



What happens on the internet stays on the internet? Defamation law reform and social media

Justine Hanks
Education Manager
Rule of Law Education Centre

“Defamation law is a difficult balancing exercise between freedom of speech on one hand, and protecting personal reputations on the other.” [NSW Attorney General Mark Speakman, 2021]

Introduction

Law reform and technological developments move at distinctly different speeds, creating challenges for legislators worldwide. In Australia, social media interactions have increased that gap due to the inability of the Universal Defamation Law (UDL), the *Defamation Act 2005*, to effectively regulate the wide and rapid dissemination of defamatory online commentary, mostly due to its foundations in historical case law and legislation created in pre-internet times.

This is making defamation litigants increasingly reliant on the creation of case law to regulate online behaviour, as evidenced in cases such as *Voller*, *BeautyFULL* and *Burrows*, expanding the role of the courts in the law-making process. In particular, gaps in legislation have forced the courts to redefine the key concept of who is considered a publisher, and what the meaning of new communication methods, such as emoji's, are, creating potential issues of inequity and fairness, a theme that will continue the more new, untested challenges arise before the courts. Law reform is needed to assign appropriate responsibility to parties that create defamatory content, enabling plaintiffs to seek remedy more directly and reducing cases before the courts.

Background

As of April 2022, Social Media News estimates Australian usage of social media platforms to be among the highest in the world, largely due to the fact that 91% of Australians have access to the internet. In a population of almost 26 million people, 23.6 million are internet users, with a reported 21.45 million using social media. Approximately 93.37% of Australians use Google as their internet search tool.

Table 1: Social Media Use in Australia as at April 2022

Social Media Platform	Estimated number of Australian users per month (millions)
Facebook	18
YouTube	17.5
WhatsApp	12
Instagram	10
LinkedIn	6.5
Snapchat	6.4
Twitter	5.8
Tiktok	1.1

Source: Social Media News, April 2022

Social media platforms have become vehicles to enormous amounts of information and a forum for freedom of speech. But their use has also seen a change in the way that we communicate our own thoughts and feelings about the actions, experiences and beliefs of others. These platforms have created a space where users can, and do, speak freely about both public and private figures, with countless others able to see those thoughts and feelings with a degree of immediacy. Such commentary is without a system of review or vetting.

As a result, courts across jurisdictions have seen an increase in the number of defamation cases related to online interaction, with legislative regulation not keeping pace with the rate of change in communication platforms. This is evidenced by the fact that Australia now has one of the highest defamation case rates in the world – more than double that of the UK. More than half of those cases occur in NSW. Judge Gibson, Defamation List Judge in the District Court of NSW, reported that, in a 2018 study of 91 defamation judgements, 64 matters (70%) involved partial or entirely online publication, with 63.7% of all cases studied being brought against individuals rather than media corporations.

What is defamation?

Defamation is ‘the action of damaging the good reputation of someone’ (Oxford Dictionary, 2022) and is an area of private law, meaning it is used to resolve disputes between individuals and/ or entities. Laws regulating defamation must balance the protection of the right to a good reputation with the right to freedom of expression and opinion, a key feature of democracy and an essential cornerstone to the achievement of the rule of law. The right to honour and reputation are contained in Article 17 of the International Covenant on Civil and Political Rights.

In Australia, defamation is simultaneously regulated by civil law and legislation. Civil torts are designed to protect rights and freedoms, with the tort of defamation protecting the right of a person or entity to their good reputation without other people creating an untrue picture to the contrary, causing others to think less of that individual or entity.

It is a ‘*strict-liability*’ tort, meaning that liability can exist regardless of fault. There is no need for a plaintiff to prove that the defendant deliberately caused reputational harm and there is no single test for what can be classified as defamatory. If a defamation action is successful, the plaintiff will be rewarded damages – financial compensation (a payment) designed to remedy, or fix, the harm that they have experienced and return them to their former state (pre-harm).

In some states, such as Western Australia and NSW, defamation can also be a criminal offence. In NSW, the offence of criminal defamation was inserted in 2005 as s529 in the *Crimes Act 1900*, however, the NSW Bureau of Crime Statistics and Research (BOCSAR) advises there has never been a matter of criminal defamation finalised by NSW Courts under this section.

The development of defamation law in Australia

Defamation, like many Australian laws, has its basis in English law, evolving over long periods of time. Matters concerning reputation have a long history in English law, spanning from Roman times and developing significantly throughout the Middle Ages. One of the earliest recorded successful claims of ‘defamatory ridicule’ by a plaintiff was *Mason v Jennings [1680]* Raym Sir T 401, ER209. A plaintiff succeeded in his claim that a public reference made about him using a slang term that inferred he had been beaten by his wife

had reduced his standing in the community. Following this case, recorded decisions from a wide range of courts acted to develop the common law of defamation. The tort of defamation arrived in Australia with the First Fleet.

Prior to 2005, each state and territory had its own body of law to address matters of defamation that comprised both common law and legislation.

Table 2: Australian Defamation Legislation Prior to 2005

State/ Territory	Legislation
Australian Capital Territory	<i>Civil Law (Wrongs) Act 2002, Ch 9</i>
New South Wales	<i>Defamation Act 1974</i>
Northern Territory	<i>Defamation Ordinance 1938, 1963 and 1964; Defamation Act 1989</i>
Queensland	<i>Defamation Act 1889</i>
South Australia	<i>Civil Liability Act 1936</i>
Tasmania	<i>Defamation Act 1957</i>
Victoria	<i>Wrongs Act 1958</i>
Western Australia	<i>Libel Act 1843 (UK); Newspaper Libel and Registration Act 1884; Newspaper Libel and Registration Act 1884 Amendment Act 1888; Criminal Code Act 1913</i>

Source: Model Defamation Provisions, 2005

The problems with inconsistent legislation

This system resulted in issues of inequity, complexity, and access across jurisdictions, particularly when what was defamatory in one state, may not be in others. This in turn resulted in highly complicated cases and high cost proceedings, particularly those that occurred across jurisdictions (for example, matters arising because of television broadcasts on national networks). In some cases of multijurisdictional broadcast, plaintiffs conducted 'jurisdiction shopping' to create the best outcome by seeking resolution in a state where the law was more conducive to their case. This clearly had ramifications for the fairness and equity of outcomes in cases of defamation, eroding the achievement of the rule of law and infringing upon individual rights.

Law reform in defamation

2005 – The introduction of Uniform Defamation Legislation

After first being identified as an issue in the 1970's, the decision was made in 2004 that a uniform defamation legislation be created across all states and territories to simplify the laws and create a fairer and more consistent approach to defamation regulation in Australia. The Federal Government pushed the states to create laws by drafting laws of their own. The Standing Committee of Attorneys General responded with draft Model Defamation Provisions (MDP's) for a UDL in the same year.

In 2005, all states and territories passed legislation to regulate defamation, applying principles agreed upon in the MDP's, with the legislation coming into force in January of 2006.

The area of defamation was now regulated across states by their respective version of the *Defamation Act 2005*, except in the ACT, where the uniform legislation was captured in Chapter 9 of the *Civil Law (Wrongs) Amendment Act 2006*.

Under the 2005 Act, to be successful in a claim, a plaintiff must prove:

- That defamatory material was published to a third party (someone apart from the creator (the defendant) and the plaintiff saw the content)
- The material created identifies or is about the plaintiff (if not explicitly named, they can be identified by a reasonable person through the commentary)
- The material is defamatory about the plaintiff (they are presented in a negative light and their reputation will be diminished because of a third party seeing it)

Commentators cited the importance of nationally developed laws bringing uniformity to the system. However, they recognised that the legislation was based on historical understandings of defamation and were 'not a radical departure' from existing regulation. They identified that further review and amendment would be needed, perhaps in recognition of the rapidly emerging communication channels available via the internet at the time and already changing social communication practices.

It is important to note that this legislation was created when Australia had a broadband internet usage rate of approximately 28%, and social media only consisted of a small global community for Facebook of approximately 1 million users total.

Table 3: Social Media Use in Australia, 2005

Social Media Platform	Estimated number of users (2005)
Facebook	1 m globally
YouTube	Launched Dec 2005
WhatsApp	Founded 2009
Instagram	Founded 2010
LinkedIn	Australian launch 2010
Snapchat	Founded 2011
Twitter	Founded 2006
Tiktok	Founded 2016

Various Sources

Applying principles of old laws in a modern age: challenges in regulating defamation under the UDL caused by social media platforms

A key problem encountered with the UDL is that it was focussed on publishing of defamatory content by traditional media organisations via traditional publishing methods, such as newspapers. It did not provide protection from defamation on new forms of media. Several key issues unaddressed by the 2006 legislation have arisen since its enactment.

1. Unfiltered comments: the lack of professional moderation by editors and legal departments material published on social media platforms.

A lack of legal knowledge and understanding by individual social media users means defamatory material is created and shared without awareness that it is breaching defamation laws. Traditional media outlets have checking systems built into processes to minimise breaching laws. This lack of knowledge and understanding has created an increase in cases, impacting on achieving fairness and rule of law.

2. Ability of users to be anonymous.

Defamation law developed long before the emergence of the internet and social media. When we consider 'publication' in defamation terms, it means communication, not authorship. Who is responsible for the communication of the defamatory messaging? People publish content to social media platforms for the purpose of that information being seen by others, who, in some instances, also choose to share the information with a wider audience. Attracting interaction then causes a wider audience to be exposed to the material as algorithms detect interest and decide what users see. Things 'go viral' as more people interact with content.

3. Who is the publisher?

A key component of the regulation of defamation has always relied on *who the publisher* of the defamatory material is, and whether a *third party* saw the material, impacting on the reputation of the plaintiff. To create legal responsibility for one party infringing the rights of another, there must be an understanding who the publisher of material is. Traditional media made determining a publisher easy, as the source was always a media outlet. This meant that the 2005 legislation was created with a focus on imputations (damaging and defamatory comments) made by publishing entities.

Figure 1: Traditional Media Publishing



However, the UDL does not define publisher, meaning common law principles are applied by judicial officers. The key Australian precedent used to determine whether a party is a publisher is *Webb v Bloch* [1928] 41 CLR 331, heard in the High Court. Drawing from the judgement in this case, Douglas (2021) defines publication as being "...a bilateral act, by which a person communicates defamatory matter to a person other than the plaintiff. Anyone who participates in dissemination of the defamation is a publisher."

In an age where people can create accounts using fake email addresses and birth dates, what happens if the actual creator of the content cannot be identified by the subject of the material? Who is then the responsible party for the publishing of that material? This impacts on just outcomes for the victims of defamatory content if they are unable to pursue a matter in court due to a lack of being able to identify a publisher.

4. The reach and speed of the spread of content (the 'grapevine effect').

The advance of technological communication methods following 2005, particularly on social media platforms, meant that the speed with which content could be shared and the vast audience it could reach, both nationally and internationally, was unaccounted for in the legislation. Accordingly, the potential impact on individual's reputations could be very significant very quickly.

NSW District Court Judge Elkaim recognised the impact of the ability of defamatory material to have a wide and rapid spread in his judgement and subsequent award of damages in *Mickle v Farley* [2013] NSWDC 295. The case involved a former student making defamatory statements on Twitter and Facebook about a teacher. In his judgement, Judge Elkaim stated "...when defamatory publications are made on social media it is common knowledge that they spread. They are spread easily by the simple manipulation of mobile phones and

computers. Their evil lies in the grapevine effect that stems from the use of this type of communication.”

5. Different interpretations of messages communicated on social media.

Given that humans interpret meaning based on a wide range of personal experiences, beliefs and understandings, individual interpretations of material led to relatively minor disputes escalating straight to the courts, rather than seeking alternative resolution. This impacts on resource efficiency and the case load of the courts.

In addition, it may have also resulted in an increase in unrepresented individuals who either cannot afford representation or may believe that they can self-represent given information available on the internet. In 2018, Judge Gibson of the NSW District Court reported that in 91 defamation cases, over 40% were self-represented litigants. This increases the burden on judicial officers, increasing hearing time and the need for explanation and support to unrepresented parties to achieve fairness, as well as the risk that a losing party is unable to pay for a trial.

6. The lack of a ‘single publication rule’ in Australia and the permanency of content.

A statutory limit of 12 months applied to defamation matters in NSW, meaning that a plaintiff had 12 months from the date of first publication to sue. This limit was created with traditional publishing methods, such as newspapers, when material became almost inaccessible over a period as copies were disposed of and before recording devices for television broadcasts existed.

However, the permanency of publications on the internet meant that under this rule, each time material was accessed by a user on the internet, the 12-month limitation began again. Essentially this meant that defendants were permanently open to litigation.

7. Freedom of the press has been negatively impacted by the UDL.

As identified in 2019 by Matt Collins AM KC and then President of the Victorian Bar, “...*our laws do not adequately protect freedom of speech, and particularly freedom of the press, in cases of serious journalism in relation to matters that its targets do not want exposed. Often, these cases involve... subject matter of high public importance; plaintiffs who are motivated by a desire to shut down public debate; and information provided to journalists by whistleblowers or confidential sources who... cannot be called to give evidence at trial.*”

Placing the onus for proving truth of comments impacts heavily on journalists, who in many instances are required to protect the identity of their sources, creating a situation where proof cannot be established. Those persons cannot give evidence as to the truth of assertions made in articles as they would then be identified in public record, in many cases risking personal safety.

Legislative reform was needed to reflect the current needs of society and the way that social media is used to communicate. The current law was not adequately protecting rights or providing just outcomes. Among others, these issues were identified as the focus of the legislative review announced in 2018 by the Council of Attorneys-General.

2018 – Review of defamation law by the Defamation Working Party

This review was designed to examine whether the objectives of the model provisions were still relevant and could be achieved by applying legislative provisions. The review was designed to consider a review of legislation, case law and technological developments.

The review was determined to comprise 2 stages, Part A (2020) and Part B (2022).

2021 – Enactment of the Defamation Amendment Act, 2020 (NSW)

“The reforms will help to bring spiralling defamation payments under control, unclog the courts from trivial cases, encourage plaintiffs to resolve cases without resorting to costly and stressful litigation and start the limitation clock at the first publication of a matter...” [NSW Attorney General Mark Speakman, 2020]

Following a series of high profile defamation payouts (see our Case Note on Geoffrey Rush <https://www.ruleoflaw.org.au/defamation-law-reform-with-geoffrey-rush-case-note/>) and the conclusion of Part A, the *Defamation Amendment Act (2020)* was enacted in the ACT, South Australia, New South Wales, Victoria and Queensland in July 2021, with Tasmania following suit in December. Western Australia and the Northern Territory are yet to implement modifications into their legislation.

Key amendments made to the legislation were:

- **A serious harm threshold has been created.** A plaintiff can no longer sue unless they can prove that they have suffered serious reputational harm or are likely to suffer that harm in the future by the publication of the defamatory material. This will require the court to consider the *consequences* of publication rather than the *content* published. Although this will serve to reduce smaller cases overloading the courts, particularly at the Local/ Magistrate level, this may also act as a disincentive for some people to pursue matters to defend their rights, impacting on just outcomes and fairness.
- **It became mandatory for the plaintiff to serve a potential defendant with a ‘concerns notice’ of alleged defamatory content prior to pursuing legal remedy.** This has been implemented to allow time for a defendant to take steps to remedy the wrong and reduce the number of actions commencing defamation proceedings in court, encouraging complainants to seek alternative dispute resolution. This reduces the burden of cases on courts, particularly at local and magistrates’ level who hear lower value civil cases. It also reduces financial burden on defendants by avoiding expensive and often unaffordable litigations. This change was prompted by cases like Voller (see below).
- **A new defence of public interest was introduced.** This defence focusses on the need for the defendant to prove that content of material published was a matter of public interest and publishing that material was also in the public interest, rather than a focus on proving truth.

This change particularly supports the freedom of the press and free speech, as opportunities for litigation are more limited when reporting on persons or organisations in positions of power. Free and open criticism of the law and its administration is necessary in creating an environment that supports the

achievement of rule of law principles, giving people a voice in the creation and refinement of laws that govern them.

- **A single publication rule was established.** The introduction of a single publication rule 'sets the litigation clock' from the date of the first upload of material or the material being electronically sent to a recipient. This increases fairness for defendants, particularly media outlets, but potentially limits the rights of plaintiffs given the permanency of comments on the internet and the likelihood of future accessibility by others. The rule also allows for the court to extend the limitation period to three years if 'it is fair and reasonable' in the case before them.

In NSW, this rule is regulated by the *Limitations Act 1969*, in Victoria by the *Limitation of Actions Act 1958* and in Queensland by the *Limitation of Actions Act 1974*.

Social media: a very public forum for very private thoughts about others. Australian case law.

Words and pictures.

Fairfax Media Publications Pty Ltd, Nationwide News Pty Limited & Australian News Channel Pty Ltd v Voller [2021] HCA 27 ('Voller')

Perhaps the most compelling recent judgement is the High Court of Australia's finding in the Voller case. The finding has created the *Voller Doctrine* that makes all administrators of social media pages or accounts 'publishers' for the purposes of defamation, even though they may be 'passive conduits' - simply carriers of the information, because it has appeared on their page. This means that if a third-party places a defamatory comment on a social media post created on any page, on any social media platform, the page administrator is liable to the plaintiff. Given the strict liability nature of the tort of defamation, they are still liable even if they are unaware of the existence of the comment.

The finding of the High Court supported the finding in the first instance of Rothman J in the NSW Supreme Court and that of Basten JA, Meagher JA and Simpson AJA in the NSW Court of Appeal, establishing the consistency with which the courts define who is a publisher and potentially highlighting the need for the legislation to provide greater clarity by defining 'publisher'. This may enhance compliance with defamation laws in the wider community by generating knowledge and understanding of responsibility for public commentary.

Figure 2: Timeline of the Voller Case

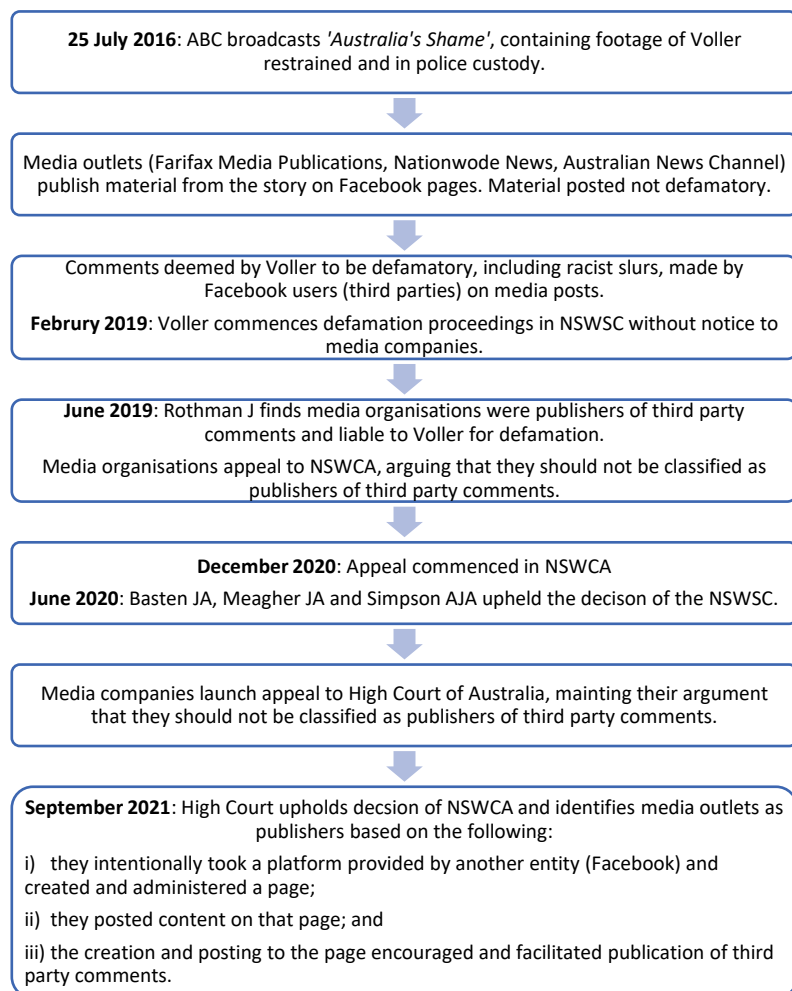
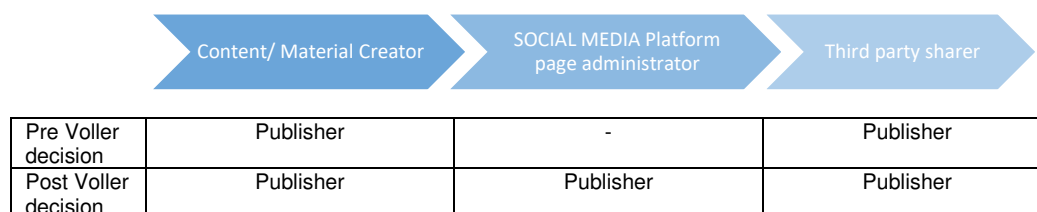


Figure 3: Liability for publishing pre and post Voller



Emojis.

Burrows v Houda [2020] NSWDC 485 ('Burrows')

What about using emoji's? Can that be defamatory? The answer is yes, according to the judgement of Gibson DCJ in the case of Burrows heard in the NSW District Court.

The plaintiff, Burrows, a well-known lawyer, was involved in matter in which the judge presiding commented about her legal conduct, suggesting that it should be referred to the Law Society for investigation and possible disciplinary action. These comments were reported on in the Herald, and Houda, the defendant and a well-known criminal lawyer,

created two posts on Twitter, linking the article. The posts were re-tweeted by other users and received likes.

A comment made on the post asking questions about matters following the trial were responded to by Houda, using only a zipper face emoji 🤪. Further retweets and responses were made by third parties, including a retweet with the words 'tick-tock' with a clock emoji, and another retweet with only three other emoji's – 💥😭👻 - collision, a face with tears of joy and a ghost. The plaintiff brought a defamation action against Houda, stating that his tweets, the subsequent retweeting and comments received implied that she had committed acts of misconduct. The posts and comments by third parties were also included in the action against Houda.

In her judgement, Gibson DCJ investigated the meaning of each of the symbols and how they may be interpreted by a reasonable person. Her Honour found in favour of the plaintiff and believed that any reasonable social media reader would understand the meaning of the emoji's used and interpret them as an indication of guilt of the plaintiff. Such material would be damaging to her reputation and career, as no investigation or prosecution had occurred. In her judgement, Gibson DCJ states that:

"...the ordinary, reasonable social media reader would infer that... the plaintiff['s]... time... was up. The third and fourth posts add further emoji and comment to the defendant's post... I am satisfied that, in circumstances where the tweet clearly identifies that there is to be a prosecution for false swearing of affidavits... the ordinary reasonable social media reader would infer that one of those likely to be prosecuted would be the plaintiff." *Burrows v Houda* [2020] NSWDC 485 at 45

The defendant was ordered to pay the plaintiff's costs.

Disappearing stories.

BeautyFULL CMC Pty Ltd v Hayes [2021] QDC 111 ('BeautyFULL')

What about content that is designed to disappear in a short period of time, like Instagram and Facebook stories and reels, Snapchat and TikTok videos? Can they be defamatory? Also yes!

In the recent case of BeautyFULL heard in the Queensland District Court, a former employee of a cosmetic medical clinic created two disappearing stories on Instagram defaming her former employer. The first story used an image from the clinic's own Instagram account and, doctoring it, asserted the business had been dishonest with customers, fabricating information for the purposes of profit and engaging in unethical conduct in several ways. The clinic was still able to be identified by followers and employees of the business as the doctoring was minimal. Third party viewing was evidenced by many people contacting the clinic director with regards to the post.

The second story contained images of physical injury, implying that she had been seriously physically assaulted by persons with the knowledge and consent of the clinic, causing injury that warranted hospitalisation. In response to a question from a follower of who had perpetrated the injuries, the defendant responded with a picture of herself in her clinic uniform. The plaintiffs issued a concerns notice to the defendant who, via email, dismissed the concerns of the plaintiffs.

The court found that although the defendant did not name the clinic directly, by publishing the stories, her intention was to diminish the reputation of the doctor in the images and the clinic in the eyes of a reasonable person. Reid DCJ also acknowledged the hurt and distress the posts had caused to the plaintiffs and awarded a total of \$85,222 in damages to 4 plaintiffs. The defendant, or any person associated with the defendant, was also ordered not to publish any content orally or in writing using social media platforms, e-mail, or electronic means defaming the plaintiffs. A similar conclusion was reached by Gibson DCJ in the case of *Martin v Najem* [2022] NSWDC 479, where a food blogger was defamed by a rival influencer a number of times in his Instagram stories. A total of \$300,000 damages and costs were awarded to Martin and Najem received a permanent injunction against publication of any defamatory imputations by use of any means.

Private messaging and group chats.

Although there are no Australian precedents yet specific to group chats like WhatsApp, a 2022 case heard in the UK could serve as persuasive precedent in Australia. The case involved defamatory comments in a long running dispute between two family members, with the judge finding that comments made by the defendant in a family chat, with 34 family members across the globe, were seriously defamatory and that they met the threshold of serious harm created in *Defamation Act 2013* (UK). Even though the audience was limited, he considered there to be have been a grapevine effect, given the ability of users to easily forward messages on the platform. The plaintiff was awarded £50,000GBP in damages, plus £100,000GBP for costs.

2022 - Proposed changes to the UDL

“Australia needs contemporary laws that protect reputations in an era when anyone can publish almost anything to the world at large with just the click of a button... However, getting the balance right is crucial to avoid online commentary being blocked unnecessarily. We must not silence free speech, which is essential to a proper, functioning democracy, or inhibit the functions of digital platforms unduly.” Mark Speakman, NSW Attorney General, 2021

Following the recent decisions in several cases, including those above, show that further amendments to the legislation are needed. As such, submissions and responses to proposed changes under Stage 2 of the Review are currently under consideration.

Of importance to social media defamation proceedings is the definition of publisher created by the High Court ruling in *Voller* as outlined above. It acted to widely expand the categories of who can be considered a publisher to include all persons who have a social media account where a third party can leave a defamatory comment without the knowledge of the page ‘owner’ or administrator.

The ruling places individuals, community groups, businesses and government agencies at risk of defamation action even if unaware of the comments. This has implications for fairness and just outcomes where the creator of the content is no longer liable for their defamatory material, rather the ‘owner’ of the page is now considered the publisher.

A new defence, the safe harbour defence, proposed for the legislation by Part B of the review, would serve to limit the liability of page administrators and is intended to create a situation where matters are resolved between complainant (subjects of the material) and originator (creator) of the content. This defence is based on the principle at common law that

the responsibility should rest with the originator of the defamatory material. There is also a further proposal to empower the courts to make non-party orders that would prevent further access online to defamatory material where intermediaries are not party to an action.

This system is designed to promote fast methods of dispute resolution and keep matters out of the courts, reducing the burden on court time and resources and reducing the cost burden on parties to a matter. It would also bring Australia into line with other similar jurisdictions, such as the UK, USA and Canada. However, there are issues of accurate identification of creators given the ability of social media users to create fake accounts and instances of hacking and identify theft that make resolution difficult.

Just one more complication... or maybe two... or more

The transnational nature of many companies that own and operate digital platforms makes prosecution and enforcement challenging, raising issues of non-compliance by multinational companies. Often using their complicated corporate structures to avoid liability in many geographical jurisdictions, some ignore court orders made in court systems other than that of the parent company altogether, despite operating in and earning sizeable profits from other jurisdictions across the globe. *“There is a need to reform Australian law to better adapt to internet intermediaries taking a recalcitrant approach to the jurisdiction and power of Australian courts...”* (Douglas, 2021)

In addition, if material is deemed to be defamatory by the courts, and the material is still available via internet intermediaries that have not been a party to the proceedings (for example via a search engine like Google), Australian courts may not be able to create an order for the removal of that content as orders are generally only made on parties to a proceeding. It would be costly for a plaintiff to create a new proceeding against an intermediary to prevent future access to the material and discovering its availability would be challenging given the viral nature of some posts and the vast options available for publishing on the internet. Enforcement and compliance are also issues where such orders are created.

Hyperlinks shared that take readers to defamatory material are another challenge yet to be addressed by Australian law, particularly in deciding who is the publisher when a hyperlink is shared.

Conclusion

Defamation law in Australia has developed over time from a wide body of case law and legislation. Uniform defamation laws have created consistency and enhanced fairness across jurisdictions but were created from historical principles, not accounting for the rapid evolution in communication and social landscapes generated by the internet. Recent developments in case law and legislation have aimed to address existing and make legislation more able to regulate contemporary defamation issues. However, the contrasting natures of the e-world and law-making means that it is likely the law will always be a few steps behind.

References

- Correll, David, 'Social Media Statistics Australia – April 2022' (online, May 1 2022) < <https://www.socialmedianews.com.au/social-media-statistics-australia-april-2022/>>
- Douglas, Michael, 'Suing Google, Facebook or Twitter for Defamation' (2021) 40(2) *Communications Law Bulletin* 53
- Dr Matt Collins AM QC, 'Nothing to write home about: Australia the defamation capital of the world' (Speech, National Press Club Canberra, 4 September 2019)
- Gibson, Judith, 'From McLibel to e-Libel: Recent issues and recurrent problems in defamation law' (Speech, State Legal Convention, 30 March 2015)
- Judge Judith Gibson, District Court of NSW, 'Recent trends in defamation cases' *Gazette of Law and Journalism* (online, 31 October 2018) < https://glj.com.au/wp-content/uploads/2018/11/GibsonDCJ_defamation_trends-1.pdf>
- Law and Justice Foundation of New South Wales, *Data Insights in Civil Justice: NSW District Court* (Report, June 2017)
- Macdonald, Sarah, "Defamation and Social Media in Australia" (2021) *UNSW Law Journal Student Series* 19
- Murray, Lucy, 'The defamation laws have just changed in most of Australia. Here's why that matters', *SBS News* (online, 1 July 2021) < <https://www.sbs.com.au/news/article/the-defamation-laws-have-just-changed-in-most-of-australia-heres-why-that-matters/8eow15ncv>>
- Parliamentary Counsel's Committee, 'Model Defamation Provisions 2005' (online) < https://pcc.gov.au/uniform/2020/Original_Model_Defamation_Provisions_2005.pdf>
- Rolph, David, 'Liability for the Publication of Third Party Comments: *Fairfax Media Publications Pty Ltd v Voller*' (2021) 43(2) *Sydney Law Review* 225
- Singh, Priya, 'Can an Emoji Be Considered as Defamation? A Legal Analysis of *Burrows v Houda* [2020] NSWDC 485' (2021) *Potchefstroom Electronic Law Journal* 24
- The Honourable Thomas Bathurst, 'The History of Defamation Law: Unjumbling a Tangled Web' (Speech, Francis Forbes Society Legal History Tutorials, 8 October 2020)
- Oxford English Dictionary* (2nd ed, 1989) 'defamation' (def 1)

Activities

1. Identify the conditions, agencies and mechanisms of legislative law reform for defamation in NSW.

Year	Conditions	Agencies	Mechanisms
2005			
2021			
2022			

2. Define the following key terms related to civil law: plaintiff, defendant, litigation, tort, common law, legislation, strict liability
3. What are the legal implications for individuals creating and administering social media accounts of the Voller case? How do the proposed legislative amendments address this issue?
4. Propose alternative ways in which individuals could settle defamation disputes before court. Using the effectiveness criteria, explain how using alternative methods of dispute resolution could impact on the effectiveness of the justice system.
5. Examine the interrelationship between rights and responsibilities with regard to defamation.
6. Assess the effectiveness of law reform in addressing emerging technological issues and enforcing rights.