

Defamation

This is a joint project between Women's Legal Service Tasmania and Engender Equality

women's
legal
service
tasmania



Defamation and the law – what you need to know before speaking out.

CAUTION: This area of law is very complex and the information provided here is a summary only and should not be relied on as legal advice. If you have any concerns, please speak to Women's Legal Service Tasmania on 1800 682 468.

Speaking Out

Many women experience violence and abuse in our society. Recently we have seen many examples of courageous women coming forward to speak about their experience, **but** the law does not always support your voice in speaking out about your experience.

It is important that you know about some of these legal barriers so that you can speak up safely.

Have you seen examples of people with pixelated faces and voices altered in television shows? This is because television networks and the people they interview don't want to be charged with defamation.

This has never been as important as it is in today's age of digital communication.

When is something defamation?

Defamation can be established where there is:

- a publication (this could be as simple as posting a defamatory comment on your Facebook page that is seen by a number of your friends, or if something you say in public is overheard by others), *and*

- the publication identifies a person (even if you don't name the person, it could be sufficient if someone could reasonably guess who you are talking about), *and*
- the publication is damaging to the reputation of a person. (To figure out if a publication is damaging to the person's reputation, the courts will consider what a *reasonable person* would regard as defamatory).

Defences to defamation

Importantly, there are a number of defences to defamation.

It is important to understand that if a person takes action against you for defamation, it is up to you to prove that you can rely on one of those defences.

This can be difficult where it was only you and the other party who was present.

Proving that you can rely on a defence can be stressful and a costly experience and is best avoided where possible.

Defamation action can be taken in both civil courts and criminal courts.

Case Study

You post a photo on your Facebook page showing the bruising on your left eye, and type that you have left your husband because he punched you last night.

Is this defamation?

Yes, it could be, because:

- the photo and the statement have been published, *and*
- the photo and the statement would likely be damaging to your husband's reputation.

However, there is likely to be a defence available if your statement is substantially true, but you will be required by law to prove that it is substantially true.

How do you prove that it is substantially true? If the assault happened somewhere where there were no other witnesses, this may be difficult to prove. If your husband says you hit your eye on the door, it comes down to your word against his.

If your husband reported you to the police because he said you made a false statement and he lost his job as a teacher because of the post, then you may be prosecuted for criminal defamation.

However, if the police were called to the incident and charged your husband for assaulting you, and he was then found guilty by the court of that assault, then you would have a strong defence based on your statement being substantially true.

Be cautious

Do not post comments on your social media or make oral statements where others may hear you when you are feeling angry, hurt or frustrated. If you are not sure whether something is defamatory or not, **STOP** and check with a lawyer first!

Other legal restrictions you need to know

Courts can make suppression orders in certain matters. This means that the Court will not let details of what happened in court public - they will prohibit publication of proceedings.

Victims of Sexual Assault

Sexual assault matters in Tasmania cannot identify the victim unless certain criteria are met. To speak publicly about your sexual assault experience:

- you need to be over the age of 18,
- you need to have been the victim of a sexual crime,
- you need to have freely given consent in writing to the publication before it is distributed, and
- the criminal proceedings against the other person must have finalised or terminated.

Children under the age of 18

There are numerous protections in our law to protect the identify of a child under the age of 18 who appears in any criminal proceeding or before a children's court. Children who are in care or

subject to a child protection order also have their identity protected.

Family Law

Under Australian Family Law, the publication of any proceedings cannot identify the parties of the proceedings.

When can I speak out about what happened to me?

You can speak out publicly about your experience, but you need to be extremely cautious before doing so.

- If the other person has been charged or convicted of assaulting you, then you may speak knowing that there is a defence that can be relied upon under defamation law.
- If the other person has passed away, you can speak safely.
- If the other person has been convicted of a sexual offence against you and the court proceedings have been finalised, you are now over the age of 18, and you have provided your written consent to publish the information beforehand, then you may speak.
- Sometimes you can also speak about the abuse if it is not possible to identify the other person.
- There are a range of ways that you can be de-identified, but it is best to be cautious and speak to a lawyer first.
- Remember that you should never speak publicly about any children involved in proceedings as the law protects them.

What else do I need to know?

If you do get caught up in any defamation action, issuing an apology can limit an award of damages.

You should always get legal advice if this becomes an issue.

This fact sheet has been developed with a focus on Tasmanian Defamation Law. There is also a *Commonwealth Defamation Act 2005* that may apply in certain circumstances in Tasmania. For instance, if you post something on social media and the damage is considered to have occurred in a number of different states or territories, then the

Court may consider it more appropriate for the Commonwealth Act to apply.

There are some differences between the Defamation Acts in the different states and territories, and you should always seek legal advice to help you navigate this area of law.

Contacts

Additional help is available by contacting the following organisations:

- Women's Legal Service Tasmania can be contacted on **1800 682 468**.
- Contact Engender Equality on **03 6278 9090** (statewide).

This publication is intended to give general information. Whilst we have made every effort to ensure the contents of this publication are accurate at the time of writing, the law and services can change. Legal and service exactness is not possible in a publication of this nature, and this publication should not be used as a substitute for legal advice.

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