



Seesaw Magazine
Editorial Policy and Code of Ethics
June 11, 2020

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INTRODUCTION

The Seesaw Magazine Editorial Policy and Code of Ethics is an important statement about the way we conduct our business and engage with our stakeholders and community.

The Policy is drafted in accordance with the Seesaw Strategic Plan 2019-2022 and it sets out a clear framework for editorial decision-making, professional standards, efficiency, responsible management and risk mitigation. The keystones here are independence and responsibility. Seesaw is committed to honesty, fairness, independence and respect for the rights of others. Seesaw conducts its editorial activities in accordance with the general principles of the Australian Press Council and the MEAA Journalist Code of Ethics.

The Policy gives guidance to the highest standards of journalistic practice and ethical behaviour. It applies to the editorial staff of Seesaw and, where relevant, all casual employees, freelancers and contributors as agreed in their terms of engagement. The keystones and guiding principles set out in this preamble form part of this Policy for staff and contributors, as well as the specific Policy items set out below.

Respect for truth and the public's right to information are fundamental principles of journalism and the basis of Seesaw's editorial practice applicable to staff and contributors.

Journalists search, disclose, record, question, entertain, comment and remember. They inform citizens and animate democracy. They scrutinise power, but also exercise it, and should be responsible and accountable.

In interpreting and applying the Policy and Code, the interests that shall always be paramount are those of the public.

This Policy serves our purpose to advance culture in Western Australia. We do this through an online media platform that is editorially independent of the WA arts sector and which provides arts coverage for the benefit of the Western Australian community.

Community values evolve, and the Editorial Policy and Code of Ethics will be reviewed from time to time to ensure it reflects what our audience expects of us.

EDITORIAL PROCESS AND FLOWCHART

The editors reserve the right to make any and all decisions regarding the commissioning, selection and development of editorial content, along with amendments to that content. Final decisions on publication, retraction or correction or similar also rest solely with the editors.

Story ideas and angles from the community are welcome, but coverage is not guaranteed, as set out above. Without limiting this, Seesaw editors reserve the right to define article and review parameters based on timeliness, relevance and significance.

Contributors are encouraged to consult with editors to identify any actual, possible or perceived conflicts of interest or any other concerns that may hinder their capacity to cover the subject in question.

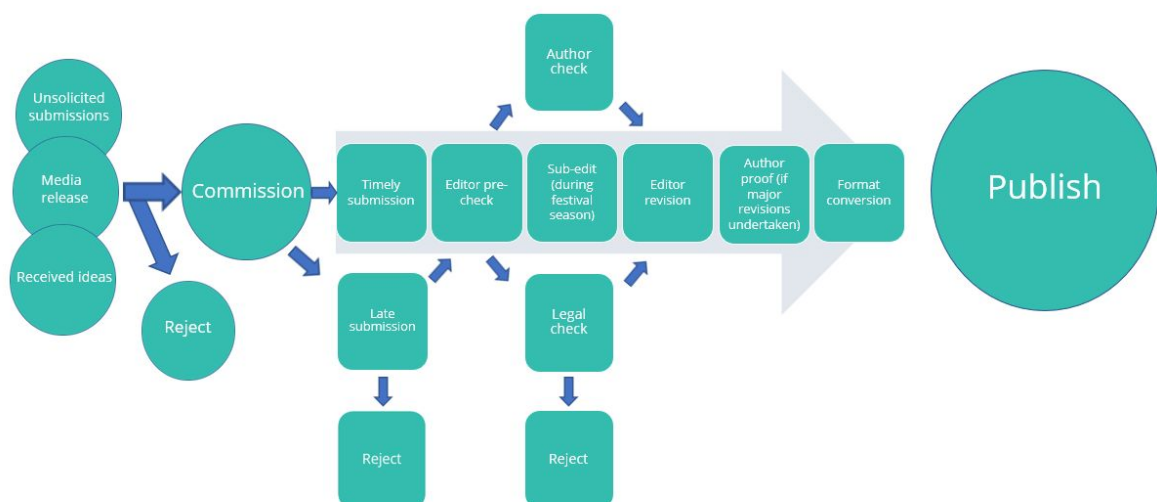
Unless agreed in advance, contributors will submit their final draft of their work. Articles will be edited for accuracy, fairness, length, clarity, style or otherwise. If necessary, Seesaw editors will seek external legal opinion regarding the content before publishing and any other content may need to be verified, if required by the editors, before publication.

If there are significant changes made by the editors to a contributor's work, a final version will be sent for approval before publication. Minor edits/corrections will not be sent back.

Any and all commissioned opinion and analysis pieces will be considered and vetted by at least two editors mindful of advice available through the Seesaw Editorial and Ethics Committee.

Without limiting the above, this flowchart illustrates the Seesaw editorial process.

Seesaw Editorial Flowchart



COMPLAINTS PROCESS

Seesaw makes every effort to maintain its editorial standards and behaviour in accordance with the practices set out in its Editorial Policy and Code of Ethics.

This complains process

We invite and welcome public feedback, positive or negative. Any and all complaints regarding the content published by Seesaw are taken very seriously. They will be dealt with promptly, fairly and with the intent to constantly improve the quality of our content and our service to our audience.

To register a complaint, please email hello@seesawmag.com.au or outline your concerns through the link: <https://www.seesawmag.com.au/contact>

To help us to understand your complaint, please:

- Provide details of the subject of your complaint by indicating the particular content by its date of publication, the URL, subject matter, headline or other identifying details, and outline the relevant content that gives rise to the complaint.
- Clearly outline the nature of your concerns. If you are alleging a breach of Seesaw's Editorial Policy and Code of Ethics, tell us which standards you believe have been breached and your reasons for having this view.

All complaints that cannot be resolved directly by the Seesaw editors will be referred to the Seesaw Editorial and Ethics Committee, a committee established by the governing board of Seesaw under the organisation's constitution.

If you're not satisfied with the response by Seesaw, you may wish to consider approaching the Australian Press Council for further assistance. Contact details here: <https://www.presscouncil.org.au/contact-us/>

As stated in the introduction to this document, Seesaw conducts its editorial activities in accordance with the general principles of the [Australian Press Council](#) and the [MEAA Journalist Code of Ethics](#).

Contributions must comply with the following editorial standards which the editors will follow.

ACCURACY AND CLARITY

- Ensure that factual material in reviews, news reports, features, opinion pieces and other editorial content is accurate and not misleading.
- Editorial material should distinguish for the reader between comment, verified fact and speculation.
- All commentary and analysis should meet the same standards of factual accuracy as news reports.
- Photographs should be a true representation of events. Photographs should be used in context, include copyright attributions, captions should be fair and accurate, and digitally enhanced images and illustrations must be clearly labelled as such.
- Paid content or advertising placed in Seesaw should be identified as such, including where goods, services or other benefits are received in consideration for content (eg gifts, product samples, travel or accommodation provided).
- Sources promised confidentiality must be protected at all costs. However, where not confidential and where possible, other sources of information should be identified as specifically as possible.
- Adhere to a clear and consistent style guide to maintain the Seesaw voice and aid ease of understanding for the reader. (See Appendix A)

FAIRNESS AND BALANCE

- Ensure that factual material is presented with reasonable fairness and balance, as finally determined by the editors if required.
- Writers' expressions of opinion must NOT be based on significantly inaccurate or misleading factual material or omission of key facts and it is the writer's obligation to ensure compliance with this requirement by verification and fact checking.
- Provide a correction or other adequate remedial action promptly if published material is significantly inaccurate or misleading or there is omission of key facts.
- Where content refers adversely to a person, they must be given a fair opportunity to comment for fairness and balance, and for the publication of a reply if that is then reasonably necessary in the interest of fairness and balance.
- Direct quotations should not be changed to alter their context or meaning.

PRIVACY AND AVOIDANCE OF HARM

- Avoid intruding on a person's reasonable expectations of privacy, including under applicable privacy legislation, unless doing so is sufficiently in the public interest as the editors may determine with recourse to legal advice.
- Avoid causing or contributing materially to substantial offence, distress or prejudice, injury or harm, or a substantial risk to any person's health or safety, unless doing so is sufficiently in the public interest as above, and is not otherwise contrary to any law in force.
- Special care should be taken when dealing with children (under the age of 16). The editors must be informed when children have been photographed, quoted or interviewed without parental consent.

- Have properly taken into account the current laws around defamation, sub judice contempt, and any other legal considerations affecting publication of material.

INTEGRITY AND TRANSPARENCY

- Seek to act always in the best interests of the public, rather than for the benefit of private or sectional interests.
- Avoid publishing material which has been gathered by misleading, deceptive or unfair means, unless doing so is sufficiently in the public interest as the editors may determine with recourse to legal advice.
- Ensure that all conflicts of interests or personal benefit of any kind are avoided or adequately disclosed, and that they do not influence published content or material.
- Must not reproduce other people's material without proper attribution.
- Acknowledge the source of published material obtained from another organisation.
- Identify the author with a byline wherever possible but only if the content is substantially the work of that author.
- Where they relate to Seesaw, the outcome of defamation actions or judgements by the Australian Press Council and other such bodies should be reported promptly.

CONFLICT OF INTEREST

- All reasonable efforts must be made to eliminate real and perceived conflicts of interest.
- Seesaw staff and contributors should not use their position to obtain private benefit for themselves or others.
- Staff and contributors should not be influenced by family or other personal relationships in fulfilling their editorial responsibilities.
- Staff and Contributors should be alert to any conflicts of interest that may arise and declare to the relevant editor any real or perceived conflict of interest.
- Staff have the right to join any community or political organisation or activity but should be aware that such participation may create, or be seen to create, a conflict of interest and reflect on the credibility of Seesaw and the staff member.
- However, staff participation in protests and demonstrations, or in decision-making or fundraising capacities in organisations that do or could generate news, should be declared where their involvement could be an issue.
- Contributors in doubt as to whether a conflict exists should consult an appropriate editor. This is especially relevant regarding reviews involving individuals or organisations associated with the reviewer.
- A reviewer who accepts a commission and subsequently identifies a conflict of interest can withdraw from the commission without prejudice.
- Seesaw staff and contributors will not allow any payment, gift or other advantage to undermine accuracy, fairness or independence.
- Any attempts to induce favoured editorial coverage through the offer of gifts or favours or other benefits should be reported to the editors and not be accepted. Where relevant, Seesaw will disclose these offers of payments, gifts or other advantages.

WORKPLACE AND PERSONAL BEHAVIOUR

- Seesaw staff – and contributors whenever possible – should have equal opportunity to develop their skills.
- Seesaw is committed to a healthy and safe working environment.
- Representatives of Seesaw are aware that their activities may have an impact on Seesaw’s reputation for independence and integrity.
- No one should be harassed or discriminated against on the grounds of sex, marital status, pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment or age. Seesaw adheres to State and Commonwealth equal opportunity and anti-discrimination legislation and requires its staff and contributors to do the same.
- Staff with access to personal information relating to contributors or other members of staff are required to treat such information as confidential, and not disclose it to anyone except in the course of discharging their formal responsibilities as permitted by and subject to limits in applicable privacy legislation.
- Seesaw internal operational activities are confidential and must not be disclosed.

LEGAL RISK MITIGATION

Seesaw’s editorial activities are not only guided by the principles of independence, responsibility and fairness, they are governed by the rule of law.

There are four key areas of Australian Commonwealth and State law that have particular relevance to journalists in this country.

These are: Defamation and Vilification; Copyright and Moral Rights Infringement; Contempt of Court; National Security Prohibitive Orders.

In the case of Seesaw coverage, the most likely of these to arise is the first listed — defamation. Risks around vilification, copyright infringement, breaches of judicial processes and compromising sources may also factor in editorial decision-making. Far less likely, but worth being aware of, are the application of national security laws.

Seesaw editorial staff and contributors should identify, at least in general terms, the potential legal risks of any kind flagged in any article so that expert legal advice can be obtained before publication, and:

- Have a proactive risk management policy in place, to minimise their risk of publishing defamatory material or otherwise breaching legal rights.
- Editorial staff must complete training to identify and mitigate legal risks before publication.
- Contributors will be given general information advice about the likely risks surrounding Defamation and Copyright in particular, but retain their obligations to avoid legal risks.
- At least one qualified and registered legal practitioner (preferably pro bono) will be available to assess articles identified as having a risk. An alternative practitioner is

recommended in the event of unavailability or a conflict of interest involving the primary advisor.

- Refer to **APPENDIX B: A Guide to Defamation**

REVIEWING PROTOCOLS

Seesaw is aimed at the general public, as well as the arts sector. We want our reviews and articles to be intelligent, engaging and accessible for as wide an audience as possible.

Reviewing is a foundational function at Seesaw. Our reviews assess productions and events, (including exhibitions) so that readers can decide whether they wish to see a work; our reviews entertain and engage readers regardless of their pre-existing interest; our reviews expound on the cultural context; our reviews provide critical feedback for artists, funders and other stakeholders, including the general public.

The protocols below are determined in line with the previously stated policies regarding clarity, accuracy, fairness, balance and integrity.

- A review must convey a work's context, its content and a critical evaluation.
- In determining context, seek to understand the intentions of the creators and purpose of the producers. Prepare, research and read the production notes.
- Credit key artists by name if possible (eg. lead roles, director, conductor, choreographer, composer, writer, curator) and attribute any uses of copyright.
- Offer an honestly held response to the work, even if it means expressing a negative opinion.
- Back opinion with cogent argument based on relevant evidence. Readers deserve that and the work's creators deserve that.
- Be diplomatic in giving critical feedback in public on someone's endeavour. Avoid cleverness for the sake of it; a good review is about the work and the audience, not about the reviewer. Try to understand what the creator attempted to do, and do not shame them if you do not think they achieved it.
- Keep your criticism proportional – the review should reflect how you felt about the work overall.
- Accuracy is crucial for the credibility of the review and the reviewer. Research and check.
- **Be guided by the following questions:**
 - Does the review describe the show/work or critique it? (Don't just say what happened, analyse whether it worked.)
 - Did the creator achieve what they set out to do?
 - Is the show/exhibition what the audience may have expected based on the promotional material?
 - If the reviewer had purchased the ticket as an audience member, would they be satisfied?

APPENDIX A: STYLE GUIDE

Spelling and grammar guidelines

- Tense In general, when you write about a work – be it a painting, a play, a piece of choreography, a piece of music – always use present tense.

Eg: “In *Satie Studs/Ogives Composite*, Clark commemorates the composer Erik Satie by paying tribute to dance works created to his music by the aforementioned choreographers. The resulting work is physically demanding and unforgiving. In particular, balances are prolonged and performed in unison; perched on one leg, torsos tip and tilt precariously, the working leg unfolding and slicing the air smoothly.”

When writing about the way a work was performed on a particular night, however, you may use past tense:

Eg: “Young’s portrayal of the character of Liz was full of delightful bravura, whether tossing her head wildly to the instructions of an “advanced at-home dance class” issuing from her old-school ghetto blaster or losing herself in a spine rippling solo, performed with an exuberance and abandonment beyond her years.”

That said, you may prefer to write about the way a work was performed in the present tense, particularly when the season is ongoing and there is only one cast. That’s fine - you can use your discretion when writing about the way the work was performed.

- Use UK spellings rather than US.
- Use italics for the names of works, double inverted commas for the names of mixed bills and exhibitions.
- Double check spelling of names.
- A band is singular but a band name is plural – ‘the band is coming to Perth’ ... ‘U2 are coming to Perth’.
- Use double quotation marks for all quotes
- Only use capital letters for names and pronouns, not positions. Eg “WASO’s chief conductor Asher Fisch opened the first concert in the Masters series.” Chief conductor doesn’t require capitals.
- Swear words are acceptable if they occur within the context of the show/exhibition. Generally though they are best avoided when writing for a widely read publication.
- In text, use words rather than digits for numbers up to nine. For all numbers from 10 upwards, use digits rather than words, except in the following cases.

- a) The sense is intentionally approximate (as in “several thousand of those ...).
- b) The number refers to a large amount of money (“\$55 million”; “\$2.5 billion”).
- c) The number comes at the start of a sentence. In this case the number must be written in words, (“Thirty-six per cent of these were” not “36 per cent of these were” or “36% of these were”).

APPENDIX B: A Guide to Defamation

This fact sheet is courtesy of Justice Connect, a not-for-profit national law network which provides legal information for Australian community organisations. The sheet is intended as a guide only, not a definitive resource or formalised advice. More details about Justice Connect: <https://www.nfplaw.org.au/>

This sheet covers:

Defamation laws in Australia

What is defamation?

Who can be defamed?

Who can be sued for defamation?

Defences

Apologies and offers to make amends

Practical guidance

Not-for-profit organisations that publish information, including online and via social media, should be aware of the risks of publishing defamatory material.

Defamation laws seek to balance freedom of expression with the protection of reputations. It is important for not-for-profit organisations to understand the potential risks of publishing defamatory material, including via social media or online. Defending a defamation claim can be extremely stressful and costly in terms of time and money, but it is important to remember that there are options for resolving the issue that don't involve going to court.

On the other hand, not-for-profit organisations may wish to understand their options where the organisation, or a person involved in the organisation, believes they have been defamed. Defamation is a very complex area of law which has some differences between states and territories. The information below is a summary of the key concepts and is only a guide. For more detailed information, please see the resources listed at the end of this fact sheet.

Defamation laws in Australia

All Australian states and territories have enacted largely uniform defamation laws (Uniform Defamation Laws) that took effect on 1 January 2006. The Uniform Defamation Laws have a focus on promoting speedy and non-litigious methods of resolving disputes about publication of defamatory material.

Prior to the adoption of the Uniform Defamation Laws, the defamation laws in each state and territory differed widely. As noted above, there are still some differences in the various state and territory laws.

In addition to the legislation in each state and territory (listed under 'Resources' at the end of this fact sheet), courts are still guided by previous court decisions (known as the 'common law'), provided that those court decisions are not inconsistent with the Uniform Defamation Laws.

What is defamation?

Defamation refers to injuring a person's reputation (and, in some circumstances, the reputation of an organisation) without a lawful reason or defence.

To make a successful claim in defamation, the following elements must be proven:

- the material has been published to a third party
- the material is about the plaintiff ('plaintiff' is the term used to describe the person or organisation claiming they have been defamed, should the matter proceed to court), and
- the material defames the plaintiff.

Each of these elements, and the available defences, are discussed below.

If the above elements are proven in court, and no defence applies, then an award of damages (a sum of money) can be made by the court. The court will seek to award damages that are proportionate to the harm caused to the plaintiff's reputation.

1. The material has been published to a third party

The material has to be published to at least one person other than the plaintiff. For example, a person cannot be defamed by a letter which only they receive and is not published to a wider audience.

Publication is defined very broadly. Publication can include, but is not limited to:

- spoken words, for example during a radio broadcast or television program
- written or printed materials, including emails, social media posts, blogs and websites
- online reviews
- drawings and cartoons
- paintings
- poetry, and
- live theatrical performances.

It is important to note that the Uniform Defamation Laws contain a limitation period (the timeframe within which you can start legal action) of up to one year from the date of publication. In limited circumstances, the court may extend the period in which to commence an action to a maximum of three years, for example where the publisher cannot be identified or the plaintiff was not aware of the publication within one year.

2. The communication is about the plaintiff

For a defamation claim to be successful, the plaintiff has to prove that they were identified in some way by the publication. For example, their name might have been used, or their photo might have been published together with other defamatory remarks. In some cases,

describing the characteristics or identifying features of a person may be enough to show that they were identified.

3. The communication defamed the plaintiff

A communication is considered defamatory where it causes others to think less of the plaintiff. It can disparage the plaintiff, cause other people to shun or avoid the plaintiff, or subject them to hatred, public ridicule or contempt.

Some defamatory statements may be overtly untrue and damaging of a person's reputation. Examples could include publishing a social media post containing harmful and disparaging lies about a person, or writing a blog describing a not-for-profit group's treasurer as a criminal and a thief. Making 'imputations' (statements that insinuate or imply certain meanings) may also be defamatory, even if only some readers know the context to understand the implied meaning.

The plaintiff does not need to establish any actual loss as a result of the communication. The key consideration is whether the plaintiff's reputation would be injured in the mind of an 'ordinary reasonable person'.

Who can be defamed?

Any living person can sue for defamation, provided that the three elements discussed above are met.

However, under the Uniform Defamation Laws, there is no cause of action to bring a defamation claim if publications are about:

- deceased persons (note that in Tasmania, the legislation does not specifically exclude deceased persons)
- a class of people (note the caution box below), or
- public bodies, including local government authorities or other government authorities.

The Uniform Defamation Laws limit the ability of corporations to sue for defamation. The only corporations or organisations that can sue for defamation are not-for-profit corporations (not including local government or public authorities) and corporations that employ fewer than ten people.

It is important to note that there are other legal avenues that for-profit corporations can pursue if defamatory material is published, for example the common law cause of action of 'injurious falsehood'. If the material identifies individuals, such as employees or board members of organisations, those people could also attempt to make a claim for defamation in their individual capacity. Therefore, it is important to be aware of the risks of making controversial or potentially damaging statements about corporations, as well as individuals.

Caution

Although a 'class of people' cannot be defamed, a statement targeting a group may be still be defamatory of a person in that group if the group is small enough that its members can be reasonably identified.

Who can be sued for defamation?

Anyone involved in the creation, publication or dissemination of the defamatory material can be sued for defamation, including a not-for-profit organisation.

If an employee has published defamatory content in the course of their employment, an organisation may be held 'vicariously liable' for the actions of its employees.

DEFENCES

The running of defamation matters is very complex and legal advice should be sought immediately if litigation is threatened.

There are a number of defences that can be raised by those who have been accused of publishing defamatory material. Set out below is an overview of some of the available defences – there are other defences, and legal advice should always be sought in defending a claim for defamation.

Defence of truth

The defence of truth can be used where the defendant (the person being accused of publishing defamatory material) can prove that the defamatory statements are true or are substantially true. The defendant will need to establish truth in court.

Defence of absolute privilege

The defence of absolute privilege is available where matters are published in the course of proceedings of a parliamentary body, or of an Australian court or tribunal.

Defence of qualified privilege

The defence of qualified privilege protects honest communications where the defendant has a moral, legal or social duty to make a communication, and the recipient of the communication has an interest in receiving the information. This defence could apply, for example, where a defendant has provided an employment reference or answered questions asked by the police. The publishing of the material must have been reasonable in the circumstances and cannot have been done maliciously.

Defence of honest opinion

The defence of honest opinion in the Uniform Defamation Laws (which is similar to the defence of 'fair comment' at common law) requires the defendant to prove that the matter was an expression of opinion, not a statement of fact. The defendant also needs to prove that the opinion is related to a matter of public interest and is based on material that is substantially true.

Triviality

Under the Uniform Defamation Laws, triviality is a defence if the defendant can prove that the circumstances of the publication were such that the plaintiff was unlikely to sustain any harm.

Innocent dissemination

The defence of innocent dissemination is intended to protect those who publish material created by someone else. This defence requires you to prove that you did not know, and would not have known with the exercise of reasonable care, that the publication was defamatory. This defence may be used by people and organisations such as television broadcasters, copying services and book sellers.

Note: If you innocently publish defamatory material, you must take reasonable steps to remove the defamatory material as soon as you become aware that it is or may be defamatory. Otherwise you will be deemed to have published the material.

The above list is not a complete list of defences – for further information on defences, see the resources at the end of this fact sheet.

Case example

In *Harbour Radio Pty Ltd v Keysar Trad* (2012) 247 CLR 31, the defence of qualified privilege was accepted by the High Court with respect to a number of defamatory imputations made by 2GB (a radio station), the day after it was attacked and called "racist rednecks" by Trad at a peace rally held after the Cronulla Riots.

If you innocently publish defamatory material, you must take reasonable steps to remove the defamatory material as soon as you become aware that it is or may be defamatory. Otherwise you will be deemed to have published the material.

In response to the comments made at the peace rally, 2GB made comments about Trad during a broadcast, including naming Trad as a "disgraceful individual". Trad sued 2GB for defamation. The High Court held that the defence of qualified privilege was available for a response to an attack when the response is proportionate with the attack and is made for the bona fide purpose of vindicating one's reputation. Therefore, the Court found that 2GB had not defamed Trad.

Case example

Wilson v Bauer Media Pty Ltd [2017] VSC 521 is a recent high profile Australian defamation case. Wilson claimed that Bauer Media published a series of defamatory articles that depicted her as a serial liar. Wilson claimed that she had suffered injury to her feelings, credit and reputation and had suffered loss and damage. The jury found that the articles were defamatory and rejected Bauer Media's defences that the imputations were substantially true, or that their publication was in circumstances of triviality. The judge rejected the defences that the publication was on an occasion protected by qualified privilege. The Supreme Court awarded Wilson \$650,000 in general damages, including aggravated damages and \$3,917,472 in special damages for Ms Wilson's opportunity for new screen roles lost by reason of the defendant's publication. The cap on general damages (currently \$389,500) imposed by the Defamation Act 2005 (Vic) did not apply because Ms

Wilson was awarded aggravated damages. Bauer media appealed the award of damages to Ms Wilson. The award of damages to Ms Wilson was subsequently reduced on appeal to \$600,000. The Court found that the award of \$3,917,472 for economic damages arising from lost opportunities could not be upheld based on the evidence. On 16 November 2018, Ms Wilson was refused special leave to appeal to the High Court of Australia. The judgment and the award of aggravated damages acts as a warning to publishers to diligently investigate and fact-check stories.

Apologies and offers to make amends

As noted above, the Uniform Defamation Laws have a focus on speedy and non-litigious resolution of defamation matters. There are steps that can be taken to avoid the matter proceeding to court.

Apologies

When faced with a claim for defamation, it is important to consider apologising or recanting the defamatory statement. An apology does not constitute an admission of guilt and is not relevant in determining the fault or liability for a defamatory publication.

Offer to make amends

Where a defamatory publication has been made, the publisher may make an offer to make amends to the aggrieved person.

An offer to make amends must be made **within 28 days** of being served or presented with a 'concerns notice.' An offer to make amends cannot be made if a defence has already been served in a legal action brought by the aggrieved person against the publisher.

Note: A concerns notice is made by the aggrieved person. It must be made in writing and must inform the publisher of the alleged defamatory imputations that the aggrieved person believes have been published.

The offer must be made in writing and the wording must make it clear that it is intended to be an offer to make amends. The offer must include:

- a reasonable correction of the defamatory material
- details of the reasonable steps you will take to tell other people who have been given the publication that the publication may be defamatory, and
- an offer to pay expenses incurred by the aggrieved person before the offer was made and the expenses reasonably incurred in considering the offer.

The offer may also include other measures to compensate harm suffered including publishing an apology, paying compensation, or details of any corrections or apologies made before the date of the offer.

If the offer to make amends is accepted by the aggrieved person, then the aggrieved person cannot continue with an action for defamation even if the offer to make amends was limited to a particular defamatory imputation.

Under the Uniform Defamation Laws, if a reasonable offer to make amends is not accepted, the failure to accept the offer can be used by the publisher as a defence for an action for defamation, if the defendant can show that:

- the offer was made as soon as practicably possible after they became aware of the defamatory material
- they were ready and willing to carry out the terms of the offer, and
- the offer was reasonable.

Practical guidance

Organisations should have a proactive risk management policy in place, to minimise their risk of publishing defamatory material.

How to avoid publishing defamatory content

As part of a risk management strategy, organisations should have appropriate policies in place and, depending on the nature of the organisation, consider training employees and volunteers.

Organisations which post blogs, use social media and publish information to the public need to be particularly mindful about imputations conveyed in these publications.

It is a common misconception that defamation claims can be avoided by simply not mentioning a person's name. Employees and volunteers should be trained to consider the communication as a whole, including titles, headlines and accompanying images.

Staff should be reminded that, where appropriate, statements should be expressed using the language of opinion rather than the language of fact.

Your organisation may wish to implement a 'peer review' process for material that is published through an organisation's social media account, blog, newsletter or other channels. If a controversial statement is made that your organisation knows is true, it is still important to ensure that your organisation has evidence to substantiate the claim. If your organisation's mission involves publishing material that puts you at risk of a defamation claim, then you may wish to consult a lawyer for review of the material pre-publication, in order to manage the risks of a potential claim.

What if someone claims you have defamed them?

Being served with a concerns notice or having a defamation claim made against you or your organisation can be daunting and very stressful. If you have been served with a concerns notice you should immediately seek legal advice, particularly noting the timeframes for an offer to make amends.

What if you believe someone has defamed your not-for-profit organisation?

It is important to take note of the relevant timeframes for claims of defamation discussed above. You should save copies of the defamatory material (for example, by taking screenshots of Facebook posts) and consider whether the publication satisfies the elements for

defamation and whether the publisher may be able to rely on one of the defences outlined above. Obtaining specific legal advice is recommended.

Remember that strict timeframes apply for making a claim for defamation (see the 'caution' box above).

Related Law Resources

The Not-for-profit Law website at <http://www.nfplaw.org.au/> has further information on the following topics:

- Advertising - <http://www.nfplaw.org.au/advertising> The advertising page provides a comprehensive guide on how organisations can comply with advertising law and marketing in Australia.
- Social media - <http://www.nfplaw.org.au/socialmedia> The social media page provides information regarding the risks associated with the use of social media by organisations and employees.
- Arts Law Defamation Information Sheet This information sheet describes defamation and explains how to minimise risk.
- Legislation: Defamation Act 2005 (WA)