



# MOULDENS

## SOLICITORS

### DEFAMATION IN SOUTH AUSTRALIA

In South Australia claims for defamation (which include “libel” by the written word and “slander” by word of mouth) arising out of defamatory statements made after 1 January 2006 are regulated by the Defamation Act (SA) 2005.

This is essentially uniform legislation with all the other States and the Northern Territory. The ACT is expected to enact similar defamation legislation in the next twelve months.

**Features** of the new Act are:

1. Proceedings must be issued within **12 months** of the publication (verbal or written) of the defamatory matter;
2. Generally companies cannot be sued for defamation;
3. The common law position is retained that a personal representative of a deceased person cannot sue for defamatory publications made either before or after the death of the deceased person;
4. The following **defences** to a claim of defamation are available:
  - (a) where the statement is substantially true and the reputation of the party is not

further harmed by the substantial truth of the statement;

- (b) where the statement is made in an Australian parliamentary body or an Australian court or tribunal;
- (c) where the statement is in a public document published honestly for the information of the public or the advancement of education;
- (d) where the statement is in a fair report of proceedings of public concern by certain public bodies. These includes international courts and parliaments, the ombudsmen, law reform bodies and sporting and professional groups concerning their members;
- (e) where the statement is subject to qualified privilege in that:
  - (i) the recipient has an interest or apparent interest in having information on some subject;
  - (ii) the matter is published to the recipient in the course of giving to the recipient information on that subject; and
  - (iii) the conduct of the defendant in publishing that matter is reasonable in the circumstances.

- (f) where the statement is an honest opinion in that:
  - (i) the matter was an expression of opinion rather than a statement of fact;
  - (ii) the opinion related to a matter of public interest; and the opinion was based on proper material that:
    - (a) is substantially true;
    - (b) is published on an occasion of absolute or qualified privilege; and
    - (c) was published on an occasion that attracted the protection of the defence of public documents or fair report of proceedings of public concern.

This is very good advice. Proceedings should only be issued after all other possible recourse including the offer of an apology have been exhausted.

5. A publisher of a defamatory statement may make offer to make **amends** and **apologise**. The offer must be in writing and made within **28 days** of notice by the aggrieved person of their complaint. The **failure** by the aggrieved party to accept the offer may be a defence by the publisher to an action for defamation. The Court will take into account the terms of the offer and the timeliness with which it was made

Before issuing proceedings seeking damages for alleged defamation great care must be taken because the consequences of an unsuccessful claim affect not only the obligation to pay the other party's costs but your own reputation will be sullied.

In a recent defamation case the Judge made the following warning:

Defamation proceedings are blood sport. The consequences of losing are far worse than just the loss of payment of (both parties') legal costs.