

WASF eNewsletter contribution – April 2011

Defamation

Defamation is the title given to the legal action available to an individual or sporting body whose reputation has been damaged in some way by the publishing of material by another person or organisation. Generally, *published material* refers to words spoken or written about a person or organisation.

The *Defamation Act 2005 (WA)* (“the Act”) governs the law of defamation in Western Australia. The Act is uniform with defamation legislation in all other States and Territories.

To be successful in a defamation action a plaintiff must establish three elements:

1. The alleged defamatory material must have been **published**. In this context publishing means that the material has been communicated to a third party either in writing, orally or through conduct.
2. The plaintiff must have been **identified** by the published material. The aggrieved person or body does not have to be specifically named, they just have to be able to be identified through the content of the material.
3. The material must be **defamatory** and must result in the aggrieved person:
 - a. being exposed to ridicule; or
 - b. having their personal or professional reputation damaged; or
 - c. being avoided by members of the community.

There are several defences to a defamation action, including but not limited to:

1. **Justification**: it is a complete defence to a defamation action if it is proven that the alleged defamatory material is substantially true.
2. **Privilege**: this applies to statements made in parliament or court proceedings.
3. The material was a **fair report of a proceeding of public concern**:
 - a. In a sporting context, s29(4)(i) of the Act provides that the reporting of proceedings of a sport or recreation association (or the governing body of the association) can generally not be considered defamatory.

The difficulty in establishing a successful defamation claim means that pursuing an action through the Court system is a very costly and time-consuming process. The Act recognises this and provides numerous alternative dispute resolution processes to be used in defamation disputes. These include the alleged publisher of the defamatory material offering an apology or offering to make amends. Importantly, s20 of the Act makes it clear that an apology made by a person in connection with an allegation of defamation is not relevant to determining fault or liability in connection with the matter.

Because of the costs involved, it is not recommended that defamation disputes are pursued in the courts. Gibson & Gibson Lawyers is able to provide members with advice as to how they can resolve these disputes in the most timely and cost-effective manner possible.