

Defamation Check List

Have you, or your business, been defamed? If so, what can you do about it? This handy checklist should point you in the right direction.

The Starting Point:

Is it Defamation?

- Has a statement been made, either in writing or verbally, that directly or by implication calls your character and standing into question?
- Has the statement been made to someone other than you (ie to a third party)?
- Is the statement untrue?

If you answer “yes” to the above questions, the statement may well be defamatory.

Threatening Legal Action

- If you are an individual, a not for profit organisation, or a company that employs less than 10 people, you can threaten and bring court proceedings under the principles of defamation.
- Before you can commence proceedings, you must serve a Concerns Notice, setting out what words were used, what the defamatory imputations are which arise from those words, and seek a retraction and apology.
- If you need urgent action taken to limit the damage caused, you might need to seek an urgent injunction from the court.
- If you are a company with 10 or more employees, you can probably still take legal action, but it will need to be framed as a claim for damages for the tort of injurious falsehood.

What is the Tort of Injurious Falsehood?

- The elements that you must prove are the same as defamation except that:
 - the false statement has been made about your goods, service or business
 - the statement was made with malice (which could simply be with reckless disregard to the damage the statement might cause)
 - actual damage must be caused (or likely to be caused in due course)

What do you want?

- Litigation is expensive, so before you start you should work out what outcome you are after:
 - do you need an urgent deletion of the words, if they appear on-line?
 - do you need a retraction and apology?
 - have you suffered financial loss, and therefore need to be financially compensated?

Other issues to consider

- For businesses it is critical to control the story. This may include publicly contradicting the defamatory statement to reshape the story, or being seen to do everything to be helpful and transparent about the issue.
- Will taking action further inflame the person who has made the defamatory statement, or draw more public attention to the story? Might it be better to let the story lose momentum by not engaging?

Specialist Advice

- The legal processes in defamation and the tort of injurious falsehood are complex but potentially very powerful. There are some defenses that can be run to frustrate these claims, so you will need expert advice from a lawyer who practices in this field.
- In many instances, you can expect to recover a large percentage of the legal costs incurred in pursuing these claims. It makes a lot of sense to speak to a lawyer experienced in this area, who can maximize the potential outcome for you.



Call Rod Berry, Managing Partner of AV Lawyers, to protect your reputation.

Level 8, 10 Help Street
Chatswood NSW 2067
T: + 61 2 9411 4466
F: + 61 2 9412 3657
rberry@avlawyers.com.au



Atkinson Vinden
Lawyers