

PREVENTING SOCIAL MEDIA DEFAMATION

Defamation disputes can move quickly online. Early, practical action can often reduce reputational damage before the issue becomes harder to resolve. This factsheet explains online defamation, who can bring a claim and what to do before escalating a dispute.

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WHAT IS ONLINE DEFAMATION?



Defamation can occur where online content:

- is published and can be seen by at least one person;
- clearly identifies an individual or small business; and
- damages that person's or business' reputation.

This can include social media posts, comments, shared content and negative online reviews.

For example, a food poisoning claim in a restaurant review may harm its reputation by implying poor hygiene.

WHO CAN BRING A CLAIM?



Not every business can sue for defamation. A claim may generally be brought by:

- an individual;
- not-for-profit corporations; and
- companies with 10 employees or fewer.

Larger companies usually cannot sue for defamation, but directors, founders or employees may claim if they are identified and personally harmed. Claims generally must be brought within 12 months.

CONCERNS NOTICES



Before starting court proceedings, the usual first step is to send a notice. A concerns notice should identify:

- the allegedly defamatory content, including screenshots;
- the meaning or implication of the content;
- the serious harm suffered or ought to be suffered; and
- the outcome sought, such as removal, correction, apology or compensation.

Once sent, a concerned notice is open for acceptance for 28 days.

COMMON DEFENCES



Common defences include:

- **Truth:** It is a defence if you can prove the statement was substantially true. You need proper evidence. "*I heard it from someone*" isn't enough.
- **Contextual truth:** A partly inaccurate statement may still be defensible if its damaging core is true and any inaccuracy causes no extra harm.
- **Honest opinion:** You may have a defence if the post was clearly your opinion, based on facts, related to a public interest issue, and genuinely held.
- **Qualified privilege:** Applies where information is shared with someone who has a real need to receive it, such as an employee reference, but can fail if malicious.
- **Public interest:** Applies where the post concerned a genuine public interest issue and you reasonably believed publication was in the public interest. Usually difficult for commercial disputes.
- **Innocent dissemination:** This may protect someone who unknowingly shared defamatory material about another person. It usually will not protect the original poster.

PRACTICAL STEPS FOR BUSINESSES



Before escalating a social media dispute, consider:

- saving screenshots and links before content is deleted;
- checking whether the post identifies your business or key people;
- asking the publisher or platform to remove the content;
- avoiding public replies that inflame the issue; and
- seeking advice before sending a formal notice.