



Defamatory and/or objectionable material on the internet

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Background

There are a growing number of cases contested in the courts involving defamatory and/or objectionable material about individual teachers posted on the internet. This is as a result of students having access to the internet at home as well as at school. Websites which have caused concern to members recently are:

- [YouTube](http://www.youtube.com) (www.youtube.com)
- [Facebook](http://www.facebook.com) (www.facebook.com)
- [Twitter](http://www.twitter.com) (www.twitter.com)
- [RateMyTeachersAU](http://au.ratemyteachers.com) (<http://au.ratemyteachers.com>)
- [BlogSpot](http://www.blogger.com) (www.blogger.com)
- [WordPress](http://www.wordpress.com) (www.wordpress.com)

Our lawyers have indicated that you can proceed in one of two ways in relation to defamatory and/or objectionable matter found on the internet:

- school disciplinary action
- legal remedies.

Getting the material taken down

Often the most useful response is to try to get the material taken down. Teachers can apply to the host of the site themselves, or seek assistance from the Cybersafety and Reputation Management team of the Department of Education (DoE) (phone (07) 3034 5035) or email: cybersafety@ged.qld.gov.au

School discipline

When students make inappropriate video clips in school or post defamatory and/or objectionable material on these sites, the DoE has the authority to take appropriate disciplinary action against them.

However, most material posted on internet sites and social media has no author or uses a false name. It then becomes impossible to determine which students are the perpetrators of the offensive material.

Legal remedies

Criminal action

Under federal law (*Criminal Code Act 1995* (Cth)), it is an offence to place “offensive” material on the internet. A student who puts such material online would be subject to prosecution under this Act. The mere posting of the material contrary to the wishes of the teacher is not an offence; rather, it is the material posted which would have to have the characteristics of being offensive. Statements or ratings found on the site <http://au.ratemyteachers.com> would not necessarily be considered offensive under the Act.

Depending on the nature and severity of the material, you may also be able to seek removal of the material directly from the designated internet service, hosting service provider or the person who posted the material under the [Online Safety Act 2021](#) (Cth).

Complaints to the Australian Communication and Media Authority

The Australian Communication and Media Authority (“ACMA”) is a Commonwealth authority under the *Broadcasting Services Act 1992* (Cth).

The function of the ACMA is largely in relation to scrutinising and regulating restricted content, such as child pornography, criminal activities, violent acts, drug use and violent sexual material. Accordingly, it is unlikely to be of much relevance to teachers in remedying any grievances they may have.

Defamation

For defamation to occur, material must be published that lowers the reputation of a person in the eyes of

ordinary, reasonable people. The next issue in establishing a right of action in defamation is to determine who has published the material. In this case, the publishers would be students and the host of the internet site in question.

You could potentially sue the offending students, although this is likely to be ineffective because the remedy is normally damages only. School students are unlikely to have assets against which a judgment can be enforced. The *Online Safety Act 2021* (Cth) empowers Australian courts to order the retraction of eligible defamatory material by way of formal notice. Removal of the content may also be achieved by negotiation in settling a matter. The powers of a court to remove the defamatory material is otherwise limited.

Court action against the internet host is possible, though expensive and complicated. Any judgment obtained against the host would have to involve overseas proceedings. In other words, if a judgment was obtained in Australia, it would have to be registered and enforced overseas as the internet service providers do not usually have any assets available in Australia.

Recent changes to defamation law mean that you must be able to show that the defamatory statements have caused you “serious harm” before an action in the courts can be commenced properly. The reality is that this means, in most cases, the plaintiff will need to show that they have suffered financial damage as a result of the statements that were made.

Invasion of privacy

Until recently, there was no general common law right of privacy in Australia. However, a recent decision by the High Court of Australia makes it possible to proceed with court actions, under a very narrow, strict class of extreme cases which rarely applies in matters of this nature.

School behaviour management response

When a student has been identified as having posted an inappropriate comment or other content on a

website, the principal should implement the school’s code of behaviour policy.

If the DoE does not support a principal’s recommendation that a student be suspended or excluded, contact your QTU Organiser for further action.

DoE response

According to an email sent to all principals by the Assistant Director-General of the DoE in March 2008, the Department considers the following approach to be appropriate:

- Discuss the issues and the despicable nature of the defamatory information with staff, P&C, school council and parents generally through newsletters to gather endorsement for the actions the school will take in response to the publication of such material.
- Reconvene your group that manages your code of behaviour. Determine consequences specifically for abuse on YouTube and other similar sites and amend the school’s code of behaviour accordingly.
- Inform parents, students and staff of the school community stance on this.

This kind of behaviour in its worst form warrants suspension pending exclusion.

Conclusion

Defamation relating to the publication of offensive material is complicated, mainly due to the anonymity of the author. It is also unlikely that a victim will gain a ruling in court for damages against the offending student and/or the host of an overseas website.

In practical terms, an appropriate school behaviour management response is by far the most satisfactory remedy available in the vast majority of cases.

For more information, you should request assistance from the QTU, either via the QTU website <http://www.qtu.asn.au/qtad> or by calling the Queensland Teachers’ Assist Desk on 1300 117 823.