

Centre for Media Transition

Trends in Digital Defamation: Defendants,
Plaintiffs, Platforms



Centre for Media Transition

The Centre for Media Transition is an interdisciplinary research centre established jointly by the Faculty of Law and the Faculty of Arts and Social Sciences at UTS.

We investigate three key areas of media evolution and transition: journalism and industry best practice; new business models; and regulatory adaptation. We work with industry, public and private institutions to explore the ongoing movements and pressures wrought by disruption. Emphasising the impact and promise of new technologies, we aim to understand how digital transition can be harnessed to develop local media and to enhance the role of journalism in democratic, civil society.

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Executive summary

In our review of defamation cases and decisions over the five-year period, 2017 resembles 2013, but there were more cases in 2014, 2015 and 2016:

Table i: Overall numbers of defamation cases and decisions, 2013-2017

Year	Number of cases	Number of decisions
2013	28	113
2014	40	120
2015	47	132
2016	44	143
2017	30	101
Total for 2013-2017	189	609

New South Wales was found to be the preferred forum for defamation actions, as found by previous studies. **More matters reached a substantive decision in New South Wales than in all other jurisdictions combined** (95 cases for NSW, compared to 94 cases in all other jurisdictions).

Table ii : Cases 2013-2017 by jurisdiction

Jurisdiction	Number of defamation cases 2013-17	Average cases per year 2013-17
New South Wales	95	19
Victoria	21	4.2
Queensland	21	4.2
Western Australia	17	3.4
South Australia	19	3.8
Tasmania	0	0
Australian Capital Territory	13	2.6
Northern Territory	1	0.2
Federal Court of Australia	2	0.4

As well as the 189 cases we located through our searches, there were **609 related decisions** (for example, separate rulings on evidence), requiring a significant commitment of resources on the part of defendants. And there were **322 other matters also in the system**, including appeals from earlier decisions and preliminary decisions on new matters. Combining these two categories, we found **at least 511 defamation ‘matters’** making their way through the Australian courts in the period 2013 to 2017. A complete picture of legal action on defamation



would include other matters that were the subject of summary dismissals, and the many matters that are settled before a claim is filed in court.

Of the 189 defamation cases over the period 2013-17, **97 (51.3%) were digital cases**. Perhaps surprisingly, there is still a solid number of cases (92, or 48.7%) that were not digital cases.

Compared to a decade ago, the overall number of cases was similar. The number of defamation cases – that is, matters for which there was a substantive decision in that year – was almost the same in 2017 as in 2007 (30 compared to 29 cases). Not surprisingly, **the proportion of digital defamation cases was much greater in 2017** (16 cases, 53.3%) than in 2007 (5 cases, 17.2%).

Our findings contradict common assumptions about public figures being the main users of defamation laws. It is becoming **more common for private individuals to be the plaintiffs in defamation actions**. Private individuals are also more likely to be the defendants (sometimes with their employers):

- In the period 2013 to 2017, only 21% of the plaintiffs in judgments we examined could be considered public figures;
- Only 25.9% of the defendant ‘publishers’ were media companies.

The form of digital publication varied:

- There were three cases (all relating to search results) in which Google was the defendant;
- There were 16 cases involving Facebook posts, 20 involving emails, four involving tweets and two involving text messages;
- There were 37 cases involving websites not affiliated with media organisations, Facebook or Twitter.

Outcomes varied too, with the plaintiff successful in between 27.3% and 43.3% of cases in the years reviewed. Overall, **about a third of plaintiffs were successful**. Specifically, plaintiffs succeeded in 34.9% of cases, or 66 of the total 189 cases.

This is an interesting result, suggesting that – even without taking into account the costs involved in defamation actions – litigation is in the majority of cases **an unsatisfactory experience** for someone who considers their reputation has been harmed.

Of the 87 awards of damages made in the five years 2013 to 2017, **38 were of \$100,000 or more**.



Introduction

Tracking digital defamation

This report provides data on aspects of ‘digital defamation’ cases over the five-year period 2013 to 2017. It is intended as a short, sharp outline of one area of concern for journalism in an era of digital publishing, news aggregation and social media.

In that respect, it is part of the exploration of change, challenge and adaptation facing the journalism that marks out the work of the Centre for Media Transition. It also demonstrates why we think work in this area often needs to be interdisciplinary – in this case, bringing together knowledge and experience from the disciplines of journalism and law.

The report considers three key questions:

1. Who commences and proceeds with a defamation action, at least to the stage of an initial judgment of a court?
2. Who are the ‘publishers’ these actions are brought against?
3. What are the platforms on which defamatory matter is said to be published?

In examining ‘digital defamation’ we do not mean to dismiss publication in print or through broadcast media. In Australia, television, and some radio, is itself ‘digital’ and print media has published online for more than two decades. As shown by the decision in the action brought by former Treasurer Joe Hockey, the decisions made by publishers on where and how to publish can be critical in their exposure to claims of defamation. By ‘digital defamation’, then, we mean matters where publication in digital form is a core part, though not necessarily the exclusive form, of publication.

Essentially, we set out to check some assumptions that availability of digital platforms, and a preference for them by many news consumers, could change the nature of who sues whom. The five-year period of this review makes some inroads into this analysis, and by way of brief comparison we apply our same method for investigating our three principal criteria to a single year (2007) a decade earlier, before the widespread adoption of social media. Utilising limited resources (specific limitations are noted in relevant chapters), the report should not be regarded as a definitive investigation of the issue. Rather, it aims to be an indicative review of ‘digital defamation’. Its findings point to the need for a broader debate among lawmakers at state and federal level as well as among the media industry and the platforms that have become essential to distributing the industry’s work.

Similarly, as the report is limited to the above three points of inquiry, it is essentially an exercise in data analysis. As such, it should not be regarded as an analysis of the developing jurisprudence on defamation. However, some context is needed for this study of plaintiffs, defendants and platforms, so a brief overview of the current position on liability for publication online and in digital forms is set out below.

Links, likes and lists: How the law treats digital defamation

The starting point for many commentaries on defamation online is the early, defining judgment on place of publication, *Dow Jones & Company Inc v Gutnick*.¹ The certainty offered by this decision of the High Court of Australia in 2002, which set into law the proposition that an action for defamation can be brought in the place where someone downloads the material (where, it is

¹ (2002) 210 CLR 575.



said, the defamation is ‘published’), is not matched in the law’s application to other key issues in online publication.

For media organisations, search engines and social media platforms, there are some common questions around ‘who is a publisher’. Resolution of disputes requires close examination of the facts of production, distribution and access, and the application of law to the facts of any case is complicated by the co-existence of common law principles with (partial) statutory protections.

The question of liability generally begins by asking whether the digital platform has actively published the content itself, and is therefore a ‘primary publisher’. Under the principle in *Webb v Bloch*,² every person who contributes to the publication of the defamatory material is liable – hence in traditional media environments, journalists and editors as well as publishing companies have been sued. The need for media organisations to exercise editorial control over what they publish, including their archives, has meant that the law of defamation has reached into their online activities, with some questions remaining over liability for some material. One example is the extent to which adoption or endorsement of hyperlinked material might extend liability, as discussed in *Visscher v Maritime Union of Australia (No 6)*.³

But for web hosts, bulletin boards, search engines and others who are not media organisations, the issue may not be whether they are a primary publisher in their own right, but whether they become a secondary publisher through having knowledge of and control over the material and through not taking action. This principle has evolved under common law including from the English case of *Byrne v Deane*,⁴ but its application varies depending on the circumstances. If the party is considered to be a publisher, there may still be a defence, under common law and under Australia’s uniform defamation legislation, for innocent dissemination, which also raises elements of knowledge of the material.⁵

Differing views have been taken on whether the ‘passive’ character of an ISP can be applied to search engines, at least where the search engine does not also host the content (see the UK cases of *Bunt v Tillery*⁶ and *Tamiz v Google Inc*⁷), and whether this changes when a search engine is aware of potentially defamatory material and fails to take action. The liability of search engines has been considered recently in decisions of the New South Wales Supreme Court,⁸ the Full Court of the South Australian Supreme Court,⁹ and the Victorian Court of Appeal.¹⁰ Leave to appeal the last of these decisions to the High Court of Australia has been granted. This may help determine whether the law in Australia protects algorithmic generation of material which is defamatory, taking into account the level of awareness and control over the content, and the effect of the search engine being notified by a complainant of offending material.

In the social media environment, a user with, say, a Facebook page, may publish content and invite friends to like or comment on their post. *Murray v Wishart*,¹¹ a decision of the New Zealand Court of Appeal, established that the person who has the Facebook page – not Facebook itself – could be liable as a publisher if they were aware of disputed content and failed to take action.

There are many variations on the circumstances described above, as the law has attempted to deal with forms of digital distribution ranging from email to chat rooms. Some useful commentaries are listed in the Resources section at the end of this report. Further information on some of the cases mentioned here is found in Chapter 4, Digital Defamation Snapshots.

² (1928) 41 CLR 331.

³ [2014] NSWSC 350.

⁴ [1937] 1 KB 818.

⁵ See, for example, s 32 of the *Defamation Act 2005* (NSW).

⁶ [2007] 1 WLR 1243.

⁷ [2013] 1 WLR 2151

⁸ *Bleyer v Google Inc* (2014) 311 ALR 529.

⁹ *Google Inc v Duffy* [2017] SASFC 130.

¹⁰ *Google Inc v Milorad Trkulja* [2016] VSCA 333.

¹¹ (2014) 3 NZLR 722.



Methodology

This review covers defamation actions heard in all states and territories over the period 2013 to 2017 inclusive. It also includes the year 2007 by way of comparison.

Our main sources for listings of Australian cases were the legal databases, Westlaw's FirstPoint and AustLII, and (where available) legal websites operated by the state and territory governments.

In Westlaw, we searched by catchwords and classification, and supplemented this with free text searching where this might be of benefit. We applied spot-checking of the Westlaw results by using the catchwords/summary field in the Case Base database within Lexis Advance. We supplemented these results with searches of court websites in jurisdictions where the courts publish their judgments online (New South Wales, Queensland, Western Australia and Victoria). Finally, we used AustLII for courts not comprehensively covered by the other databases (for example, decisions of the County Court in Victoria).

After completing this task for every state and territory in Australia and for the Federal Court of Australia, we compiled the results into tables based on 'cases', rather than decisions. We took this approach because we want the report to have general appeal and real meaning for non-lawyers. On this approach, we did not want to treat as a separate matter each decision of a judge that is related to the one case.

Accordingly, the tables in Chapter 1 are arranged by what, in most cases, might be called the **first substantive decision** regarding a defamation action. This might be a decision in favour of either a plaintiff or defendant on the matter overall, but it will not include costs issues, pre-trial decisions on evidence, judgments on imputations alone or, at the other end of an action, a decision of a higher court on appeal. For this analysis, our principal criteria of plaintiffs, defendants and platforms does not change through various preliminary decisions on evidence and matters of procedure, or through appeals. Our searches turned up some matters that were the subject of summary dismissal, and we have included these to give an indication of the matters publishers, large of small, may face. Our methodology, and the datasets held by the search tools, does not comprehensively cover these decisions. A more far-reaching project with additional resources would add to this aspect of the picture of defamation litigation in Australia.

As we do not want to misrepresent the commitment of resources in defamation matters overall, we have tried to include related decisions in an additional column within the tables in Chapter 1. This gives us our overall **number of 'decisions'** rather than simply the number of cases.

But there are further **matters that were 'in the system'** and the subject of the main cases. These include cases where there was a substantive decision before 2013 and then an appeal sometime later, as well as matters that were the subject of only preliminary decisions by the end of 2017. We represent these matters in a separate alphabetical list in Chapter 2.

We did encounter some difficulties in gathering the data for this report. These partly reflect our limited resources, but they are also indicative of difficulties in legal research more generally. Legal researchers will be familiar with these challenges. Three important limitations with our methodology will result in an underreporting of the total number of defamation matters. First, this will apply where a case is settled out of court, with no claim filed in court. Second, in cases where there was a jury decision in favour of the defendant, there may be no substantive judgment issued. We expect these matters to be picked up in the list in Chapter 2, but it is possible they might not be. Finally, some decisions are not available online and in any event, the data on cases within Australian jurisdictions is somewhat piecemeal. There is no single authoritative source for case law, even within a single jurisdiction; sources have different listings; and the decisions of lower courts are sometimes omitted. A more comprehensive research project would require an extensive search for cases, including, for example, writing to the courts to cross-check results. As such extensive research was beyond the scope of this indicative review of trends, our report should be regarded as a first step in understanding these developments – one we hope can be continued and refined.



1. Defamation cases

This chapter presents data for cases in all Australian jurisdictions in the years 2013 to 2017. Tables showing results within jurisdictions are preceded by a listing of total number of cases and decisions, across the jurisdictions. In the table for specific jurisdictions:

- **Case** gives the name by which the matter is generally known. In some matters there is more than one plaintiff or defendant. Occasionally, a single matter was later separated by the court. An asterisk indicates a decision that has not been included in our total number of matters in order to avoid double counting.
- **First substantive decision** is generally the decision at first instance, or where the matter was not appealed, the first and final decision. Interlocutory decisions (for example, orders of the court on matters of evidence) and appeals are not included here. A matter for which there was a substantive decision prior to 2013 is included in the table if it was the subject of a retrial. In effect, the list is a mix of actual trials and some summary dismissals. As explained in the introduction, summary judgments were generally not picked up by our searching. A good outline of the categories and examples of these decisions is provided by Judge Judith Gibson’s review of defamation actions (noted in the Resources section at the end of this report), which also charts all matters going to trial under the uniform defamation laws up to 2016.
- **Overall outcome** generally indicates the successful party in the proceedings and, where the information is available, the final quantum of any damages awarded, allowing for any appeals.
- **Related decisions/comments** lists any of the interlocutory decisions as well as the appeals. This is a useful list, given the search tools and strategies used, but a more comprehensive search of all decisions in the period might produce some additional decisions which have not been classified as having an element of defamation. Some pre-2013 decisions are included in this column if they are related to the substantive decision recorded in the table. If there is a need for additional information, it is provided in this column.

1.1 Year: 2013

Table 1: Across jurisdictions

Jurisdiction	Number of cases	Number of decisions
New South Wales	14	56
Victoria	4	17
Queensland	4	8
Western Australia	2	10
South Australia	2	12
Tasmania	0	0
Australian Capital Territory	1	7
Northern Territory	1	3
Federal Court of Australia	0	0
TOTAL	28	113



Table 2: New South Wales

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Mickle v Farley	[2013] NSWDC 295	Judgment for the plaintiff for \$105,000.	
Bushara v Nobananas Pty Ltd	[2013] NSWSC 225	Judgment for the plaintiff for \$37,500.	[2012] NSWSC 63
Stanton v Fell	[2013] NSWSC 1001	Judgment for the defendant.	[2014] NSWCA 44 (No 2) [2014] NSWSC 1052
Cao v Liu	[2013] NSWDC 172	Judgment for the defendant.	[2013] NSWDC 8
Kim Anne Ahmed v Harbour Radio Pty Ltd Harbour Radio Pty Ltd (first defendant) Ray Hadley (second defendant)	[2013] NSWSC 1928	(i) Award for the plaintiff against the first defendant for \$240,000. (ii) Award for the plaintiff against the defendants for \$40,000. However, this judgment was set aside, a retrial was ordered and proceedings were later referred for mediation in 2016.	[2010] NSWSC 676 (No 2) [2011] NSWSC 20 [2015] NSWCA 290 [2016] NSWSC 219
Enders v Erbas & Associates Pty Ltd	(No 2) [2013] NSWDC 44	Judgment for the defendants.	[2012] NSWDC 129 [2014] NSWCA 70
Paramasivam v Sabanathan	[2013] NSWSC 1033	Plaintiff's claim in defamation dismissed.	[2013] NSWCA 362
Giovannetti v State of NSW	[2013] NSWSC 1960	The statement of claim dismissed.	
Sleeman v Tuloch Pty Ltd t/as Palms on Oxford	(No 3) [2013] NSWDC 92	Judgment for the defendants.	[2013] NSWDC 43 (No 4) [2013] NSWDC 111
Born Brands Pty Ltd v Nine Network Australia Pty Ltd	(No 6) [2013] NSWSC 1651	Judgment for the defendants.	[2011] NSWSC 642 [2013] NSWSC 1646 (No 2) [2013] NSWSC 1647 (No 3) [2013] NSWSC 1648 (No 4) [2013] NSWSC 1649 (No 5) [2013] NSWSC 1650 [2014] NSWCA 369 (No 2) [2014] NSWCA 406



McMahon v John Fairfax Publications Pty Ltd	(No 7) [2013] NSWSC 933	Judgment for the plaintiff for \$300,000.	[2010] NSWCA 308 (No. 2) [2011] NSWSC 1373 2011] NSWSC 485 (No 3) [2012] NSWSC 196 (No 4) [2012] NSWSC 216 (No 5) [2012] NSWSC 218 (No 6) [2012] NSWSC 224 (No 8) [2014] NSWSC 673 (No 9) [2014] NSWSC 936
Gacic v John Fairfax Publications Pty Ltd Aleksandra Gacic (first plaintiff) Ljiljana Gacic (second plaintiff) Branislav Ciric (third plaintiff)	[2013] NSWSC 1920	Judgment for the first plaintiff for \$160,000. Judgment for the second plaintiff for \$160,000. Judgment for the third plaintiff for \$160,000. On appeal in 2015 this was increased to \$195,000 for each plaintiff.	[2005] NSWSC 1210 [2006] NSWCA 175 [2007] HCA 28 [2009] NSWSC 1403 [2009] NSWSC 1198 [2011] NSWCA 362 [2012] NSWSC 793 (No 2) [2014] NSWSC 738 [2015] NSWCA 99
Glanville v TCN Channel Nine Pty Ltd	(No 3) [2013] NSWSC 1185	Proceedings stayed permanently.	(No 2) [2013] NSWSC 1179 [2013] NSWSC 1143
Munn v Tunks	[2013] NSWSC 1263	Proceedings dismissed.	(No 2) [2014] NSWSC 506

Table 3: Victoria

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Jeffrey & Anor v Giles	[2013] VSC 268	Judgment for the plaintiffs in the amount of \$12,000 and \$8,000. On appeal, in 2015, this was increased to \$75,000 and \$65,000.	[2013] VSCA 267 [2015] VSCA 70 [2016] VSCA 314 (No 2) [2016] VSC 2 (No 3) [2016] VSC 78 [2017] VSCA 144 [2017] HCASL 210
Casley v ABC	[2013] VSC 251	The plaintiff's application for an extension of time dismissed.	[2013] VSCA 182
Gluyas v Best	[2013] VSC 3	Judgment for the plaintiff for \$50,000.	
Haque v State of Victoria; Haque v State of Victoria & Ors	[2013] VCC 1035	Judgment for the defendant.	[2013] VSCA 332 [2013] VSCA 316 [2014] VCC 2035 [2015] HCASL 158 [2015] VSCA 83



Table 4: Queensland

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Cutbush & Anor v Leach & Anor	[2013] QDC 329	Summary judgment for the first and second defendants.	
Naudin-Dovey v Naudin & Ors	[2013] QDC 119	Judgment for the plaintiff for \$65,000.	[2013] QDC 153
Palmer v Gold Coast Publications Pty Ltd & Anor; Palmer v McCarthy	[2013] QSC 352	The plaintiff's claim was dismissed.	The plaintiff is Clive Palmer.
Mather v Smith	Citation not available. See fourth column	Judgment for the plaintiff for \$85,000	[2014] QDC 218 [2014] QCA 66 (No 1) [2014] QCA 65

Table 5: Western Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Ives v The State of Western Australia	[No 8] [2013] WASC 277	Plaintiff's action dismissed.	[2010] WASC 339 [2010] WASC 178 [No 2] [2010] WASC 221 [No 3] [2010] WASC 331 [No 4] [2011] WASC 148 [No 5] [2011] WASC 165 [No 6] [2012] WASC 189 [No 7] [2013] WASC 62
Van Lieshout v Public Advocate WA	[2013] WADC 92	Judgment for the defendant.	



Table 6: South Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Deputy Commissioner of Taxation v Moignard	[2013] SADC 165	This was an appeal by the taxpayer to the District Court of South Australia from a decision which struck out the taxpayer's counter-claim in defamation. The appeal was dismissed. Initial judgment unavailable.	
Sands v State of South Australia	[2013] SASC 44	Judgment for the defendant	[2005] SASC 381 [2010] SASC 340 [2010] SASC 244 [2011] SASC 7 [2011] SASCFC 136 [2011] SASC 146 [2012] SASC 159 [2013] SASC 105 [2013] SASC 202 [2015] SASCFC 36

Table 7: Tasmania

Case	First substantive decision	Overall outcome	Related decisions/ Comments

Table 8: Australian Capital Territory

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Brennand v Hartung	[2013] ACTSC 132	Plaintiff's action dismissed	[2012] ACTSC 132 [2012] ACTSC 150 [2014] ACTSC 326 (No 2) [2015] ACTSC 2 (No 3) [2015] ACTSC 149



Table 9: Northern Territory

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Kunoth-Monks v Healy & Anor	[2013] NTSC 74	Judgment for the plaintiff for \$125,000.	[2013] NTSC 21 [No 2] [2014] NTSC 1

Table 10: Federal Court of Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments

1.2 Year: 2014**Table 11: Across jurisdictions**

Jurisdiction	Number of cases	Number of decisions
New South Wales	23	74
Victoria	4	19
Queensland	3	5
Western Australia	4	10
South Australia	4	7
Tasmania	0	0
Australian Capital Territory	1	4
Northern Territory	0	0
Federal Court of Australia	1	1
TOTAL	40	120



Table 12: New South Wales

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Graham v Powell	(No 3) [2014] NSWSC 185	Judgment for the Plaintiff for \$80,000.	[2013] NSWSC 1266 (No 2) [2013] NSWSC 2026 (No 4) [2014] NSWSC 1319
Ritson v Burns	[2014] NSWSC 272	Judgment for the plaintiff for \$7,500.	[2012] NSWSC 586 [2012] NSWSC 483
Nicholas Polias v Tobin Ryall Tobin Ryall (first defendant) Andy Hun Wei Lee (second defendant) Sandy Jan (third defendant) Rhys Gould (fourth defendant)	[2014] NSWSC 1692	Judgment for the plaintiff against co-defendants for: \$130,000, \$125,000, \$50,000 and \$35,000.	[2013] NSWSC 1267 [2015] NSWSC 1
Shift2Neutral Pty Ltd v Fairfax Media Publications Pty Ltd	[2014] NSWSC 86	Judgment for the defendants.	[2015] NSWCA 274
Elliott v Tomkins	(No. 3) [2014] NSWDC 68	Judgment for the defendant.	[2014] NSWDC 55 (No 2) [2014] NSWDC 56
Brian Stanley Fisher v Channel Seven Sydney Pty Ltd	(No 4) [2014] NSWSC 1616	Judgment for the plaintiff for \$125,000. On appeal, in 2015, this was changed to \$75,000.	[2014] NSWSC 1343 (No 2) [2014] NSWSC 1593 (No 3) [2014] NSWSC 1619 (No 5) [2014] NSWSC 1873 [2015] NSWCA 414 (No 6) [2015] NSWSC 887
Pedavoli v Fairfax Media Publications Pty Ltd	[2014] NSWSC 1674	Judgment for the plaintiff for \$350,000.	[2015] NSWCA 237
Visscher v Maritime Union of Australia	(No 6) [2014] NSWSC 350	Judgment for the plaintiff for \$90,000.	[2013] NSWSC 1523 (No 2) [2013] NSWSC 1552 (No 3) [2013] NSWSC 1565 (No 4) [2013] NSWSC 1572 (No 5) [2013] NSWSC 1640



North Coast Children's Home Inc. t/as Child & Adolescent Specialist Programs & Accom. (CASPA) v Martin North Coast Children's Home Inc. t/as Child & Adolescent Specialist Programs & Accom. (CASPA) (first Plaintiff) Naarah Morgan Rodwell (second plaintiff) Todd Michael Yourell (third plaintiff)	[2014] NSWDC 125	Judgments for the co-plaintiffs for \$50,000, \$100,000 and \$100,000.	(No. 2) [2014] NSWDC 142
James Phillips v Robab Pty Limited	[2014] NSWSC 1520	Judgment for the plaintiff for \$50,000.	
Ell v Milne	(No 8) [2014] NSWSC 175	Judgment for the plaintiff for \$15,000.	[2011] NSWSC 645 (No 2) [2012] NSWSC 259 (No 3) [2012] NSWSC 985 (No 5) [2012] NSWSC 1540 (No 5) [2013] NSWSC 246 (No 6) [2013] NSWSC 599 (No 7) [2013] NSWSC 600 (No 9) [2014] NSWSC 489
Bodenstein v Hope Street Urban Compassion	[2014] NSWDC 126	Judgment for the first defendant.	[2014] NSWSC 174
Stanizzo v Sassu	[2014] NSWDC 90	Plaintiff's claim against the first to fourth defendants dismissed.	
Foley v Rosier	[2014] NSWDC 92	Statement of claim dismissed. Plaintiff's applications for extension of time to serve the statement of claim, leave to amend and for transfer to the Local Court refused.	
Bleyer v Google Inc	[2014] NSWSC 897	Proceedings permanently stayed.	
Allen v Lloyd-Jones	(No 6) [2014] NSWDC 40	Judgment for the plaintiff for \$6,000.	[2009] NSWDC 168 (No 2) [2010] NSWDC 41 (No 3) [2010] NSWDC 53 (No 4) [2010] NSWDC 93 [2012] NSWCA 230 (No 2) [2012] NSWCA 315



Freeburn v The Cake Decorators Assoc. of NSW Inc.	(No 2) [2014] NSWDC 173	Proceedings dismissed.	[2014] NSWDC 88
Boros v Swann	[2014] NSWDC 227	Proceedings discontinued.	
Moss v Eagleston	[2014] NSWSC 6	Proceedings dismissed.	
Hanshaw v Seven Network (Operations) Ltd	[2014] NSWSC 623	Proceedings dismissed	[2014] NSWSC 178
Saad v Daily Telegraph	[2014] NSWSC 430	Claim dismissed	
O'Shane v Harbour Radio Pty Limited	[2014] NSWSC 1947	Proceedings referred to mediation	[2013] NSWCA 315 [2014] NSWSC 93
Ghosh v TCN Channel Nine Pty Ltd & Ors; Ghosh v Ninemsn Pty Ltd & Ors	(No 4) [2014] NSWDC 151	Proceedings dismissed.	[2013] NSWDC 63 (No 2) [2013] NSWDC 145 [2013] NSWDC 206 [2014] NSWCA 121 [2014] NSWCA 180 (No. 5) [2014] NSWDC 215 [2015] NSWCA 25 [2015] NSWCA 334 [2017] NSWCA 90

Table 13: Victoria

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Barrow v Bolt & Anor	[2014] VSC 599	Claim dismissed.	[2013] VSC 226 [2014] VSC 16 [2014] HCSL 5 [2015] VSCA 107
McMahon v Watkinson	[2014] VSC 123	Plaintiff's application for an extension of time dismissed.	
Williams v Katis	[2014] VSC 405	Judgment for the defendant.	[2014] VSC 471



Cripps v Vakras	[2014] VSC 279	In a case with various co-plaintiffs and co-defendants, judgment for the plaintiffs for \$350,000, \$70,000, \$15,000 and \$15,000. The case has been appealed. Damages against Mr Vakras have been set aside with a retrial ordered. Damages against Ms Raymond remained at \$15,000 and \$70,000.	[2012] VSC 400 [2012] VCAT 579 [2014] VSC 110 (No 2) [2014] VSC 352 [2015] VSCA 234 [2015] VSCA 193 [2016] FCA 955 [2016] FCCA 20 [2017] HCASL 88 [2017] HCASL 87
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Table 14: Queensland

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Pro Teeth Whitening (Aust) Pty Ltd v Commonwealth of Australia & Ors	[2014] QSC 107	The application to extend the limitation period for the claims was dismissed.	
Beattie v Coles	[2014] QDC 131	Proceeding dismissed.	
Sierocki & Anor v Klerck & Ors	[2014] QSC 9	Judgment for the plaintiffs against the first, second, third, fourth and fifth defendants. In a later judgment, in 2015, the first plaintiff was awarded damages of \$80,000 from the first defendant, \$20,000 from the second defendant, \$60,000 from the fourth defendant and \$10,000 from the fifth defendant. The second plaintiff was awarded \$30,000 from the first defendant, \$5,000 from the second defendant, \$10,000 from the third defendant, \$20,000 from the fourth defendant and \$5,000 from the fifth defendant.	[2014] QCA 355 [2015] QSC 92

Table 15: Western Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Luke v Richardson	[2014] WADC 27	Judgment for the plaintiff for \$1000.	



Dabrowski v Greeuw	[2014] WADC 175	Judgment for the plaintiff for \$12,500.	
Prefumo v Bradley	[No 4] [2014] WASC 94	Claim dismissed.	[2011] WASC 251 [No 2] [2012] WASC 76 [No 3] [2013] WASC 56
Sims v Jooste	[No 2] [2014] WASC 373	Claim dismissed.	[2013] WASC 425 [2015] WASCA 170 [No 2] [2016] WASCA 83

Table 16: South Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Tassone v Kirkham	[2014] SADC 134	Judgment for the plaintiff for \$176,408.81.	[2015] SASCF 21 [2015] SASC 3 [2015] SASC 6
Brennan v Rijic Pty Ltd & Hickey	[2014] SADC 153	Judgment for the plaintiff for \$4000 against the second defendant.	
Easling v Rankine	[2014] SADC 40	Proceedings permanently stayed.	
Mcdonagh v Cefai and Ors	[2014] SADC 83	This is a review of a Magistrate's decision, where each of the plaintiff's claims for defamation was rejected (initial judgment unavailable). The decision was affirmed in the District Court.	

Table 17: Tasmania

Case	First substantive decision	Overall outcome	Related decisions/ Comments

Table 18: Australian Capital Territory

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Dunstan v Higham & Ors	[2014] ACTSC 206	Defamation claim dismissed.	(No 2) [2016] ACTCA 28 [2016] ACTCA 20 [2016] HCASL 308



Table 19: Northern Territory

Case	First substantive decision	Overall outcome	Related decisions/ Comments

Table 20: Federal Court of Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Thomson v Luxford	[2014] FCA 342	Defamation claim dismissed.	

1.3 Year: 2015

Table 21: Across jurisdictions

Jurisdiction	Number of cases	Number of decisions
New South Wales	22	69
Victoria	4	9
Queensland	6	16
Western Australia	3	3
South Australia	6	20
Tasmania	0	0
Australian Capital Territory	5	13
Northern Territory	0	0
Federal Court of Australia	1	2
TOTAL	47	132

Table 22: New South Wales

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Rix v Hoenig	[2015] NSWSC 755	Proceedings dismissed.	
Nasr v State of NSW	[2015] NSWSC 584	Proceedings dismissed.	[2015] NSWCA 293
P101 v Cambridge University Press	[2015] NSWSC 1005	Proceedings dismissed.	



White v Sparks	[2015] NSWDC 53	Proceedings dismissed.	
Zoef v Nationwide News Pty Ltd & Ors	[2015] NSWDC 232	Original judgment for the defendant. The decision was reversed on appeal, in 2016, and judgment ordered for the plaintiff for \$150,000.	[2016] NSWCA 283 (No 2) [2017] NSWCA 2
Linnell v Channel Seven Sydney Pty Ltd	[2015] NSWSC 583	Proceedings dismissed.	[2014] NSWSC 20 (No 2) [2014] NSWSC 209
York v Morgan	[2015] NSWDC 109	Statement of claim struck out and dismissed.	
Time for Monkeys Enterprises Pty Ltd v Southern Cross Austereo Pty Ltd	[2015] NSWDC 13	Proceedings dismissed.	
Daniels v State of NSW (No 6)	[2015] NSWSC 1074	Proceedings resolved by agreement.	[2014] NSWSC 1256 (No 2) [2014] NSWSC 1934 (No 3) [2015] NSWSC 191 (No 4) [2015] NSWSC 1073 (No 5) [2015] NSWSC 1164
Bateman v Fairfax Media Publications Pty Ltd (No 4)	[2015] NSWSC 610	Defamation action struck out.	[2014] NSWSC 400 (No 2) [2014] NSWSC 1380 (No 3) [2014] NSWSC 1601 (No 5) [2015] NSWSC 830 (No 6) [2015] NSWSC 890 [2015] NSWCA 154
Elzahed v Commonwealth of Australia	[2015] NSWDC 271	Defamation claims struck out.	[2016] NSWDC 327 [2017] NSWDC 160
Pi v State of NSW	[2015] NSWSC 324	Defamation claim struck out.	[2014] NSWSC 1360 (No 4) [2015] NSWSC 1410 (No 4) [2016] NSWSC 645 [2017] NSWSC 874
Toben v Nationwide News Pty Ltd; Toben v Mathieson	[2015] NSWSC 1784	Proceedings permanently stayed.	[2013] NSWSC 1530 [2014] NSWCA 200 [2014] NSWSC 575 [2014] NSWCA 49 [2015] NSWSC 1862 [2016] NSWCA 296 [2016] NSWSC 224
Mohareb v Palmer	(No. 2) [2015] NSWDC 141	Proceedings dismissed as parties entered into settlement.	[2015] NSWCA 369 [2015] NSWDC 411 [2015] NSWDC 134 (No.3) [2016] NSWDC 38 [2016] NSWCA 378 [2017] NSWCA 281 (No. 4) [2017] NSWDC 127 [2018] HCASL 18



Cehade v Mihailuk	[2015] NSWDC 74	Judgment for the defendant.	
French v Fraser	(No 3) [2015] NSWSC 1807	Judgment for the plaintiff for \$300,000.	[2014] NSWSC 1937 (No 2) [2015] NSWSC 1824
Saltearn v Saltearn	[2015] NSWSC 582	Parties agreed to discontinue.	
Haddad v Nationwide News Pty Limited	(No 7) [2015] NSWSC 1814	Plaintiff's action dismissed	[2013] NSWSC 2027* (No 2) [2014] NSWSC 775 [2015] NSWSC 1667 [2015] NSWSC 1081 (No 3) [2015] NSWSC 146* (No 4) [2015] NSWSC 193*
Tate v Duncan-Strelec	[2015] NSWSC 1303	Defamation action discontinued.	[2013] NSWSC 1446 [2014] NSWSC 1125
Kang v Australian Broadcasting Corporation	[2015] NSWSC 893	Proceedings dismissed.	[2015] NSWCA 375
Alex v Australian Broadcasting Corporation	[2015] NSWDC 78	Proceedings dismissed.	
Goldsmith v Ghosh	[2015] NSWSC 1758	Parties agreed to discontinue.	[2015] NSWSC 631 [2015] NSWSC 604

Table 23: Victoria

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Hardie v Herald and Weekly Times Pty Ltd	[2015] VSC 364	Original judgment for the plaintiff for \$90,000. This was increased on appeal, in 2016, to \$150,000 against the first and second respondents plus an additional sum of \$100,000 against the second respondent.	[2014] VSC 232 (No.2) [2016] VSCA 130 [2016] VSCA 103
Sheehan v Brett Young & Ors	(No 2) [2015] VSC 651	Defamation claim statute barred.	(No 3) [2016] VSC 39 (No 4) [2016] VSC 53
Barrow v Herald & Weekly Times Pty Ltd	[2015] VSC 263	Summary judgment granted.	
Gluyas v Canby	[2015] VSC 11	Judgment for the plaintiff for \$50,000.	



Table 24: Queensland

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Harvey v Henzell & Ors	[2015] QDC 132	Claim and statement of claim struck out.	[2015] QCA 261
Flegg v Hallett	[2015] QSC 167	Judgment for the plaintiff for \$775,000.	[2014] QSC 278 [2014] QSC 220 [2015] QSC 315
Smith v Lucht	[2015] QDC 289	Plaintiff's claim dismissed.	[2014] QDC 302 [2015] QDC 325 [2016] QCA 267
Beynon v Manthey	[2015] QDC 252	Judgment for the plaintiff for \$25,000.	
Hudson v Mellis	[2015] QDC 284	Judgment for the defendant.	[2015] QDC 285 [2015] QDC 194 [2016] QCA 171
Bertwistle v Conquest	[2015] QDC 133	Judgment for the plaintiff for \$100,000.	

Table 25: Western Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Albrecht v Commonwealth of Australia	[2015] WASC 167	Summary judgment awarded.	
McEloney v Massey	[2015] WADC 126	Plaintiff's claim dismissed.	
Barkla v Bush	[2015] WADC 46	Originating summons struck out.	

Table 26: South Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Duffy v Google Inc	[2015] SASC 170	Judgment for the plaintiff for \$100,000. Upheld on appeal to the Full Court of the Supreme Court of South Australia in October 2017.	[2011] SADC 178 (No 2) [2015] SASC 206 (no 3) [2016] SASC 1 [2017] SASCFC 130



Stone v Moore (No 2)	[2015] SADC 130	Judgment for the defendant. On appeal, in 2016, this judgment was set aside and the plaintiff was awarded \$2000.	[2015] SASC 46 [2015] SADC 169 [2016] HCASL 254 [2016] SASCF 50
Greek Orthodox Community of SA Inc v Pashalis	[2015] SASC 122	Judgment for three of the plaintiffs for \$10,000, \$10,000 and \$5,000.	
De Poi v Advertiser-News Weekend Publishing Company Pty Ltd	[2015] SADC 21	Plaintiff's claim originally dismissed, but this decision was reversed on appeal, in 2016. Judgment entered for the plaintiff for \$75,000.	[2012] SADC 129 [2015] SADC 25 [2016] SASCF 25 (No 2) [2016] SASCF 45 [2016] HCASL 234
Scali v Scali	[2015] SADC 172	Judgment for the plaintiff for \$20,000	
Gilbert & Anor v Tripodi & Anor	Citation not available. See fourth column for the appeal which upheld the decision.	Judgment for the defendants	[2016] SADC 6

Table 27: Tasmania

Case	First substantive decision	Overall outcome	Related decisions/ Comments

Table 28: Australian Capital Territory

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Zwambila v Wafawarova	[2015] ACTSC 171	Judgment for the plaintiff for \$180,000.	[2014] ACTSC 73
Piscioneri v Brisciani	[2015] ACTSC 106	Judgment for the plaintiff for \$82,000.	(No 1) [2016] ACTCA 30 (No 2) [2016] ACTCA 24 (No 3) [2016] ACTCA 31 (No 4) [2016] ACTCA 32 [2017] ACTSC 237
Bottrill v Van Lieshout	[2015] ACAT 26	Judgement for the applicant for \$10,000.	



Barlow v Law Society of the ACT and Ors	[2015] ACTMC 8	Judgment for the defendants.	[2017] ACTSC 35
Piscioneri v Reardon	[2015] ACTSC 61	Application dismissed.	[2016] ACTCA 33 [2017] ACTSC 237*

Table 29: Northern Territory

Case	First substantive decision	Overall outcome	Related decisions/ Comments

Table 30: Federal Court of Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Hockey v Fairfax Media Publications Pty Limited	[2015] FCA 652	Judgment for the applicant with regard to some publications while other claims were dismissed. Damages awarded were \$20,000 and \$180,000 against separate defendants.	(No 2) [2015] FCA750



1.4 Year: 2016

Table 31: Across jurisdictions

Jurisdiction	Number of cases	Number of decisions
New South Wales	22	75
Victoria	4	16
Queensland	6	8
Western Australia	5	16
South Australia	4	23
Tasmania	0	0
Australian Capital Territory	3	5
Northern Territory	0	0
Federal Court of Australia	0	0
TOTAL	44	143

Table 32: New South Wales

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Al Muderis v Duncan	[2016] NSWSC 1726	Judgment for the plaintiff. First and second defendants ordered jointly and severally to pay the plaintiff damages of \$320,000. Second defendant also ordered to pay further damages of \$160,000.	[2016] NSWSC 1363 Al (No 3) [2017] NSWSC 726
Feldman v Executive Council of Australian Jewry	[2016] NSWSC 1669	Proceedings referred to mediation.	
Kang v Channel Seven Sydney Pty Ltd	[2016] NSWDC 307	Proceedings dismissed.	
Stephen Dank v Nine Network Pty Ltd	[2016] SWSC 1572	Summary dismissal.	[2013] NSWSC 1101 [2013] NSWSC 2054 (No 2) [2013] NSWSC 1531 (No 3) [2013] NSWSC 1850 [2014] NSWSC 1728 [2014] NSWSC 1938 [2016] NSWSC 1145



O'Brien v Australian Broadcasting Corporation	[2016] NSWSC 1289	Judgment for the defendant.	[2014] NSWSC 420 [2017] NSWCA 338
Carney v Fairfax Media Publications Pty Ltd	[2016] NSWSC 1246	Proceedings referred to mediation.	
Hall v TCN Channel Nine Pty Ltd	(No 2) [2016] NSWSC 1250	Proceedings dismissed.	[2014] NSWSC 1604
Templar v Watt (No 3)	[2016] NSWSC 1230	Judgment for the defendant.	[2014] NSWSC 937 [2015] NSWSC 997
Alex v Fairfax Media Publications Pty Ltd (No 2)	[2016] NSWDC 185	Proceedings dismissed.	[2014] NSWCA 273 [2014] NSWCA 273 (No 2) [2014] NSWSC 181 [2016] NSWDC 96
United Land Council Ltd v New South Wales Aboriginal Land Council	[2016] NSWSC 1191	Proceedings dismissed.	
Carolan v Fairfax Media Publications Pty Ltd (No 6)	[2016] NSWSC 1091	Judgment for the plaintiff for \$300,000.	[2014] NSWSC 1628 [2015] NSWSC 1399 (No 2) [2015] NSWSC 1010 (No 3) [2015] NSWSC 1344 (No 5) [2015] NSWSC 1560 (No 7) [2017] NSWSC 351 (No 8) [2017] NSWSC 1757
Rothe v Scott (No. 4)	[2016] NSWDC 160	Judgment for the plaintiff for \$150,000.	(No. 2) [2015] NSWDC 143 [2015] NSWDC 105 (No. 5) [2016] NSWDC 225 (No. 3) [2016] NSWDC 151
Korolak v Bauer Media Pty Ltd	[2016] NSWDC 98	Statement of claim dismissed, judgment for the defendant.	(No. 2) [2016] NSWDC 115
YZ v Amazon (No 7)	[2016] NSWSC 637	Proceedings permanently stayed.	[2013] NSWSC 1522 (No 2) [2014] NSWSC 415 (No 3) [2015] NSWSC 1130 (No 4) [2015] NSWSC 1346 (No 5) [2015] NSWSC 1539 (No 6) [2015] NSWSC 1951



Park v Lee	[2016] NSWDC 75	Proceedings dismissed.	
Kang v Immigration News Pty Ltd	[2016] NSWDC 74	Statement of claim struck out and dismissed.	
Gmitrovic v Commonwealth of Australia	[2016] NSWSC 418	Judgment for the defendant	[2015] NSWSC 840 (No2) [2016] NSWSC 546
Dank v Nationwide News Pty Ltd	[2016] NSWSC 295	Judgment for the plaintiff. No award of damages.	[2013] NSWSC 1064 [2013] NSWSC 1122 [2014] NSWSC 914 [2014] NSWSC 732 [2015] NSWSC 827 [2016] NSWSC 156
Lee v Cho	[2016] NSWDC 36	Proceedings dismissed.	
Prowse v Harbour Radio Pty Ltd	(No 2) [2016] NSWSC 139	Proceedings referred to mediation.	[2016] NSWSC 57
Cheikho v Nationwide News Pty Ltd	(No 5) [2016] NSWSC 29	Judgment for the plaintiff for \$100,000.	[2013] NSWSC 2027 (No 3) [2015] NSWSC 146 (No 4) [2015] NSWSC 193 (No 6) [2016] NSWSC 225
Voelte v Australian Broadcasting Corporation	(No 4) [2016] NSWSC 1012	Judgment for the defendant.	[2015] NSWSC 210 [2015] NSWSC 577 [2015] NSWSC 1083

Table 33: Victoria

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Pham v Legal Services Commissioner	[2016] VSC 450	Summary judgment in favour of the defendant.	[2017] VSCA 87 [2017] HCASL 19
Trkulja v Dobrijevic	[2016] VSC 421	Fourth amended statement of claim was struck out.	[2013] VSC 261 (No 2) [2014] VSC 594 (No 3) [2014] VSC 614 [2015] VSCA 281 [2016] VCC 67 (No 2) [2016] VSC 596 [2016] VCC 677
Dods v McDonald	(No 2) [2016] VSC 201	Judgment for the plaintiff for \$150,000	(No 1) [2016] VSC 200 [2017] VSCA 197 [2017] VSCA 129
Van Garderen v Channel Seven Melbourne Pty Ltd & Ors	[2016] VCC 953	Application to extend the limitation period dismissed.	



Table 34: Queensland

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Weatherup v Nationwide News Pty Ltd	[2016] QSC 266	Judgment for the plaintiff for \$100,000.	(No 2) [2016] QSC 301 [2017] QCA 070
Grattan v Porter	[2016] QDC 202	Judgment for the plaintiff for \$160,903.42.	
Schoch v Palmer	[2016] QSC 147	Plaintiff's claim is statute barred.	
Kelly v Levick	[2016] QMC 11	Judgment for the plaintiff for \$10,000.	
Price v Davies & Anor	[2016] QDC 201	The appeal of the decision of the Brisbane Magistrate's Court was dismissed. The original decision was that the originating process should be set aside.	(Judgment of the Brisbane Magistrate Court unavailable)
Hua & Others v Winslet & others	[2016] QDC 163	Proceedings stayed pending the outcome of mediation between the parties.	

Table 35: Western Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Douglas v McLernon (No 4)	[2016] WASC 320	Judgment for the plaintiff against one of the defendants for \$250,000.	[2013] WASC 126 (No 2) [2014] WASC 316 (No 3) [2016] WASC 319
Tull v Wolfe	[2016] WASC 65	Summary judgment granted in favour of defendant.	
Kingsfield Holdings Pty Ltd v Rutherford	[2016] WASC 117	Judgment for the defendant.	[2013] WASC 347 [2014] WASC 408
Leighton v Garnham	[No 4] [2016] WASC 134	Plaintiff's action dismissed.	[2012] WASC 314 [No 2] [2013] WASC 335 [No 3] [2014] WASC 35
Moran v Schwartz Publishing	[No 7][2016] WASC 422	Proceedings referred to mediation.	[No 4] [2015] WASC 328 [No 5] [2016] WASC 67 [No 6] [2016] WASC 168



Table 36: South Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Poniatowska v Channel Seven Sydney Pty Ltd (No 4)	[2016] SASC 137	Judgment for the defendant.	[2014] SASC 95 (No 2) [2014] SASC 123 (No 3) [2014] SASC 159 (No 5) [2017] SASC 32
Fleming v Advertiser-News Weekend Publishing Company Pty Ltd (No 2)	[2016] SASC 26	Judgment for the defendant.	[2010] SASC 255 [2012] SASC 58 (No 2) [2012] SASC 127 [2013] SASC 92 [2014] SASC 145 (No 3) [2016] SASC 81 [2016] SASCFC 109 [2017] HCASL 16 [2017] SADC 38
McLeod v Thorpe & Anor	Citation not available See fourth column for the appeal which upheld the decision	Judgment for the defendant	
Maras v Lessees	[2016] SADC 40	Judgement for the plaintiff for \$75,000. However, this was reduced to \$25,000 on appeal in 2017.	(No 2) [2016] SASC 140 [2016] SASC 117 (No 2) [2016] SADC 57 [2017] SASCFC 137 [2017] SASCFC 48 (No 3) [2017] SASCFC 154

Table 37: Tasmania

Case	First substantive decision	Overall outcome	Related decisions/ Comments

Table 38: Australian Capital Territory

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Reid v Dukic	[2016] ACTSC 344	Judgment entered for the plaintiff for \$182,700.	
Bottrill v Cristian & Anor	[2016] ACAT 7	Judgment for the applicant.	[2016] ACTSC 315 [2016] ACAT 104
Martin v Trinh	[2016] ACAT 47	Claim dismissed.	



Table 39: Northern Territory

Case	First substantive decision	Overall outcome	Related decisions/ Comments

Table 40: Federal Court of Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments

1.5 Year: 2017

Table 41: Across jurisdictions

Jurisdiction	Number of cases	Number of decisions
New South Wales	14	56
Victoria	5	17
Queensland	2	3
Western Australia	3	12
South Australia	3	9
Tasmania	0	0
Australian Capital Territory	3	4
Northern Territory	0	0
Federal Court of Australia	0	0
TOTAL	30	101



Table 42: New South Wales

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Chow v Un Sum Chow (first plaintiff) Colin Chiu Kwan Chau (second plaintiff)	[2017] NSWDC 254	Judgment for the first plaintiff for \$95,000 and for the second plaintiff for \$65,000.	(No. 2) [2017] NSWDC 301
M v Public Guardian	[2017] NSWDC 253	Proceedings discontinued.	
Cummings v Fairfax Digital Australia & New Zealand Pty Ltd; Cummings v Fairfax Media Publications Pty Ltd	[2017] NSWSC 657	Judgment for the defendants for most matters. However, judgment for the plaintiff against the second defendant concerning a poster.	
Ghosh v Miller	(No 2) [2017] NSWSC 791	Judgment for the defendants.	(No. 2) [2013] NSWDC 194 (No 2) [2015] NSWSC 1287 (No. 3) [2015] NSWDC 133 (No. 4) [2015] NSWDC 206 [2016] NSWSC 430 (No 2) [2016] NSWSC 713 (No 3) [2016] NSWSC 1568 (No 4) [2016] NSWSC 1710 [2016] NSWSC 1574
Mahmoud v ABC	(No 3) [2017] NSWSC 764	Proceedings dismissed.	[2017] NSWSC 85
Milne v Eil	[2017] NSWSC 555	Judgment for the plaintiff for \$45,000.	[2014] NSWCA 407 [2015] NSWSC 569
Oueik v Foley	[2017] NSWSC 1324	Proceedings dismissed.	
Gim v Byeon	[2017] NSWDC 136	Judgment for the defendant.	
Vaa v Barakat	[2017] NSWDC 300	Judgment for the defendant.	



Collier v Country Women's Assoc. of NSW	[2017] NSWSC 1573	Judgment for the defendant.	[2016] NSWSC 1361 (No 2) [2017] NSWSC 1729 [2017] NSWCA 22 (No 4) [2017] NSWSC 1411 [2017] NSWCA 303 (No 3) [2017] NSWSC 604 (No 2) [2017] NSWSC 422
Chel v Fairfax Media Publications Pty Ltd	(No 8) [2017] NSWSC 1315	Judgment for the plaintiff for \$120,268.49.	(No 5) [2015] NSWSC 1729 [2015] NSWSC 1707 [2015] NSWSC 1726 [2015] NSWSC 1725 [2015] NSWCA 355 [2015] NSWCA 379 (No 4) [2015] NSWSC 1727 (No 2) [2015] NSWSC 1535 (No 2) [2017] NSWSC 58 (No 3) [2017] NSWSC 61 (No 4) [2017] NSWSC 107 [2017] NSWSC 56 [2017] NSWSC 135 [2015] NSWSC 171 (No 6) [2017] NSWSC 230 (No 7) [2017] NSWSC 996
Zaia v Eshow	[2017] NSWSC 1540	Judgment for the plaintiff for \$150,000.	[2016] NSWSC 921 [2016] NSWSC 1684
Imielska v Morgan	[2017] NSWDC 329	Proceedings dismissed.	
Michail v Mount Druitt & Area Community Legal Centre	(No. 6) [2017] NSWDC 25	Proceedings dismissed.	[2015] NSWDC 145 (No. 2) [2015] NSWDC 214 [2015] NSWCA 396 (No. 5) [2017] NSWDC 13

Table 43: Victoria

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Sheales v The Age & Ors	[2017] VSC 380	Judgment for the plaintiff for \$175,000.	(No 2) [2017] VSC 151 (No 3) [2017] VSC 152 (No 1) [2017] VSC 150 (Costs) [2017] VSC 605



Wilson v Bauer Media Pty Ltd	[2017] VSC 521	Judgment for the plaintiff for \$4,567,472.	(No 1) [2017] VSC 302 (No 2) [2017] VSC 303 (No 3) [2017] VSC 311 (No 4) [2017] VSC 354 (No 5) [2017] VSC 355 (No 6) [2017] VSC 356 (No 7) [2017] VSC 357
Barrow v Ackland & Gibson	[2017] VSC 485	Proceedings dismissed.	
Deferos v Google Inc & Anor	[2017] VSC 158	Summary dismissal granted.	[2017] VSC 189
Huang v Zhi & Anor	[2017] VCC 1990	Judgment for the plaintiff for \$200,000.	

Table 44: Queensland

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Naidoo v State of Queensland & Anor	[2017] QDC 63	Claim dismissed.	[2016] QDC 169
Gregory v Johnson	[2017] QDC 224	Judgment entered for the plaintiff for \$170,901.92.	

Table 45: Western Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Rayney v The State of Western Australia	[No 9] [2017] WASC 367	Judgment for the plaintiff for \$1,849,549 (plus interest of \$773,866)	[2009] WASC 105 (No 2) [2009] WASC 133 (No 3) [2010] WASC 83 [2011] WASC 3 (No 4) [2013] WASC 2 (No 5) [2014] WASC 147 (No 6) [2015] WASC 279 (No 7) [2016] WASC 288 (No 8) [2017] WASC 66
Taylor v Hewitt	[2017] WASC 234	Plaintiff's claim dismissed.	
Accommodation West Pty Ltd v Aikman	[2017] WASC 157	Action dismissed.	



Table 46: South Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Takhar v Sroa	[2017] SADC 110	Judgment for the plaintiff for \$10,000.	
Militis v The State of South Australia	[2017] SASC 186	Matter resolved out of court.	[2013] SASC 189 [2014] SASCFC 67
Stokes v Ragless	[2017] SASC 159	Judgment for the plaintiff for \$90,000.	[2014] SASC 56 (No 2) [2016] SAEOT 5 [2015] SAEOT 1 [2016] SAEOT 2

Table 47: Tasmania

Case	First substantive decision	Overall outcome	Related decisions/ Comments

Table 48: Australian Capital Territory

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Piscioneri v Whitaker	[2017] ACTSC 174	Judgment for the plaintiff in the sum of \$9,600.	
Egan-Green v McLean	[2017] ACTSC 48	Proceedings dismissed.	[2017] ACTCA 28
Piscioneri v Malcolmson	[2017] ACTSC 278	Judgment for the defendant.	

Table 49: Northern Territory

Case	First substantive decision	Overall outcome	Related decisions/ Comments

Table 50: Federal Court of Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments



2. Cases also in the system 2013-17

This chapter offers a list of other defamation matters that were ‘in the system’ in the period 2013 to 2017. By this we mean:

- **Matters already the subject of a substantive decision** – these are cases launched prior to 2013 and for which there has been a substantive decision, but which are ongoing, usually because of an appeal. An example is *Trkulja v Google Inc* [2015] VSC 635. This case was the subject of a number of decisions from 2011, then a substantive decision in favour of Google in 2012, but then the subject of an appeal. Our methodology would treat this as a 2012 matter, and therefore place it outside the period of review covered in Chapter 1.
- **Matters not yet the subject of a substantive decision** – these are actions that have been filed and are the subject of preliminary decisions or orders, but by 31 December 2017 there was no substantive decision on the defamation claim. An example is *Mirabella v Price & Anor (Ruling)* [2017] VCC 794. This is part of the action brought by former MP Sophie Mirabella against *The Benalla Ensign* and its editor over an article that stated Ms Mirabella pushed independent MP Cathy McGowan during the 2016 federal election. By the end of 2017 there were rulings on two preliminary matters (including this one, in which the newspaper successfully applied to have the matter moved from Melbourne to the Wangaratta registry of the County Court), but no judgement on the substantive defamation claim.
- **Indeterminate matters** – this comprises a small number of matters for which we were unable to obtain a reliable indication of the status or outcome. For that reason, we have not included them in the main defamation tables in Chapter 1 nor the digital defamation cases in Chapter 2. This category may pick up some matters where there was a jury verdict in favour of a defendant and no substantive decision of a judge (although where we found a later decision such as a costs order, we included it in the main table, as in *Voelte v ABC* (No 4) [2016] NSWSC 1012).

As with the recording of ‘decisions’ in the fourth column of the tables in Chapter 1, these matters have been recorded to give a more complete picture of the commitment of resources by both plaintiffs and defendants to defamation actions. If anything, this list underestimates that commitment of resources because **we have only recorded one decision for each defamation case** when there may be multiple decisions. The Mirabella case is only counted once here, for example, even though there was a related decision on pleadings in the same court in the same year. Decisions from appellate courts, for example the New South Wales Court of Appeal, have not been included.

Table 51: Cases also in the system, 2013-17

Cases also in the system, 2013-17	
1.	<i>Adeang v The Australian Broadcasting Corporation</i> (No 2) [2016] FCA 1599
2.	<i>Adnyamathanha Traditional Lands Assn & Ors v Topez</i> (Formerly Nanschild) [2016] SADC 69
3.	<i>Ah Choo Teo v Pacific Media Group</i> [2016] VSC 626
4.	<i>Aikman v The Owners Of Strata Plan 48817 - 16 Dolphin Drive Mandurah</i> [2016] WASC 380



5.	Alawadi v Widad Kamel Farhan trading as The Australian Arabic Panorama Newspaper (No. 3) [2016] NSWDC 204
6.	Ale v Pauling [2017] NSWSC 1744
7.	Alex v Goodsir [2014] NSWDC 72
8.	Alex v Gridneff [2013] NSWSC 2025
9.	Anderson v News Digital Media Pty Limited [2015] NSWSC 1952
10.	Anna Von Marburg v Aldred and Anor [2016] VSC 566
11.	Argus Probity Auditors and Advisors Pty Ltd & Ors v Queensland Rail Ltd [2014] QSC 161
12.	Arman v Nationwide News Pty Limited [2017] NSWDC 151
13.	Australian Chinese Community Association of New South Wales Ltd v Pun [2017] NSWDC 55
14.	B1 v B2 [2017] NSWDC 252
15.	Baboolal v Fairfax Digital Australia and New Zealand Pty Ltd & Ors [2016] QSC 175
16.	Balzola v Federal Capital Press of Australia Pty Ltd (No. 3) [2016] NSWDC 258
17.	Barach v University of New South Wales & Ors [2013] NSWSC 1054
18.	Barrett v TCN Channel Nine Pty Ltd [2016] NSWSC 1663
19.	Bateman and Idameneo (No 123) Pty Limited v Fairfax Media Publications Pty Limited and Ors [2013] ACTSC 72
20.	Bega v Bilinsky [2014] NSWSC 1572
21.	Behan v Stonehouse [2017] WASC 275
22.	Benhayon v Rockett [2016] NSWSC 1210
23.	Bidstrup v Cullen [2013] SASC 136
24.	Bilal v Nine Network Australia Pty Ltd [2017] ACTSC 388
25.	Billis v McLernon [2013] WASC 128
26.	Blake-Dyke v Bayard [2017] NSWSC 1474
27.	Boikov v Dailymail.com Australia Pty Ltd [2015] NSWDC 192
28.	Boikov v Network Ten Pty Ltd; Boikov v Nationwide News Pty Ltd [2017] NSWDC 88
29.	Bolten v Stoltenberg [2016] NSWSC 596
30.	Brooks v Fairfax Media Publications Pty Ltd; Brooks v TCN Channel Nine Pty Ltd [2016] NSWSC 604
31.	Brown v Random House Australia Pty Ltd [2014] NSWSC 1505



32. Buswell v Carles [No 2] [2013] WASC 54
33. Byrne v Hamilton [2017] NSWDC 334
34. Capilano Honey Ltd v Dowling [2016] NSWSC 1441
35. Capilano Honey Ltd v Mulvany [2017] NSWSC 833
36. Capolingua v Nationwide News Pty Ltd [2016] WASC 156
37. Carey v Nationwide News Pty Ltd (ACN 008 438 828) (No. 2) [2014] NSWDC 93
38. Carney v Fairfax Media Publications Pty Limited [2016] NSWSC 1246
39. Cassar v Network Ten Pty Ltd [2014] NSWSC 1576
40. Chan v Yip [2014] NSWSC 189
41. Charan v Nationwide News Pty Ltd (Ruling No 6) [2017] VSC 331
42. Chen v Evans [2014] VSC 230
43. Cheung v Fairfax Media Publications Pty Ltd [2014] NSWSC 28
44. Chiguvare v Seven Network (Operations) Limited [2015] ACTSC 285
45. Chittick v Pitney [2014] NSWSC 1557
46. Clarke (previously Naicker) v Herrick [2017] NSWDC 302
47. Computer Accounting And Tax PTY LTD (in liq) v Professional Services Of Australia Pty Ltd [No 10] [2015] WASC 380
48. Corby v Allen & Unwin Pty Ltd (No 2) [2013] NSWSC 617
49. Corby v Network Ten Pty Limited Corby Junior v Network Ten Pty Limited Rose v Network Ten Pty Limited Kisina v Network Ten Pty Limited [2014] NSWSC 1431
50. Cornish v Australian Broadcasting Corporation [2015] NSWSC 900
51. Cornwell v Channel Seven Sydney Pty Limited [2015] NSWSC 1673
52. Cosco v Hutley [2017] NSWSC 1745
53. Cowper v Fairfax Media Publications Pty Ltd; Cowper v Australian Broadcasting Corporation [2016] NSWSC 1614
54. Creak v Channel Seven Sydney Pty Ltd [2017] NSWSC 213
55. Crespin v Channel Seven Sydney Pty Ltd (No. 2) [2015] NSWDC 212
56. Crismale v Mathers [2015] NSWSC 1293
57. Crosby v Kelly [2013] FCA 1343
58. Csortan v Nationwide News Pty Ltd [2017] NSWSC 1349



59. Culleton v Kershaw [2016] WASC 334
60. Daher v Nationwide News Pty Ltd [2016] NSWDC 203
61. Dank v Herald and Weekly Times [2015] VSC 270
62. Danwer v Nine Network Australia Pty Ltd [2016] NSWSC 95
63. Darwin v Norman [2017] NSWSC 777
64. Dawson v Harbour Radio Pty Ltd [2017] NSWSC 124
65. Day v Harness Racing New South Wales (No 2) [2015] NSWSC 1455
66. Dean v Vrettos [2014] NSWSC 186
67. Debrossard v AB Commission [2016] NSWDC 109
68. Di Girolamo v Fairfax Media Publications Pty Ltd (No. 3) [2016] NSWSC 642
69. Doe v Dowling [2017] NSWSC 1793
70. Donohue v Round & Ors (Ruling) [2017] VCC 1711
71. Douglas v Purpose Marketing Group Pty Ltd [2013] WASC 125
72. Duffy & Anor v Marr & Anor [2017] VSC 384
73. Dupois v Zuanetti; Dupois v Qld and Television Ltd & Ors [2013] QSC 60
74. Duthie v Nixon [2015] VSC 672
75. Eardley v Nine Network Australia Pty Ltd [2017] NSWSC 1374
76. Eastland Medical Systems PTY LTD v Sims [2013] WASC 11
77. Edwards v Trapman [2014] NSWSC 1089
78. El-Mouelhy v QSociety of Australia Inc (No. 4) [2015] NSWSC 1816
79. Elston v Commonwealth of Australia [2014] FCA 704
80. Facer v Wolfe [2013] NSWDC 231
81. Fairhead v West Australian Newspapers Ltd [No 3] [2016] WASC 44
82. Farrow v Nationwide News Pty Ltd (No. 2) [2017] NSWDC 30
83. Feeney v TCN Channel Nine Pty Ltd [2016] NSWSC 1848
84. Feldman v Australian Broadcasting Corporation [2017] NSWSC 359
85. Feldman v Australian Broadcasting Corporation; Feldman v Special Broadcasting Services Corporation [2016] NSWSC 757
86. Feldman v GNM Australia Ltd [2016] NSWSC 920



87. Feldman v IAC/InterActiveCorp [2016] NSWSC 1302
88. Feldman v Nationwide News Pty Ltd [2016] NSWSC 1890
89. Feldman v Polaris Media Pty Ltd [2016] NSWSC 1889
90. Feldman v Spinak [2016] NSWSC 1083
91. Feldman v The Daily Beast Company LLC [2017] NSWSC 831
92. Fenn & Anor v Australian Broadcasting Corporation [2017] VSC 486
93. Ferrier v Australian Broadcasting Corporation [2015] NSWSC 989
94. Ferrier v McRae [2015] NSWSC 1379
95. Ferrier v Nationwide News Pty Limited (No. 3) [2015] NSWSC 1806
96. Finch v The Heat Group Pty Ltd (No 5) [2016] FCA 191
97. Findlay v Grimmer [No 4] [2015] WASC 438
98. Findley v Morand & Ors [2014] QSC 297
99. Fogarty v Nationwide News PTY LTD [2013] WASC 477
100. FU v Winstar GROUP PTY LTD [2014] WASC 496
101. Furnari v Ziegert [2016] FCA 1080
102. G, Re v Department Of Correctional Services & Ors [2017] SASC 96
103. Gair v Greenwood [2017] NSWSC 1652
104. Gallagher v Destiny Publications Pty Ltd [No 2] [2015] WASC 475
105. Garrett v Cahill [2015] VSC 572
106. Gary Howes v ACP Magazines Limited & Ors [2013] NSWSC 88
107. Gayle v Fairfax Media Publications Pty Ltd; Gayle v The Age company Pty Ltd; Gayle v The Federal Capital Press of Australia Pty Ltd [2017] NSWSC 1261
108. Gaynor v Burns (No. 2) [2015] NSWDC 283
109. GG Australia Pty Ltd v Sphere Projects Pty Ltd (No 2) [2017] FCA 664
110. Ghaly v Fairfax Media Publications Pty Ltd [2015] NSWSC 1004
111. Ghosh v Google Australia Pty Ltd [2013] NSWDC 146
112. Giani v Queensland Television Ltd & Ors [2015] QDC 286
113. Gilbert v Nationwide News Pty Ltd; Clark v Nationwide News Pty Ltd; Maguire v Nationwide News Pty Ltd [2016] NSWSC 845



114. Gmitrovic v Department of Defence [2015] NSWSC 840
115. Goldsworthy v Seven Network Limited [2013] NSWSC 344
116. Goodfellow v Fairfax Media Publications Pty Limited [2017] FCA 1152
117. Greenfield v Fairfax Media Publications Pty Ltd ; Greenfield v Australian Broadcasting Corporation (No. 3) [2017] NSWSC 125
118. Gregg v Fairfax Media Publications Pty Limited [2016] FCA 1470
119. Grygiel v Australian Broadcasting Corporation [2016] NSWSC 140
120. Ha v Cho (No. 2) [2015] NSWDC 210
121. Ha v Kang [2015] NSWDC 211
122. Hall v Fairfax Media Ltd [2017] NSWSC 1271
123. Hall v Hanson [2017] ACTSC 369
124. Hall v Swan [2013] NSWSC 1758
125. Hamid v Nationwide News Pty Ltd [2017] NSWSC 1358
126. Hang v Nguy [2017] NSWDC 333
127. Hanks v Johnston (No 3) [2016] VSC 629
128. Hanson v Hunter [2015] NSWDC 220
129. Hanson-Young v Bauer Media Ltd (No 2) [2013] NSWSC 2029
130. Harb v Trustees of the Christian Brothers trading as St Patrick's College Strathfield [2016] NSWDC 90
131. Harbour Radio Pty Ltd v Trad [2015] NSWSC 632
132. Harradine v The Commissioner Of Police [2016] SADC 135
133. Hawes v Fairfax Media Limited [2015] NSWSC 1534
134. Hawthorn v Seven Network Ltd [2013] VSC 352
135. Heathcote v University of Sydney [2014] FCCA 613
136. Hegarty & Ready Flowers Pty Ltd v Craven [2016] QDC 91
137. Hewit v Galletta [2017] NSWDC 129
138. Hibbert v Nationwide News Pty Ltd (No. 3) [2016] NSWDC 242
139. Hill v Hope [2017] QDC 160
140. Hoffman v Challis [2016] NSWSC 142



141. Hon Douglas James Shave, The v City Of Kalgoorlie-Boulder [2015] WASC 499
142. Howes v ACP Magazines Limited [2013] NSWSC 1836
143. Hussey v Ramsay Healthcare Australia Pty Limited [2015] NSWSC 1769
144. Ibrahim v Fairfax Media Publications Pty Ltd [2014] NSWSC 24
145. Inserve Australia Ltd v Kinane [2017] QDC 92
146. Jacobs v Levitt [2016] NSWDC 202
147. Jane Doe 1 and Jane Doe 2 v Dowling (No 2) [2016] NSWSC 1910
148. Jane Doe 1 v Dowling (No 3) [2017] NSWSC 126
149. Jenman v McIntyre [2013] NSWSC 1100
150. Jensen v Nationwide News PTY Limited [2017] WASC 63
151. Jneid v West Australian Newspapers Limited [2015] WASC 68
152. Jones v Aussie Networks Pty Ltd [2014] QSC 126
153. Jones v TCN Channel Nine Pty Limited (No 2) [2015] NSWSC 1854
154. Jones v TCN Channel Nine Pty Ltd (No 3) [2016] NSWSC 922
155. Jordan v Nationwide News Pty Ltd [2016] NSWSC 1055
156. Kazal v Fairfax Media Ltd [2017] NSWSC 1070
157. Kelly v Fairfax Media Limited [2017] ACTSC 322
158. Kelly v Fairfax Media Publications Pty Ltd (No 2) [2014] NSWSC 166
159. Kelly v Harbour Radio Pty Ltd (No 2) [2013] NSWSC 1807
160. Kenny v Australian Broadcasting Corporation [2014] NSWSC 190
161. Kenyon v Sabatino [2013] WASC 76
162. Khalil v Fairfax Media Publications Pty Ltd [2017] NSWDC 346 (7 December 2017)
163. Khan v Fairfax Media Publications Pty Limited [No 3] [2015] WASC 400
164. Kim v The Korean Times Pty Ltd & Anor [2013] NSWDC 230
165. King v Fairfax Media Publications Pty Ltd (No 3) [2015] NSWSC 1450
166. Kirwan v Schurig [2014] NSWDC 222
167. Knell v Harris [No 3] [2015] WADC 38
168. Konidaris v Google Australia Pty Limited [2015] NSWSC 1810



169. Lazarus v Azize & Ors [2015] ACTSC 344
170. Le Mottee v Dingle [2017] NSWSC 1270
171. Lee v Fairfax Media Publications Pty Ltd (No. 3) [2015] NSWDC 142
172. Lee v Korean Society of Victoria (No. 3) [2016] VSC 210
173. Lighthouse Forward Planning Pty Ltd & Anor v Queensland Newspapers Pty Ltd & Ors [2014] QSC 217
174. Lister v Harbour Radio Pty Limited [2016] NSWSC 1850
175. Lister v Nationwide News Pty Ltd [2017] NSWSC 1655
176. Litchfield v Fairfax Digital Australia & New Zealand Pty Ltd [2017] NSWDC 31
177. Liu v Fairfax Media Publications Pty Ltd [2013] NSWSC 7
178. Liu v The Age Company Pty Limited (No 2) [2015] NSWSC 276
179. Lokmeh v Harbour Radio Pty Ltd [2015] NSWDC 172
180. Louise v DailyMail.com Australia Pty Ltd [2014] NSWDC 177
181. Louise v Nationwide News Pty Ltd (No. 2) [2015] NSWDC 64
182. Luna v Porter [2016] NSWSC 1727
183. Lynn v Thompson [2017] NSWDC 296
184. Lyons v Fowler [2014] VSC 627
185. MacDonald v Australian Broadcasting Corporation [2014] NSWSC 1472
186. Madafferi v The Age Company Pty Ltd & Ors (No. 2) [2016] VSC 103
187. Maher v Nationwide News PTY LTD [No 5] [2015] WASC 103
188. Mallegowda v Sood (No. 4) [2016] NSWDC 8
189. Markham v Fairfax Media Publications Pty Ltd [2013] NSWSC 1839
190. Markisic v State of New South Wales & Ors (No 3) [2015] NSWSC 415
191. Marson v Network Ten Pty Ltd [2016] NSWSC 1245
192. Matich v McLernon [2013] WASC 127
193. MB v SG [2017] NSWSC 1203
194. Mbuzi v Griffith University [2014] FCA 1323
195. McFarlane v Nationwide News Pty Ltd [2014] NSWSC 1574



196. McKay v Nationwide News Pty Ltd; McKay v Fairfax Media Publications Pty Ltd; McKay v The Australian Broadcasting Corporation [2016] NSWSC 1719
197. McMillan v The Federal Capital Press of Australia Pty Ltd [2016] ACTSC 286
198. Miller v Overseas Newspaper [2017] NSWSC 1350
199. Minus v Harbour Radio Pty Ltd [2017] NSWSC 191
200. Mirabella v Price & Anor (Ruling No 2) [2017] VCC 1192
201. Mizikovsky v Queensland Television Ltd & Ors (No 4) [2013] QSC 132
202. Mohammed v Nationwide News Pty Ltd [2016] NSWSC 733
203. Mohareb v Fairfax Media Publications Pty Limited [2017] NSWSC 288
204. Mohareb v Harbour Radio Pty Ltd [2017] NSWSC 353
205. Mohareb v Jankulovski [2014] NSWSC 767
206. Mohareb v Kelso; Mohareb v Booth [2016] NSWDC 208
207. Molan v Fairfax Media Publications Pty Ltd [2017] NSWSC 800
208. Moodie v Racing Integrity Commissioner [2017] VSC 693
209. Mooney v Nationwide News Pty Limited (No 2) [2014] NSWSC 1933
210. Moore-Mcquillan v Cox & Ors [2016] SADC 98
211. Moseley v AB (No 2) [2017] NSWSC 1812
212. Moss v Random House Australia Pty Ltd (No. 2) [2015] NSWSC 1190
213. Mossmani by his tutor Karout v Nationwide News Pty Ltd (ACN 008 438 828) [2017] NSWDC 103
214. Mowen v Rockhampton Regional Council; Bendigo & Adelaide Bank Ltd v Mowen [2017] QSC 295
215. Munsie v Dowling (No. 7) [2015] NSWSC 1832
216. Murphy v Barfield [2016] QDC 231
217. Murphy v Nationwide News Pty Limited (No 2) [2017] FCA 781
218. Nasr v Etihad Airways PJSC [2013] NSWSC 1041
219. Newhouse v News Limited (No 2) [2015] NSWSC 567
220. NHB Enterprises Pty Ltd v Sydney Magazine Publishers Pty Ltd [2013] NSWSC 1163
221. Nicolson v Florida [2016] NSWDC 260
222. Noble v Phillips [2017] NSWSC 121



223. Norman v Cowell [2014] NSWSC 1575
224. Norman v Woods [2016] NSWSC 257
225. Nyoni v Chee Koon Hee (No 2) [2014] FCA 83
226. Nyoni v Pharmacy Board of Australia (No 5) [2017] FCA 1282
227. O'Neill v Fairfax Media Publications Pty Ltd [2017] NSWSC 631
228. O'Neill v Lewis [2017] NSWSC 1213
229. Ogbonna v CTI Logistics Ltd [2016] FCA 239
230. Oscar Kazal v Fairfax Media Publications Pty Ltd [2017] NSWSC 44
231. Otto (a.k.a. Ashworth) v Gold Coast Publications Pty Ltd [2017] NSWDC 101
232. Otto v Dailymail.com Australia Pty Ltd [2017] NSWDC 32
233. Oueik v Seven West Media Limited [2017] NSWSC 1325
234. Pahuja v TCN Channel Nine Pty Limited [2015] NSWSC 1664
235. Palmer v Nationwide News Pty Ltd and Ors [2014] QSC 174
236. Perera v Genworth Financial Mortgage Insurance Pty Ltd t/a Genworth [2015] NSWSC 1357
237. Petty v Zhao (No. 2) [2015] NSWDC 18
238. Pham v Legal Services Commissioner [2016] VSC 450
239. Plymouth Brethren (Exclusive Brethren) Christian Church v Fairfax Media Publications Pty Ltd; Plymouth Brethren (Exclusive Brethren) Christian Church v The Age Company Pty Ltd [2017] NSWSC 214
240. Prowse v Harbour Radio Pty Ltd [2016] NSWSC 57
241. Pryor v Latham [2015] NSWSC 529
242. QBH Commercial Pty Ltd & Anor v Nine Network Australia Pty Ltd [2016] VSC 441
243. Quigley v Wallace [2015] WASC 479
244. Ramandious v Habashy (No. 2) [2015] NSWDC 146
245. Rana v Google Inc [2017] FCA 542
246. Rayney v Pan Macmillan Australia PTY LTD [2014] WASC 129
247. Rayney v Reynolds [2016] WASC 219
248. Registered Clubs Association of NSW, The v Australian Broadcasting Corporation [2016] NSWSC 835
249. Renshaw v Reed Business Information Pty Ltd trading as Lawyers Weekly [2013] NSWDC 5



250. Rezaiee v Australian Broadcasting Corporation (No 2) [2014] NSWSC 1656
251. Rice v Hall [2013] WASC 260
252. Rinehart v Nine Entertainment Co Holdings Ltd [2015] NSWSC 239
253. Riske v Oxley Insurance Brokers Pty Ltd (No 2) [2014] NSWSC 1611
254. Roberts-Smith v Crawshaw [2014] WASC 12
255. Roozendaal v Fairfax Digital Australia and New Zealand Pty Limited [2015] FCA 764
256. Rose v Allen & Unwin Pty Limited [2015] NSWSC 991
257. Ross v Perpetual Trustees Victoria LTD & Ors [2017] SASC 61
258. Rowe v Smith [2016] NSWSC 104
259. Russell v Nationwide News Pty Limited [2013] ACTSC 241
260. Russell v Polites Investments P/L (No 2) [2016] SASC 203
261. Russell v Win Corporation Pty Ltd, Nine Network Australia Pty Ltd, McKinnon and Bailey [2013] ACTSC 159
262. Ryan v Random House Australia Pty Ltd [2015] NSWDC 31
263. Sakr v Australian Broadcasting Corporation (No. 2) [2015] NSWDC 34
264. Sali v ABC & Ors (Ruling No 2) [2013] VSC 719
265. Saraceni v Mentha [2013] WASC 95
266. Saravinovski v Fairfax Media Publications Pty Ltd [2014] NSWSC 919
267. Sarina v Fairfax Digital Australia and New Zealand Pty Ltd [2015] NSWDC 196
268. Scanlon v Tai [2014] NSWSC 751
269. Schlaepfer v Australian Securities and Investment Commission [2017] NSWSC 1656
270. Seafolly Pty Ltd v Madden (No 5) [2014] FCA 1413
271. Setka v Abbott & Anor (No 2) [2013] VSC 726
272. Sharp v Harbour Radio Pty Ltd (No 2) [2016] NSWSC 2 Sharp v Harbour Radio Pty Limited [2015] NSWSC 1536
273. Shea v News Ltd [No 2] [2016] WASC 146
274. Singh v Singh [2017] WASC 255
275. Sites N Stores Pty Ltd v Whirlpool.Net.Au Pty Ltd [2015] FCA 1474
276. Smith v Marshall [No 2] [2015] WASC 62



277. Smith v Jones (pseudonyms) [2017] NSWSC 980
278. Sporting Shooters Association of Australia (New South Wales) Inc v McGuire (No 2) [2015] NSWSC 1239
279. Sporting Shooters Association of Australia v Judge (No 2) [2013] NSWSC 1821
280. State Of South Australia, The v Milisits [2013] SASC 189
281. Stebbings v Goding [2013] QDC 108
282. Stoner v Jones [2015] NSWSC 585 (24 April 2015)
283. Stratton v Bowles (No 2) [2015] FCA 43
284. Sullivan v North West Crewing Pty Ltd [2016] FCA 1130
285. Sun v Hojunara International Group (No 2) [2013] NSWSC 1050
286. Sydney Cosmetic Specialist Clinic Pty Ltd, The v Hu [2017] NSWSC 1658
287. Sydney Security Services Pty Limited v iGuard Australia Pty Limited (No 2) [2016] NSWSC 1849
288. Tabbaa v DailyMail.com Australia Pty Ltd (ACN 166 912 465) [2015] NSWDC 278
289. Tabbaa v Nine Network Australia Pty Limited; Tabbaa v Nine Network Australia Pty Limited [2016] NSWSC 227
290. Tagg v Pickering (No 2) [2015] NSWSC 1977
291. Tauaifaga v TCN Channel Nine Pty Ltd [2013] NSWSC 8
292. Templar v Britton (No 3) [2014] NSWSC 802
293. Thunder Studios Inc (California) v Kazal (No 4) [2017] FCA 1571
294. TPI Enterprises Ltd v Poppy Growers Tasmania Inc [2014] VSC 518
295. Trkulja v Google Inc [2015] VSC 635
296. Trodden v Fairfax Media Publication Pty Ltd [2013] NSWSC 1148
297. Tsamis v The State of Victoria [2017] VSC 496
298. Ultrasonic Slimming Pty Ltd v Fairfax Media Publications Pty Ltd [2013] NSWSC 1987
299. Van Lieshout v City Of Fremantle [No 2] [2013] WASC 176
300. Vass v Nationwide News Pty Ltd [2016] NSWSC 1721
301. Visscher v Fairfax Digital Australia & New Zealand Pty Ltd [2013] NSWSC 1512
302. Von Marburg v Aldred & Anor (No 3) [2017] VSC 146
303. Wagner v Harbour Radio Pty Ltd [2017] QSC 222



304. Wakim v Criniti [2016] NSWSC 1723
305. Walsh v Bennetts [No 2] [2015] WASC 122
306. Wan-Jen Sun v Hojunara International Group Pty Ltd [2013] NSWSC 2044
307. Wash Investments Pty Ltd & Ors v SCK Properties Pty Ltd & Ors (No 2) [2016] QDC 269
308. Wayne v The Owners Corporation SP64622 (No. 3) [2015] NSWDC 195
309. Wehbe v Fairfax Media Ltd [2017] NSWSC 207
310. Whitehead v Nickells & Ors [2013] NSWSC 1466
311. Williams v Fairfax Media Publications Pty Limited [2013] NSWSC 1828
312. Williams v Harbour Radio Pty Ltd [2014] NSWSC 1242
313. Wilson v Coxon [No 2] [2015] WASC 197
314. Woelfl v Australian Broadcasting Corporation [2014] NSWSC 1943
315. Wolf v State of New South Wales [2013] NSWSC 1800
316. Wood v Nationwide News Pty Limited (No 2) [2014] NSWSC 1944
317. Wyatt & Anor v Cutbush [2016] QSC 253
318. Yuen v Chan [2016] NSWDC 157
319. Yunghanns v Colquhoun-Denvers [2016] VSC 403
320. Zaghoul v Woodside Energy Ltd [2017] WASC 316
321. Zeccola v Fairfax Media Publications Pty Ltd (No. 3) [2015] NSWSC 1007
322. Zillman v Cambridge Scholars Publishing Ltd & Ors [2014] QDC 142



3. Digital defamation cases

This chapter presents data for all cases we have classified as ‘digital defamation’ matters. It is drawn from the data in Chapter 1 on all matters that proceeded to judgement in all Australian jurisdictions in the years 2013 to 2017.

As noted above, in the classification used in this study, the term ‘digital defamation cases’ encompasses emails, text messages, posts on websites etc, but the phrase does not include television and radio publications (including digital television broadcasts) unless also uploaded on the internet, streamed or sent via email, text, etc.

In the table for specific jurisdictions:

- **Case** gives the name by which the matter is generally known
- **First substantive decision**, as for the tables in Chapter 1, is the decision at first instance, or where the matter was not appealed, the first and final decision.
- **Type of publication** indicates the platform over which the digital defamation was said to occur (for example, a website or social media).
- **Type of defendant** shows whether the publisher was an established media company, a digital platform or an individual.
- **Type of plaintiff** shows whether the action was brought by a public figure or a ‘private’ individual.

3.1 Year: 2013

Table 52: Digital defamation cases, across jurisdictions, 2013

Case	First substantive decision	Type of Publication	Type of Defendant	Type of Plaintiff
Kunoth-Monks v Healy & Anor	[2013] NTSC 74	Defamatory imputations in a radio broadcast that were republished on a website	Media organisation (ABC) and the individual who initially conveyed the defamatory imputations to the ABC	Individual
Jeffrey v Giles	[2013] VSC 268	Words posted on a website that was created by the defendant	Individual	Individuals
Gluyas v Best	[2013] VSC 3	Several items uploaded onto different websites	Individual	Individual
Mickle v Farley	[2013] NSWDC 295	Comments posted on Facebook and Twitter	Individual	Individual



Bushara v Nobananas Pty Ltd	[2013] NSWSC 225	Contents of a website published by the defendants	Company and the individual who is the principal of the company	Individual
Stanton v Fell	[2013] NSWSC 1001	Email	Individual	Individual
Cao v Liu	[2013] NSWDC 172	Email	Individual	Individual
Enders v Erbas & Associates Pty Ltd	(No. 2) [2013] NSWDC 44	Email and email attachment	Company and the individual who is the managing director of the company	Individual
Giovannetti v State of New South Wales	[2013] NSWSC 1960	Email	The State of NSW	Individual
Kim Anne Ahmed v Harbour Radio Pty Limited	[2013] NSWSC 1928	Podcast	Radio presenter and the radio company	Individual
Gacic v John Fairfax Publications Pty Ltd	[2013] NSWSC 1920	Internet publication	Media organisation and an individual food critic	Individuals who owned a restaurant
Sands v State of South Australia	[2013] SASC 44	Internet publication on official South Australia Police website	The State of South Australia	Individual
Munn v Tunks	[2013] NSWSC 1263	Internet publications	Individuals	Individual

3.2 Year: 2014

Table 53: Digital defamation cases, across jurisdictions, 2014

Case	First substantive decision	Type of Publication	Type of Defendant	Type of Plaintiff
Tassone v Kirkham	[2014] SADC 134	Email allegedly sent from a work email account	Individual	Individual
Easling v Rankine	[2014] SADC 40	Emails	Individual	Individual
Sierocki & Anor v Klerck & Ors	[2014] QSC 9	Emails and material posted on a range of websites	Individuals and associated companies that had registered the websites.	Individual and a company he incorporated with the first defendant.



Beattie v Coles	[2014] QDC 131	Email sent to members of a body corporate of an apartment building	Individual	Individual
Dabrowski v Greeuw	[2014] WADC 175	Facebook post on defendant's own page	Individual	Individual
Sims v Jooste	[No 2] [2014] WASC 373	Words posted on a website	Individual	Individual
Barrow v Bolt & Anor	[2014] VSC 599	Email sent	Individual and individual's employee; The Herald and Weekly Times Pty Ltd	Individual
Cripps v Vakras	[2014] VSC 279	Articles published on website	Individuals	Individual and the Individual's company
Graham v Powell	(No 3) [2014] NSWSC 185	Various posts on a website that the plaintiff pleaded were owned and operated by the defendant	Individual	Individual
Hanshaw v Seven Network (Operations) Ltd	[2014] NSWSC 623	Television broadcast which was also published on official network website	Media organisation	Individual
Nicholas Polias v Tobin Ryall	[2014] NSWSC 1692	Facebook posts	Individuals	Individual
Elliott v Tomkins	(No. 3) [2014] NSWDC 68	Negative review on ebay website and comments made on a website	Individual	Individual
Brian Stanley Fisher v Channel Seven Sydney Pty Ltd	(No 4) [2014] NSWSC 161	Television broadcast which was also published on official network website	Individual and Media organisation	Individual
Pedavoli v Fairfax Media Publications Pty Ltd	[2014] NSWSC 1674	Article in SMH. Also available on the tablet app and on the newspaper's website. The link was tweeted. The online article was also given to the Age's website.	Media organisation and journalist employee	Individual



Visscher v Maritime Union of Australia	(No 6) [2014] NSWSC 350	Article on the Maritime Union of Australia website. This article contained a hyperlink to another article from the Cootamundra Herald	Maritime Union of Australia	Individual
North Coast Children's Home Inc. trading as Child & Adolescent Specialist Programs & Accommodation (CASPA) v Martin	[2014] NSWDC 125	Internet publications on a Facebook page known as 'Tommy versus the Anglican Church' as well as emails sent to various people		
James Phillips v Robab Pty Limited	[2014] NSWSC 1520	Internet publication on a website. Website was alleged to be authored by the defendants	The individual authors of the websites and the companies that they are directors of.	Individual
Ell v Milne	(No 8) [2014] NSWSC 175	Email sent to many people	Individual	Individual
Bleyer v Google Inc	[2014] NSWSC 897	Google search results	Google	Individual
Ghosh v TCN Channel Nine Pty Ltd & Ors; Ghosh v Ninemsn Pty Ltd & Ors	(No 4) [2014] NSWDC 151	Three internet publications	Media organisations	Individual
Thomson v Luxford	[2014] FCA 342	Online article	Law firm and individual member of the law firm	Individual



3.3 Year: 2015

Table 54: Digital defamation cases, across jurisdictions, 2015

Case	First substantive decision	Type of Publication	Type of Defendant	Type of Plaintiff
White v Sparks	[2015] NSWDC 53	TV segment that was also uploaded on the official media website as well as YouTube, which had been sent in emails as a web link. The only publication in the limitation period was on YouTube.	Individual journalist	Individual
Tate v Duncan-Strelec	[2015] NSWSC 1303	Material published on a website	Individual	Individual
Alex v Australian Broadcasting Corporation	[2015] NSWDC 78	Internet publications on media website	Media organisation and individual journalist employee	Individual
Linnell v Channel Seven Sydney Pty Limited	[2015] NSWSC 583	Television broadcast that had been made available on the internet	Media organisation (first defendant)	Individual
Bateman v Fairfax Media Publications Pty Ltd (No 4)	[2015] NSWSC 610	SMH articles and their online version	Media company and individual journalist	Individual and a company that manages a medical practice
Toben v Nationwide News Pty Ltd; Toben v Mathieson	[2015] NSWSC 1784	Online version of newspaper article	Media organisation	Individual
Mohareb v Palmer (No. 2)	[2015] NSWDC 141	Facebook photo of posters and Facebook comments	Individuals who posted the photo/comments	Individual
French v Fraser	(No 3) [2015] NSWSC 1807	Material posted on a website, a Facebook post and an email publication	Individual	Individual
Goldsmith v Ghosh	[2015] NSWSC 1758	Several internet publications	Individual	Individual
Smith v Lucht	[2015] QDC 289	Email communication	Individual	Individual



Beynon v Manthey	[2015] QDC 252	A 'Current Affair' show. But the Judge noted that the video had remained online on the official website.	Individual who was interviewed in the segment	Individual
Bertwistle v Conquest	[2015] QDC 133	Text message	Individual	Individual
Duffy v Google Inc	[2015] SASC 170	Google search engine results	Google as the defendant	Individual
Scali v Scali	[2015] SADC 172	YouTube videos	Individual	Individual
McEloney v Massey	[2015] WADC 126	Posts made on a Facebook page for Poms in Perth	Individual who made the statements on the Facebook page.	Individual
Zwambila v Wafawarova	[2015] ACTSC 171	Journalist who published articles in newspapers republished the allegations on his website. Article remained on the official media site. Articles was also published by the same individual on other websites.	Individual journalist	Individual
Piscioneri v Brisciani	[2015] ACTSC 106	Comments made on a forum, posted on a website	The individual who is the owner and operator of the website	Individual
Piscioneri v Reardon	[2015] ACTSC 61	Comments made on a forum, posted on a website	The individual whom the plaintiff claimed, had posted the comments	Individual
Bottrill v Van Lieshout	[2015] ACAT 26	Material posted on Facebook	Individual	Individual
Hardie v The Herald and Weekly Times Pty Ltd and Andrew Rule	[2015] VSC 364	Newspaper articles published on media website and remained on the website	Media organisation and individual journalist.	Individual
Sheehan v Brett Young & Ors	(No 2) [2015] VSC 651	Internet publications	Individual	Individual
Barrow v The Herald & Weekly Times Pty Ltd	[2015] VSC 263	Online report published about a Supreme Court case by The Herald and Weekly Times.	The Herald and Weekly Times	Individual
Gluyas v Canby	[2015] VSC 11	Internet blog posts by the defendant on his own website.	Individual who made posts on own website.	Individual



Hockey v Fairfax Media Publications Pty Limited	[2015] FCA 652	Newspaper articles were published on various online platforms. Some of these publications were tweets.	Media organisations	Individual
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3.4 Year: 2016

Table 55: Digital defamation cases, across jurisdictions, 2016

Case	First substantive decision	Type of Publication	Type of Defendant	Type of Plaintiff
Reid v Dukic	[2016] ACTSC 344	Defendant had published nine statements as posts on his own Facebook page	Individual who made the Facebook posts	Individual
Bottril v Cristian & Anor	[2016] ACAT 7	Comments on a website. Respondents were owners of the website on which other people posted. Comments included a hyperlink with further defamatory comments	Individuals who owned the website	Individual
Schoch v Palmer	[2016] QSC 147	Statements published in different media, with some continuing to be published on media websites	The individual who made statements to journalists	Individual
Kelly v Levick	[2016] QMC 11	Facebook post on own Facebook page	Individual who made the Facebook post	Individual
Price v Davies & Anor	[2016] QDC 201	Words published on website	First respondent is an individual who wrote the words, second respondent is the individual's employer	Individual
Poniatowska v Channel Seven Sydney Pty Ltd & Anor (No 4)	[2016] SASC 137	Television segment republished on Channel Seven website	Media organisation	Individual
Fleming v Advertiser-News Weekend Publishing Company Pty Ltd (No 2)	[2016] SASC 26	Articles published in online media website	The relevant media companies	Individual



Maras v Lesses	[2016] SADC 40	Email publication	Individual	Individual
Douglas v McLernon [No 4]	[2016] WASC 320	Publications on different websites	Individuals	
Pham v Legal Services Commissioner	[2016] VSC 450	Document published online by the Legal Services Commissioner	Legal Services Commissioner	Individual
Trkulja v Dobrijevic	[2016] VSC 421	Issue of republication of statements from a bishop's ruling on an overseas website	The bishop	Individual
Dods v McDonald (No 1)	[2016] VSC 200	Statements made on a website.	Individual who administered the website	Individual
Van Garderen v Channel Seven Melbourne Pty Ltd & Ors	[2016] VCC 953	Content on an internet news service and on a website	Media organisations	Individual
Al Muderis v Duncan	[2016] NSWSC 1363	Publication of material on the internet, (website, YouTube and a Facebook page).	The Individual who posted the YouTube material, set up the Facebook page and website which included the material, the registrant of the relevant website and the relevant host registration authority	Individual
Kang v Channel Seven Sydney Pty Ltd	[2016] NSWDC 307	Publication on the website of the Department of Fair Trading	First defendant: Media organisation Second defendant: Helen Wellings Third defendant: State of NSW Fourth defendant: The Hon. Matthew Ryan Mason-Cox Fifth defendant: David Byrne, Department of Fair Trading Sixth defendant: Media organisation	Individual



O'Brien v Australian Broadcasting Corporation	[2016] NSWSC 1289	Media Watch television segment, the video and transcript of which remained on the ABC website	ABC	
Carney v Fairfax Media Publications Pty Limited	[2016] NSWSC 1246	Article published in print and online	Media organisations	
Templar v Watt (No 3)	[2016] NSWSC 1230	Statements made in an email	Person who wrote the email and their employer; Central Coast Local Health District	Individual and individual's employer (corporation)
Carolan v Fairfax Media Publications Pty Ltd (No 6)	[2016] NSWSC 1091	Publication of a series of online articles in SMH online. One issue was when an online article includes links to related articles, is this a single publication?	Media organisation and individual journalist (employee)	Individual
Rothe v Scott (No. 4)	[2016] NSWDC 160	Facebook post by defendant on defendant's Facebook page	Individual who made the posts	Individual
Gmitrovic v Commonwealth of Australia	[2016] NSWSC 418	Statements made in two emails	Individual and Individual's employer	Individual
Kang v Immigration News Pty Ltd	[2016] NSWDC 74	Newsletter that was claimed to have been published online.	Immigration News Pty Ltd and an individual, Carl Konrad	Individual
Dank v Nationwide News Pty Ltd	[2016] NSWSC 295	Online versions of newspaper articles	Media organisation (first defendant)	Individual
Leighton v Garnham	[No 4] [2016] WASC 134	Internet publications	Individual	Individual



3.5 Year: 2017

Table 56: Digital defamation cases, across jurisdictions, 2017

Case	First substantive decision	Type of Publication	Type of Defendant	Type of Plaintiff
Cummins v Fairfax Digital Australia & New Zealand Pty Limited; Cummins v Fairfax Media Publications Pty Limited	[2017] NSWSC 657	Internet articles	Media organisation	Individual and the Individual's corporate alter ego
Ghosh v Miller	(No 2) [2017] NSWSC 791	Blog posts and comment posted on the website by readers of the blog	Individuals	Individual
Milne v Ell	[2017] NSWSC 555	Internet publication	Individual	Individual
Gregory v Johnson	[2017] QDC 224	Text message, Facebook message	Individual	Individual
Taylor v Hewitt	[2017] WASC 234	Facebook post by the defendant on the plaintiff's company page	Individual	Individual
Accommodation West Pty Ltd v Aikman	[2017] WASC 157	Emails sent	Individual	Company and individuals who are company directors and a company employee
Piscioneri v Whitaker	[2017] ACTSC 174	Posts made on a website	Individual	Individual
Sheales v The Age & Ors	[2017] VSC 380	Online article	Media organisation	Individual
Wilson v Bauer Media Pty Ltd	[2017] VSC 521	Online articles	Media organisation	Individual
Barrow v Ackland & Gibson	[2017] VSC 485	Website and social media	Individuals	Individual
Defteros v Google Inc & Anor	[2017] VSC 158	Search result pages	Google	Individual
Huang v Zhi & Anor	[2017] VCC 1990	Email publications and messages sent on the We Chat social media platform	Individuals	Individual



Chel v Fairfax Media Publications Pty Ltd	(No 8) [2017] NSWSC 1315	Internet article	Media organisation and individual journalist	Individual
Mahmoud v Australian Broadcasting Corporation	(No 3) [2017] NSWSC 764	Internet article	Various media organisations	Individual
Zaia v Eshow	[2016] NSWSC 921	Facebook posts	Individual who made the posts	Individual
Stokes v Ragless	[2017] SASC 159	Several publications, including website posts, emails and Facebook posts	Individual	Individual



4. Trends in digital defamation

This chapter draws on data presented in the previous chapters on defamation cases and those considered ‘digital defamation’ to assess whether trends can be identified in the following areas:

- Overall numbers of defamation and digital defamation cases
- Plaintiffs and defendants, including media organisations as defendants
- Outcomes of defamation actions: decisions in favour of the plaintiff
- Damages awarded.

Overall numbers

Table 57: Overall numbers of defamation cases that reached a substantive decision in the period 2013-17 and related decisions

Year	Number of cases	Number of decisions
2013	28	113
2014	40	120
2015	47	132
2016	44	143
2017	30	101
Total for 2013-2017	189	609

Table 58: Cases 2013-2017 by jurisdiction

Jurisdiction	Number of defamation cases from 2013-2017	Average per year from 2013-2017
New South Wales	95	19
Victoria	21	4.2
Queensland	21	4.2
Western Australia	17	3.4
South Australia	19	3.8
Tasmania	0	0
Australian Capital Territory	13	2.6
Northern Territory	1	0.2
Federal Court of Australia	2	0.4



Table 59: Digital defamation cases 2013-2017

Jurisdiction	Number of digital defamation cases	Percentage of overall defamation cases
2013	13	46.4%
2014	20	50.0%
2015	24	51.1%
2016	24	54.5%
2017	16	53.3%
Total for 2013-2017	97	51.3%

Observations

- NSW numbers are considerably higher than other jurisdictions. There were more matters reaching a substantive decision in New South Wales than in all other jurisdictions combined (95 cases for NSW, compared to 94 cases for all other jurisdictions).
- In addition to the 189 cases reaching a substantive decision in this period, there were 609 related decisions (for example, separate rulings on evidence), requiring a significant commitment of resources on the part of defendants.
- Also in addition to the 189 cases reaching a substantive decision in this period, there were 322 matters that were also in the system. As outlined in Chapter 2, these could be appeals on matters that had a substantive decision before 2013, or matters commenced during the period, and for which we could locate at least one preliminary decision, but which were not yet the subjective of a substantive decision. Combining these two categories, there were 511 defamation ‘matters’ making their way through the Australian courts in the period 2013 to 2017. This does not take account of matters for which we were unable to locate electronic records, or matters that were the subject of claims settled before being filed with a court.
- Of the 189 defamation cases over the period 2013-17, 97 (51.3%) were digital cases. Perhaps surprisingly, however, there is still a solid number of cases (92 or 48.7%) that were not digital cases. These non-digital cases include alleged defamatory imputations contained in book publications, community newsletters, oral statements made in conversation or in a court proceeding/court documents, traditional print media (magazines and newspapers), television and radio broadcasts. They also include statements made in written complaints/letters or in the minutes of meetings.
- Some of the digital defamation cases include the website versions of a media organisation’s newspaper article or television program.
- It should be noted (as outlined in the Methodology section in the Introduction) that it can be difficult to locate lower court judgments in some jurisdictions. In addition, no judgments from Tasmania could be found and only one judgment from the Northern Territory could be found (2013). Only two federal cases were found over the five years (2015).



Plaintiffs and defendants

Observations

- Traditionally, defamation cases have been seen to be brought by public figures against media organisations. In reviewing this, we have adopted a broad interpretation of the term ‘public figure’ so that it includes not just celebrities or high profile politicians but also local council/government members (such as a mayor), ambassadors, high profile doctors, lawyers and businessmen/women etc. While there are no strict rules for categorising a plaintiff as a public figure, we have taken into account the reference by David Rolph (2016, p 182) to a person who has ‘assumed a public persona’ and to the description used by the Australian Communications and Media Authority (2016, p 6) in its *Privacy Guidelines for Broadcasters*: ‘Public figures such as politicians, celebrities, prominent sports and business people and those in public office ...’.
- Adopting that approach, approximately 21% of the judgments in defamation cases 2013-2017 could be said to involve public figures as plaintiffs. Furthermore, some of these plaintiffs were the same people bringing different cases, meaning that less than 20% of plaintiffs we examined were public figures. This shows that most plaintiffs are not ‘famous’.
- Over the five-year period, the most high profile celebrity plaintiffs were Rebel Wilson, Joe Hockey and Clive Palmer, all of whom sued media organisations. Overall, it is difficult to identify trends in relation to defendants, but it can be said that media organisations (television and radio along with publishers of newspapers/magazines whether print or online) still make up a significant proportion of defendants.

Table 60: Media organisations as defendants, 2013-2017

Year	Number of cases where media organisations are defendants	Percentage of overall defamation cases
2013	8	28.6%
2014	8	20.0%
2015	12	25.5%
2016	16	36.4%
2017	5	16.7%
Total 2013-2017	49	25.9%



Table 61: Media organisations as defendants in digital defamation cases, 2013-2017

Year	Number of digital defamation cases where media organisations are defendants	Number of digital defamation cases where media organisations are not defendants	Percentage of overall digital defamation cases
2013	3	10	23.1%
2014	5	15	25.0%
2015	7	17	29.2%
2016	8	16	33.3%
2017	5	11	31.3%
Total 2013-2017	28	69	28.9%

- The 49 cases where media organisations were the defendant represented 25.9% of all defamation cases in the period examined. For digital defamation cases, the 28 cases where media organisations were the defendant represented 28.9% of these cases, while the 69 cases where the defendants were not media organisations represented 71.1% of cases.
- Google was a defendant in three of the cases over 2013-17, all in relation to search results.
- Over the five years, there were 16 cases regarding Facebook posts, 20 regarding emails and 37 regarding websites not affiliated with media organisations, Facebook or Twitter.
- Over the five years, there were 4 cases that involved tweets and 2 that involved text messages.
- It should also be noted that these types of 'digital defamation' are not mutually exclusive of each other. See for example: *White v Sparks* [2015] NSWDC 53, *Hockey v Fairfax Media Publications Pty Limited* [2015] FCA 652 and *Mickle v Farley* [2013] NSWDC 295.
- There is a number of matters where both the plaintiff and defendant are private individuals. Sometimes, instead of Individual v Individual, the parties are Individual 1 v Individual 2 and Individual 2's employer. See for example *Price v Davies & Anor* [2016] QDC 201. This combination of employees and employers both being defendants in the same case is relevant to the media cases. For example, in *Carolyn v Fairfax Media Publications Pty Ltd (No 6)* [2016] NSWSC 1091, both the journalist and Fairfax were sued. See also *Toben v Nationwide News Pty Ltd; Toben v Mathieson* [2015] NSWSC 1784 in which there were several defendants (the media organisation, journalist, editor of the organisation and the interviewee).
- Although the numbers of cases are too small to make definitive statements, it would be worth expanding the period of study to see whether there is a digital age trend whereby public figures sue media organisations but private individuals sue each other.



Outcomes

Judgment for the plaintiff

This table charts final outcomes in favour of the plaintiff, recorded against the year in which the substantive decision was made. This means that in cases where a judgment for the defendant was overturned on appeal, the outcome in favour of the plaintiff is recorded against the initial substantive decision (consistent with the way in which we have arranged the data in the main tables).

There were 66 cases where judgement was given for the plaintiff.

Table 62: Decisions where the plaintiff was successful, 2013-2017

Year	Number of cases where judgment is given for the plaintiff	Percentage of overall defamation cases
2013	9	32.1%
2014	16	40.0%
2015	16	34.0%
2016	12	27.3%
2017	13	43.3%
Total 2013 to 2017	66	34.9%

The 66 cases where the plaintiff was successful constitute 34.9% of the total 189 cases.

The breakdown by jurisdiction is set out below.

Table 63: Decisions where the plaintiff was successful 2013-2017, by jurisdiction

Jurisdiction	Number of defamation cases from 2013-2017 where judgment is given for the plaintiff	Average per year from 2013-2017	Percentage of overall defamation cases for this particular jurisdiction
NSW	26	5.2	27.4%
VIC	9	1.8	42.9%
QLD	10	2	47.6%
WA	4	0.8	23.5%
SA	10	2	52.6%



TAS	0	0	0
NT	1	0.2	100%
ACT	5	1	38.5%
FCA	1	0.2	50%

- For the data presented above, an outcome in favour of the plaintiff has been recorded if at least one of the plaintiffs succeeded on at least one aspect of the case. The tables in Chapter 1 provide more detail on outcomes.
- This data reflects the most recent update on the case (ie, decisions overturned on appeal).

Damages

In this section, an ‘award of damages’ generally refers to the total amount of damages awarded in a single case if there was one plaintiff and one defendant (for example, if there was an amount awarded for a print article and another for a social media post relating to that article). This does not apply in cases where, in a single judgment, there are separate damages awarded, relating to multiple plaintiffs or defendants or both.

The number of awards of damages does not equal the number of outcomes in favour of plaintiffs, both because there may be multiple awards of damages and because judgment may be entered for the plaintiff without damages being awarded.

As above, the following data reflects the most recent update on the case. This means that if a decision was overturned on appeal, the final award (or at least the most recent in an ongoing matter) will be included. However, in these tables we have departed from our standard approach of recording data against the year of the initial substantive decision, as damages are commonly understood by the year in which they are awarded. That said, we have not included damages awarded in 2013 if the substantive decision itself does not appear in our tables in Chapter 1. On this approach, a more complete picture of damages over the five-year period would include awards in 2018 (and beyond) for the substantive matters we do record in Chapter 1. We will aim to add these results to our tables over time.

Damages by year

2017

- 7 awards of damages were below \$100,000
- 4 awards of damages were in the range \$100,000 to \$199,999
- 1 award of damages was in the range \$200,000 to \$299,999
- 2 awards of damages were of \$300,000 or above (being the award of \$1.85 million to Lloyd Rayney and the award of \$4.57 million to Rebel Wilson)
- **7 out of 14 of the awards of damages were \$100,000 or above**

2016

- 3 awards of damages were less than \$100,000
- 10 awards of damages were in the range \$100,000 to \$199,999



- 1 award of damages was in the range \$200,000 to \$299,999
- 2 awards of damages were of \$300,000 or above
- **13 out of 16 of the awards of damages were \$100,000 or above**

2015

- 21 awards of damages were less than \$100,000
- 7 awards of damages were in the range \$100,000 to \$199,999
- 2 awards of damages were of \$300,000 or above
- **9 out of 30 of the awards of damages given were \$100,000 or above**

2014

- 14 awards of damages were less than \$100,000
- 5 awards of damages were in the range \$100,000 to \$199,999
- 1 award of damages was of \$300,000 or above
- **6 out of 20 of the awards of damages were \$100,000 or above**

2013

- 4 awards of damages were less than \$100,000
- 2 awards of damages were in the range \$100,000 – \$199,999
- 1 award of damages was of \$300,000 or above
- **3 out of 7 awards of damages given were \$100,000 or above.**

This year-by-year listing below shows that 38 out of 87 (43.7%) of the awards of damages given over the five years involved a sum of \$100,000 or more. Beyond that, it is difficult to detect patterns as the damages vary according to (among other factors) the vastly different factual circumstances of each case. In 2015, for example, there was a large number (21) of awards below \$100,000, but this was not seen in other years. In the two most recent years, the proportion of awards above \$100,000 was higher than earlier years (50% for 2017 and 81.2% for 2016).



5. Digital defamation snapshots

This chapter offers a brief outline of the facts and decision in six cases, each of which deals with a different aspect of digital defamation:

- an article on a website operated by an individual
- articles on a news media website, along with tweets issued by the organisation
- a Facebook post
- entries generated in a search results page by a search engine
- text messages exchanged between private individuals
- an email sent by a journalist to his media employer and forwarded to a third party.

Website article

Dods v McDonald 2016

[Dods v McDonald \(No 2\) \[2016\] VSC 201](#)

Plaintiff: Colin Dods

Defendant: Michael McDonald

Court: The Supreme Court of Victoria

Facts

- The plaintiff was a police officer. He was one of four police officers present when one of the officers shot dead a 15 year-old boy.
- The defendant was a barrister who posted statements on a website he established about the death of the boy.
- The plaintiff alleged the statements to be defamatory.
- The imputations included, amongst others, that the plaintiff was the one who executed the deceased without reason; that unlawful and excessive force was used in the killing; and that the plaintiff committed manslaughter.
- The defendant argued triviality.

Decision

- Judgment for the plaintiff for \$150,000.



News media website articles and tweets

Hockey v Fairfax Media 2015

[Hockey v Fairfax Media Publications Pty Limited \[2015\] FCA 652](#)

Applicant: Joseph Hockey

Respondents: Fairfax Media Publications Pty Limited, The Age Company Limited and The Federal Capital Press of Australia Pty Ltd

Court: Federal Court of Australia

Facts

- Then Treasurer, Joe Hockey, sued media outlets for defamation regarding articles that had been published in *The Sydney Morning Herald*, *The Age* and *The Canberra Times* newspapers as well as on the media websites and other digital platforms. The internet versions were very similar to the printed articles.
- He also claimed defamation in relation to a poster published by the SMH promoting its newspaper article with the words 'Treasurer for Sale'.
- Finally, his claim included tweets published by *The Age*. One tweet was 'Treasurer Hockey for Sale' with a hyperlink to the online article in *The Age*. A second was 'Treasurer for Sale: Joe Hockey offers privileged access. Treasurer Joe Hockey is granting privileged access to a select group of business leaders in return for political donations totalling hundreds of thousands of dollars each year.' This was accompanied by a photo and hyperlink to the online article. A third tweet included the article.

Decision

- The articles were not found to be defamatory when read as a whole.
- The first two tweets were found to be defamatory. The third tweet, which included the article, was not found to be defamatory.
- The poster was found to be defamatory.
- Damages of \$120,000 were awarded for the poster and \$80,000 for the two Tweets.

Facebook post

Reid v Dukic 2016

[Reid v Dukic \[2016\] ACTSC 344](#)

Plaintiff: Heather Reid

Defendant: Stan Dukic

Court: Supreme Court of The Australian Capital Territory

Facts

- The defendant had published nine statements as posts on his own Facebook page.
- The plaintiff was the CEO at Captain Football Pty Ltd.



- The imputations were, amongst others, that the plaintiff was dishonest, fraudulent, had misappropriated funds, was incompetent, gender biased, racist etc. in her capacity as CEO of Captain Football.
- A defamation claim was made for compensatory and aggravated damages.
- The plaintiff also sought for the defendant to be permanently restrained from publishing the posts.

Decision

- Judgment was entered in favour of the plaintiff in the sum of \$182,700 inclusive of interest. This included compensatory damages of \$160,000 and aggravated damages of \$20,000. Injunctions were also ordered.

Website search results

Google Inc v Duffy

[Google Inc v Duffy \[2017\] SASCF 130](#)

Plaintiff: Dr Janice Duffy

Defendant: Google Inc

Court: Full Court of the Supreme Court of South Australia

Facts

- Articles about the plaintiff were published on a website (Ripoff Report) operated by a third party. The plaintiff claimed that the articles and comments on the website comments were defamatory.
- The imputations, among others, included that the plaintiff stalks psychics, harasses psychics, maliciously accesses other people's electronic emails and materials, spreads lies, threatens and manipulates people etc.
- Other websites had published material that had been derived from the Ripoff Report.
- The plaintiff became aware that Google search results of her name gave, in addition to the hyperlinks, a display of excerpts from the Ripoff Report.
- She also became aware that Google gave the automatic alternative search term 'Janice Duffy Psychic Stalker'.
- The plaintiff notified Google and requested removal of the material. Google initially declined then removed material.

Decision

- The court found that Google was not a primary publisher, as it had not posted the reports. Google was, however, a secondary publisher and was considered to have an awareness of the material from the time it was notified by Dr Duffy. A reasonable time had passed after being notified of the removal request in which it did not comply.
- Earlier judgement for the plaintiff, with damages of \$100,000, was upheld. The defence of qualified privilege was not made out.



Text message

Bertwistle v Conquest 2015

[Bertwistle v Conquest \[2015\] QDC 133](#)

Applicant/Plaintiff: Daryl Ross Bertwistle

Respondent/Defendant: Nancy Ann Conquest

Court: District Court of Queensland

Facts

- The defendant sent text messages to a third person which stated that the plaintiff had engaged in consensual and non-consensual sex with his sisters.
- The plaintiff's solicitor wrote a letter to the defendant asking her to make an offer to make amends. The defendant did not comply.
- The plaintiff served a statement of claim but the defendant did not serve a notice of intention to defend or file a defence.

Decision

- The defendant was in default.
- Looking at the damage done to the plaintiff – including the grapevine effect of the text message, his ostracism from family gatherings, etc – the plaintiff was entitled to injunctions and \$100,000 in damages.

Email

Barrow v Bolt 2014

[Barrow v Bolt & Anor \[2014\] VSC 599](#)

Plaintiff: David Barrow

Defendants: Andrew Bolt (journalist) and The Herald and Weekly Times Pty Limited (employer)

Court: Supreme Court of Victoria

Facts

- The journalist Andrew Bolt sent an email about the plaintiff to the managing editor of the *Herald Sun*.
- The email included the statement, 'Mr Barrow is in my opinion a vexatious litigant in many fora over a long time. Mr Barrow is in my opinion a man who seeks not to promote debate but to close it down.'
- This email was forwarded to the executive director of the Australian Press Council in the course of the *Herald Sun's* handling of a complaint to the Council.

Decision

- The court found that the plaintiff had been defamed. However, it found that the defences of qualified privilege and triviality applied.
- The case was dismissed.



6. Pre-social snapshot

This chapter provides some context for the recent data presented in earlier chapters. The same approach is taken to gathering information about defamation decisions across the various jurisdictions and then extracting the digital defamation cases.

Defamation cases

5.1. Year: 2007

Table 64: Across jurisdictions

Jurisdiction	Number of cases	Number of decisions
New South Wales	17	62
Victoria	2	5
Queensland	2	3
Western Australia	1	3
South Australia	1	2
Tasmania	0	0
Australian Capital Territory	2	4
Northern Territory	1	3
Federal Court of Australia	3	20
TOTAL	29	102

Table 65: New South Wales

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Ali v Nationwide News Pty Limited	[2007] NSWSC 58	Judgment for the plaintiff for \$125,000.	[2008] NSWCA 183
Attrill v Christie	[2007] NSWSC 1386	Judgment for the plaintiff for \$110,000.	
Motyka v Gojan	[2007] NSWSC 31	Judgment for the plaintiffs for \$120,000 and \$60,000 (separate defendants).	[2008] NSWCA 28
Peter John Hyer v Cabbie Pty Limited and Another	[2007] NSWSC 795	Judgment for the plaintiff for \$107,500.	



Martin v Bruce	[2007] NSWDC 264	Judgment for the plaintiff for \$25,000.	
Adamson v Ede	[2007] NSWSC 829	Judgment for the plaintiff for \$60,000.	[2006] NSWSC 1342 [2008] NSWSC 1184 [2008] NSWSC 1143 [2009] NSWCA 403 [2009] NSWCA 379 [2008] NSWSC 767
Photi v Target Australia Pty Ltd	[2007] NSWDC 265	Judgment for the plaintiff in the claim for wrongful arrest, false imprisonment and defamation for \$50,000.	(No 2) [2007] NSWDC 302 (No 3) [2008] NSWDC 14
Hennessy v Lynch	(No. 3) [2007] NSWDC 268	Judgment for the plaintiff for \$16,000 in relation to three publications. Judgment for the defendant in relation to one publication.	(No 4) [2008] NSWDC 15 (No.2) [2006] NSWDC 49 [2006] NSWDC 26
Griffith v ABC	[No 1] [2007] NSWSC 711	Judgment for the defendant.	(No 2) [2011] NSWCA 145 [2010] NSWCA 257 [2013] NSWSC 750 [2008] NSWSC 764 [2003] NSWSC 1244 [2004] NSWSC 582 [2003] NSWSC 485 [2003] NSWSC 483 [2003] NSWSC 484 [2003] NSWSC 298 [2002] NSWSC 86
Gregory Frawley v The State of NSW	[2007] NSWSC 1379	Judgment for the defendant.	[2006] NSWSC 248 [2006] NSWCA 317
Bennette v Cohen	[2007] NSWSC 739	Judgment for the defendant overturned on appeal. Judgment for the plaintiff for \$15,000.	[2005] NSWCA 341 [2009] NSWCA 60 (No 2) [2009] NSWCA 162
Aktas v Westpac Banking Corp. Ltd	[2007] NSWSC 1261	Judgment for the defendant.	[2013] NSWSC 1451 [2010] HCA 25 [2009] NSWCA 9 [2004] NSWSC 218 [2010] HCA 47
Obeid v ABC	[2007] NSWDC 26	Judgment for the plaintiff for \$150,000.	[1999] NSWSC 1058 [2006] NSWCA 231



SMEC Holdings Ltd v Boniface SMEC Holdings (First plaintiff) Peter Busbridge (Second plaintiff) Ross Hitt (Third plaintiff) Geoff Percival (Fourth plaintiff)	[2007] NSWSC 1402	First plaintiff awarded damages of \$75,000, \$100,000, \$80,000 and \$120,000 for four separate publications. Second plaintiff awarded damages of \$80,000, \$80,000, \$80,000, \$100,000, \$110,000 and \$110,000 for six publications, with verdict for the defendant on one publication. Third plaintiff awarded damages of \$80,000, \$80,000, \$90,000, \$90,000 and \$110,000 for five publications. Fourth Plaintiff awarded damages of \$80,000, \$80,000 and \$110,000 for three publications.	[2005] NSWSC 1099 [2004] NSWSC 526 [2003] NSWSC 555 [2006] NSWCA 351
Dawson v ACP Publishing Pty Ltd	[2007] NSWSC 542	Judgment for the plaintiff for \$225,000.	[2002] NSWSC 712
Andrew Charles Robert Battenberg v Union Club	[2007] NSWSC 265	Proceedings dismissed.	
Kriss v John Fairfax Publications Pty Ltd	[2007] NSWSC 830	Judgment for the plaintiff for \$90,000	[2003] NSWSC 319 [2006] NSWSC 758 [2003] NSWSC 677 [2007] NSWCA 79

Table 66: Victoria

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Mohamed v State of Victoria	[2007] VSC 538	On appeal, judgment for the defendant. First instance judgment unavailable.	
Li v The Herald and Weekly Times Pty Ltd	[2007] VSC 109	Judgment for the defendants.	[2005] VSC 304 [2008] VSCA 201 (2007) (unreported, Vic Ct of App, Nettle and Redlich JJA, 25 July 2007)



Table 67: Queensland

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Doelle v Bedey	[2007] QDC 134	Plaintiff's claim dismissed.	[2007] QCA 395
Sunshine Coast Newspaper Company Pty Ltd v Rea	[2007] QDC 268	On appeal, plaintiff awarded \$8000 in damages. Original decision for the defendant. First instance decision unavailable.	

Table 68: Western Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments
MTQ Holdings Pty Ltd v Lynch & Ors	[2007] WASC 49	Application for extension of time dismissed.	[2005] WASC 162 [2006] WASC 53

Table 69: South Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Jarrad v Santamaria	[2007] SADC 26	Judgment for the defendant. Additionally, the defendant's counterclaim in defamation was allowed and the plaintiff was ordered to pay the defendant \$17,000.	(No 2) [2007] SADC 31

Table 70: Tasmania

Case	First substantive decision	Overall outcome	Related decisions/ Comments



Table 71: Australian Capital Territory

Case	First substantive decision	Overall outcome	Related decisions/ Comments
O'Rourke v Hagan Stephen Hagan (First defendant) Nationwide News (Second defendant)	[2007] ACTSC 61	Judgment for the plaintiff against the first defendant for \$90,800. Judgment for the plaintiff against the second defendant for \$113,500.	
Winnel v Snow	[2007] ACTSC 34	Judgment for the defendant.	[2003] ACTSC 94 [2009] ACTSC 146

Table 72: Northern Territory

Case	First substantive decision	Overall outcome	Related decisions/ Comments
Coull v Nationwide News Pty Ltd	[2007] NTSC 47	Original judgment for the plaintiff for \$12,000. On appeal, this was increased to \$80,000.	[2008] NTCA 13 [2008] NTCA 10

Table 73: Federal Court of Australia

Case	First substantive decision	Overall outcome	Related decisions/ Comments
National Auto Glass Supplies (Australia) Pty Limited v Nielsen & Moller Autoglass (NSW) Pty Ltd	(No 8) [2007] FCA 1625	Proceedings brought by first applicant dismissed. Judgment for the second applicant against the first and third respondents for \$31,000. Judgment for the third applicant against the first and third respondents for \$22,300. Proceedings against the second respondent dismissed.	[2006] FCA 1386 (No 2) [2006] FCA 1717 (No 3) [2006] FCA 1850 (No 4) [2006] FCA 1851 (No 5) [2007] FCA 569 (No 6) [2007] FCA 570 (No 7) [2007] FCA 582 (No 9) [2007] FCA 1826



Bahonko v Sterjov	[2007] FCA 1244	Judgment for the applicant. Nominal damages awarded for \$50.	[2007] FCA 1717 [2007] FCA 1556 [2007] FCA 1555 [2007] FCA 1377 [2007] FCA 1341 [2007] FCA 867 [2007] FCA 375 [2007] FCA 359
Goodall v Nationwide News Pty Ltd	(No.2) [2007] FMCA 1427	Defamation claim dismissed.	[2007] FMCA 218

Also in the system, 2007

Applying the methodology explained in Chapter 3, we captured

- matters that were the subject of a pre-2007 substantive decision but were still the subject of litigation in 2007
- matters that were the subject of one or more preliminary rulings in 2007, but not a substantive decision as at 31 December 2007
- a small number of indeterminate matters.

Table 74: Cases also in the system, 2007

Cases also in the system, 2007
1. Advanced Medical Institute Pty Ltd and Anor v Channel Seven Sydney Pty Ltd [2007] NSWSC 793
2. A-S v Statewide Roads Limited [2007] NSWSC 1472
3. Andrew George Robinson v Lyn Dulcie Brighton and Anor [2007] NSWSC 1125
4. Artinos v Stuart Reid Pty Ltd [2007] FMCA 1141
5. Badcock v The State of South Australia & Ors [2007] SADC 36
6. Bailey v Veda Advantage Information Services and Solutions Limited [2007] FCA 1664
7. Brett May v TCN Channel Nine Pty Ltd and Ors [2007] NSWSC 760
8. Carr v Reynolds Porter Chamberlain [2007] NSWSC 21
9. Channel 9 South Australia Pty Ltd & Ors v Clarke [2007] SASC 309
10. Channel Seven Adelaide Pty Ltd v S, DJ [2007] SASC 117



11. Conroy's Smallgoods Pty Ltd & Anor v Channel Seven Adelaide Pty Ltd [2007] SASC 76
12. Dale v Veda Advantage Information Services and Solutions Limited [2007] FCA 1603
13. Daniels v Deputy Commissioner of Taxation [2007] SASC 114
14. Daniels v Northern Territory of Australia [2007] NTSC 65
15. David and Anor v Abdishou and Ors [2007] NSWSC 890
16. Edward Hayson v John Fairfax Publications Pty Ltd [2007] NSWSC 763
17. Electrical Trades Union of Employees Queensland & Anor v. National Electrical Contractors Association & Anor [2007] QDC 77
18. Elliott v West Australian Newspapers Ltd [2007] WASC 149
19. Ennis v TCN Channel Nine Pty Limited [2007] NSWSC 1106
20. Fleet v Royal Society for the Prevention of Cruelty to Animals [2007] NSWSC 1420
21. Forrest v Askew & Anor [2007] WASC 161
22. French v John Fairfax Publications Pty Ltd [2007] VSC 105
23. Gardener v Nationwide News Pty Limited [2007] NSWSC 1508
24. Garry Dobson v Macquarie Radio Network Ltd [2007] NSWSC 718
25. Gray v Hill & Ors [2007] WASC 123
26. Gray v John Fairfax Publications Pty Ltd [2007] WASC 274
27. Greig v WIN Television NSW Pty Ltd [2007] NSWSC 1118
28. Gunns Ltd & Ors v Marr & Ors (No 4) [2007] VSC 91
29. Heartcheck Australia Pty Limited v Channel 7 Sydney Pty Limited [2007] NSWSC 555
30. James v Faddoul [2007] NSWSC 821
31. JWH Group Pty Ltd (Discontinued 30 August 2004) & Anor v Buckeridge & Anor [2007] WASC 194
32. Karam Chand Ramrakha v Mahendra Pal Chaudhry and National Farmers Union [2007] NSWSC 991
33. Kutasi v Melbourne University Publishing Ltd t/a Melbourne University Press [2007] NSWDC 7
34. Lamont v Dwyer & Ors [2007] ACTSC 47



35. Lane & Anor v Channel Seven Adelaide Pty Ltd [2007] SASC 188
36. Mallik v McGeown [2007] NSWSC 1414
37. Markisic and Anor v Middletons Lawyers and Ors [2007] NSWSC 1147
38. McBride v John Fairfax Group Pty Ltd [2007] NSWSC 384
39. Medford v Nationwide News Pty Ltd [2007] WASC 52
40. Metcash Trading Limited (ACN 000 031 569) v Bunn [2007] FCA 2038
41. Page and Lennon v. Freebody and The Cairns Post [2007] QDC 122
42. Pestano and Anor v Madden and Ors [2007] NSWSC 545
43. Pisano v Thrum [2007] WASC 109
44. Reason Wafawarova v Australian Broadcasting Corporation [2007] NSWSC 1212
45. Robinson v. Laws & Anor [2007] QSC 152
46. Rodgers v Nine Network Australia Pty Ltd [2007] NSWDC 180
47. S, D R v Channel Seven Adelaide Pty Limited and Australian Broadcasting Commission (NO 2) [2007] SASC 30
48. S, DJ v Channel Seven Adelaide P/L & Anor [2007] SASC 80
49. Schrader v Australian Broadcasting Corporation [2007] SASC 270
50. Shari-Lea Hitchcock v John Fairfax Publications Pty Limited [2007] NSWSC 7
51. Simundic v University of Newcastle [2007] FCA 676
52. Sydney Refractive Surgery Centre Pty Ltd v Commissioner of Taxation [2007] FCA 1544
53. Walter v Buckeridge & Anor [2007] WASC 14
54. Willett & Ors v Belconnen Soccer Club [2007] ACTSC 41
55. Williams v. Noosa and District Landcare Group Incorporated [2007] QDC 147
56. Wilson v GIO General Ltd [2007] NSWSC 1445



Digital defamation cases

5.2 Year: 2007

Table 75: Digital defamation cases, across jurisdictions, 2007

Case	First substantive decision	Type of Publication	Type of Defendant	Type of Plaintiff
Ali v Nationwide News Pty Limited	[2007] NSWSC 58	Internet news article on Media website	Media organisation	Individual
Gregory Frawley v The State of New South Wales	[2007] NSWSC 1379	Material posted on a website	The State of New South Wales	Individual
SMEC Holdings Ltd v Boniface	[2007] NSWSC 1402	Email publications	Individual	Company and individuals who had held an executive position in the company and had been a member of the board of directors
MTQ Holdings Pty Ltd v Lynch Holdings Pty Ltd & Ors	[2007] WASC 49	Letter that was published on a company website	Individuals and a company	Company
National Auto Glass Supplies (Australia) Pty Limited v Nielsen & Moller Autoglass (NSW) Pty Limited	(No 8) [2007] FCA 1625	Email publication	Individual	Company and the individuals who were the company's directors

Comparison: 2007 and 2017

Number of cases

Table 76: Overall number of cases and decisions, 2007 and 2017

Year	Number of cases	Number of digital defamation cases	Digital cases as a proportion of all defamation cases
2007	29	5	17.2%
2017	30	16	53.3%



Table 77: Cases 2007 and 2017 by jurisdiction

Jurisdiction	2007 cases	2017 cases
New South Wales	17	14
Victoria	2	5
Queensland	2	2
Western Australia	1	3
South Australia	1	3
Tasmania	0	0
Australian Capital Territory	2	3
Northern Territory	1	0
Federal Court of Australia	3	0

Observations

The following points can be observed from the data presented in this report for 2007 and 2017:

- The number of defamation cases – that is, matters for which there was a substantive decision in that year – was almost the same in 2017 as it was in 2007 (30 compared to 29 cases). The number of decisions was the same: 131 in each year.
- Not surprisingly, the proportion of digital defamation cases was much greater in 2017 (16 cases, 53.3%) than in 2007 (5 cases, 17.2%). In 2007, two of the cases concerned emails and the others concerned website material. By 2017, there were four cases involving Facebook posts, one involving WeChat and one involving a tweet.
- The proportion of cases where media organisations were defendants was lower in 2017 (5 cases, 16.7%) than in 2007 (9 cases, 31%). Of these cases where media organisations were defendants, in 2017 all were digital defamation cases, whereas in 2007 only one was a digital defamation case.



Conclusion

We are living in a golden age of communication, a time – as political scientist John Keane has observed – of communicative abundance, where there has never been more access to more information by more people. It is also a time of another abundance: journalists, publishers and individual citizens have never had more opportunities to defame and to be defamed.

This report highlights key trends in defamation over the past five years and also looks back a decade, to a time before social media became such a force in the distribution of information. Its key findings point to the urgent need for debate, and most probably legislative reform, to account for digital defamation as an emerging factor in the rightful and laudable pursuit of open, civil discourse — and its attendant capacity to ‘chill’ such discourse — and the delivery of redress of those impugned in the public space.

If nothing else, this report shows how that public space is now a much bigger and wilder place: as defendants, media companies represent one in four of the defamation cases we identified in the period studied.

Media companies, by their very nature, tend to gain most attention in defamation cases. High profile action, such as those involving celebrity Rebel Wilson and ex-politicians Joe Hockey and Clive Palmer, see to that and rightfully, raise questions about the rights to know, publish and privacy.

But the data shows that we are at or approaching a turning point, an inflective moment wherein private individuals are increasingly suing each other and Google and the owners of Facebook pages are sued as the ‘publishers’ of alleged defamatory content. Over the five years we studied, just over one in five plaintiffs was a public figure.

This is a prima facie challenge to the platforms’ views that they are not publishers, of one kind or another. It’s one thing for platforms to share the pain; the real challenge is alleviating the pain for all.

As the report notes, digital defamation is not a clean sphere of legalistic debate or practice: often, as with the Hockey case against Fairfax Media, the social platforms (in this case Twitter) become enmeshed in the traditional (in this case a newspaper point of sale ‘poster’ selling the story).

Further tracking of defamation actions – building on this report and the recent work of Judge Judith Gibson – would reveal the full picture of defamation litigation in Australia. Understanding how the law is used in the digital environment will also help in formulating public policy: in how the law should protect reputations, and how it should help promote freedom of expression in a world that has been transformed by digital publication.



Resources

The following are useful resources, either as explanations of defamation law in Australia or as resources for tracking developments in defamation case law.

Butler, Des and Sharon Rodrick, *Australian Media Law* (Thompson Reuters, 2015, 5th ed, 2015).

Gibson, Judith, 'Defamation Case Law Analysis and Statistics' (2017) in LexisNexis, *Australian Defamation Law and Practice*.

Gazette of Law and Journalism <http://glj.com.au>.

Ireland, Jennifer, 'Defamation 2.0: Facebook and Twitter' (2012) 17(1) *Media and Arts Law Review* 53.

Joyce, Daniel, 'Data Associations and the Protection of Reputation in Australia' (2017) 4(1) *Big Data & Society* 1.

LexisNexis, *Australian Defamation Law and Practice*, 'New Media and Online: Defamation' (December 2017).

Rolph, David, *Defamation Law* (Thompson Reuters, 2016).

Rolph, David, Judith Bannister, Daniel Joyce and Matt Vitins, *Media Law: Cases, Materials and Commentary* (Oxford University Press, 2015).

Westlaw, *Media and Internet Law and Practice*, 'Defamation' (February 2018).

