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of ADELAIDE

# Legal Compliance Education and Awareness



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## Defamation Act 2005

(South Australian)

[adelaide.edu.au](http://adelaide.edu.au)

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# Preamble

This document is provided to give University staff a general overview of the Defamation Act 2005 (SA)

***PLEASE NOTE:***

Individual staff members may be able to sue in their personal capacity if they are defamed.

However, the Defamation Act does not allow 'the University' to sue for defamation in its own right or on behalf of individuals.

Legal & Risk cannot advise staff on personal legal matters, but can provide general information & support where appropriate

# What is Defamation?

- Defamation is a false or malicious statement that harms the character or reputation of a person
- If you are alleging defamation you must prove that the statement:
  - was communicated to another person;
  - was about you or identified you; &
  - is likely to cause harm to your reputation
- Defamatory material may be “communicated” by any means:
  - written - newspaper, magazine, email
  - verbally – radio, television, public meeting, conversation
  - pictorially – painting, poster, cartoon

## What is Defamation? (cont.)

- A person can sue for defamation even if they are not named as long as there is enough information for the person to be identified, even if only to friends
  - *For example: Defamatory remarks about “the last person to see the man”, or defamatory photos of “the accused shop owner” are enough for a person to be identified*
- The intention of the publisher does not matter
  - *For example: A letter to the editor stating that the Police Commissioner is using “mafia-like tactics” may be defamatory as readers will have an opinion of what it means to act in a mafia-like way. Even if the author did not mean that the Commissioner was being violent, readers are likely to conclude this is what was meant.*

## What is Defamation? (cont.)

- Unless proven true, offhand comments can be defamatory, such as:
  - *"I utterly object to the author's lack of moral concern"*
  - *"Jane is racist"*
  - *"What a liar"*
  - *"Jack did not write any of his essays. He copied all of his coursework from the internet"*

# Abusive comments v. defamation

- Abusive or insulting statements, including the use of expletives to describe a person, will **not necessarily** be defamatory
- A statement will not be defamatory merely because it is hurtful or upsetting to a person, it must **affect their reputation** in a damaging way
- Defamatory statements can be distinguished from mere abusive statements in that they say something about the person being criticised that goes beyond an insult
  - For example, it **would not** generally be defamatory to say something like "*I hate X, she's a loser*" or "*I've got no time for X, he's an idiot*"
- Statements which attribute anti-social or reprehensible actions on X's part are likely to make right-thinking people think less of the person & are therefore, potentially defamatory
  - For example, it **would** be defamatory to say "*I hate X, she's a loser, she plagiarised my work*" or "*I've got no time for X, he's an idiot and a compulsive liar*"

# How does the Act apply to the University

- Every person at the University is capable of suing or being sued under the Defamation Act
- There is potential for defamatory comments to be made by University staff & students, all of whom have a diversity of views & who regularly publish, lecture & speak publicly, including to the media
- The University is responsible for all University-published material & may be liable for a claim of defamation if it fails to act to remove material when requested to do so. This relates to material:
  - *on the University website*
  - *in a course prospectus*
  - *on a poster or a pamphlet published by the University within University grounds*

# What does the Defamation Act do?

- Protects the reputation of **individuals** from unfair attack
  - Most **organisations**, including the University, cannot sue for defamation.
- Provides effective & fair remedies for a person whose reputation has been harmed by defamation
- Promotes quick & non-court based processes for resolving disputes about defamation



# Defamation Defences include

## ***Truth / Justification***

- It is a defence if the defamatory remark was substantially true **AND** the statement related to a matter of public interest
- Gossip about a person's private life rarely has an element of public interest, therefore even if true, could be defamatory

## ***“Qualified Privilege”***

- It is a defence if the communication is made under a “qualified privilege”, that is, there is a legal, social or moral duty to communicate the defamatory information (known as the “common law defence”)
  - *For example: qualified privilege circumstances might apply when answering police inquiries or communicating between teachers & parents, or traders & credit agencies*
- The privileged communication must relate to the business at hand - the relationship cannot be abused for the purpose of relaying gossip
- This defence may fail if the defamed person can show that the communication was motivated by malice

# Defamation Defences include

## ***Honest Opinion***

- It is a defence if the defamatory statement was an expression of opinion, observation, criticism or remark, rather than a statement of fact **AND** related to a matter of public interest **AND** was made "in good faith" & without malice
  - *For example: A movie or restaurant review, or an end-of-year course survey*

## ***Vulgar abuse, jest & triviality***

- It is a defence if the defamatory words were spoken or written in jest or as part of vulgar abuse & therefore did not convey any defamatory meaning to those who heard or saw them
  - *For example: Statements made on stage during a comedy or sketch show*
  - *For example: Flippant comments made to a friend about a stranger on the street*

# What can happen if I defame someone?

- Everyone involved in the publication of defamatory material is potentially liable, including the writers, publishers & editors
- Liability can even extend to a situation where a rumour or comment made by somebody else is repeated

## ***Individual Consequences***

- Legal costs
- Payment of damages
- Damage to your personal reputation
- A breach of the Act may be considered misconduct actionable under the University's Enterprise Agreement

# What can happen if I defame someone? (cont.)

## ***University Consequences:***

- Legal costs
- Payment of damages
- Negative publicity
  - *Damage to the University's reputation*
  - *Attraction & retention of staff & students is compromised*

## What do I do if I am defamed in a newspaper, book or hard-copy publication?

- Request a retraction of the defamatory comments from the publisher of the material
- Allow the publisher to make amends & apologise within 28 days of your request:
  - In the amendment, the publisher should include an offer to publish corrections to the defamatory material
  - The publisher may include any other kind of offer to redress the harm sustained by the aggrieved person:
    - *public apology*
    - *offer to pay compensation*

### ***Keep in mind:***

- An apology is not an admission of fault & cannot be used as evidence in a civil proceeding
- Failure to accept the offer may be a defence by the publisher to a later action by you for defamation

# What do I do if I am defamed online?

- Try to contact the person who wrote the comments
- If you are unable to contact an individual, contact the Internet Content Host &/or the internet service provider
- **Only when** the owner or service provider does not remove material after being given reasonable opportunity to do so, in limited circumstances, you may have a legal claim against them as well as against the person who actually made the defamatory remarks

## ***Keep in mind:***

- Courts have suggested that statements made in the context of an internet bulletin board or chat room are generally likely to be opinions or deliberate exaggeration, rather than defamatory
- An apology is not an admission of fault & cannot be used as evidence in a civil proceeding

## What do I do if I am accused of defaming someone?

- If you are accused of defamation relating to something you wrote or said ***on behalf of the University*** (such as on the University website) & in your capacity ***as an employee of the University of Adelaide or one of its Controlled Entities***, contact Kim Evans (Senior Legal Counsel) for advice
  - [kim.evans@adelaide.edu.au](mailto:kim.evans@adelaide.edu.au)
  - 8313 6103
- If you are accused of defaming someone ***in your personal capacity***, seek independent legal assistance
  - The Law Society can recommend community centres who can provide legal advice

# Tips on avoiding defamation

## ***ALL STAFF:***

- Avoid publishing in print, by spoken word or otherwise, statements that may damage the personal, professional or business reputation of others, or may cause them to be ridiculed
- Be careful not to make damaging remarks about others during lectures or public spaces where others can hear you
- Be careful what you publish online in your personal capacity, including comments made in blogs & on social networking sites
- Do not make threats or admit to anything resembling a crime – you'll have a hard time undoing such an admission, even if done as a joke

## ***MANAGERS:***

- Be aware of what is being placed on a departmental website & act quickly to remove any material perceived to be defamatory from public view/circulation



# Tips on avoiding defamation

## ***KEEP IN MIND:***

- It is ***not a defence*** to defamation that you have prefaced a comment with “it is alleged that”
- It is ***not a defence*** to defamation that you have merely repeated what another person said
- It is ***not a defence*** to defamation that the person to whom the defamatory material was communicated did not believe it
- Legally, you are allowed to be abusive or give an honest opinion that may hurt someone’s feelings, ***however***, as a member of the University community, you are required to be courteous & respectful
- The mere fact that your honest opinion may not be defamatory doesn’t mean that;
  - At best, it is not socially unacceptable & offensive, & in the University context, may be contrary to the environment the University’s encourages; or
  - At worst, breach of your Terms of Employment or the University’s Code of Conduct

# Additional Resources

- If you have any doubts or queries about the application of this Act, contact
  - [Kim Evans](#) (Senior Legal Counsel)
    - 8313 6103
- [Defamation Act 2005 \(SA\)](#)



# Disclaimer

The content of this material is intended only to provide a summary & general overview of the *Defamation Act* as it applies to the University of Adelaide.

It is not intended to be comprehensive nor does it constitute legal advice.

Please contact *Kim Evans* or Legal & Risk if you are unsure of your compliance obligations under the Act.