

DISTRICT COURT OF QUEENSLAND

CITATION: *Hallam v O'Connor and Pyne* [2024] QDC 187

PARTIES: **GREGORY JOHN CHARLES HALLAM**
(plaintiff)
v
LYN ELIZABETH O'CONNOR
(first defendant)
and
ROBERT JOHN PYNE
(fourth defendant)

FILE NO: 23 of 2018

DIVISION: Civil

PROCEEDING: Claim

ORIGINATING COURT: Cairns

DELIVERED ON: 30 October 2024

DELIVERED AT: Cairns

HEARING DATE: 16-20, 23-27, 30-31 August 2021; 1, 2, 6-10 September 2021, 5-8, 22, 30 November 2021, 1, 2, 10 December 2021, 1, 14-18, 21-25 January 2022, 1, 14-18, 21-25 February 2022, 2-4 March 2022, 31 October 2022, 1-2 November 2022.

JUDGE: Morzone KC DCJ

ORDER:

- 1. Judgment for the plaintiff against the first defendant in the amount of \$346,131.51 including interest pursuant to s 58 of the *Civil Proceedings Act 2011* (Qld) at the rate of 3% per annum to the date of judgment from 10 June 2017 on general damages of \$61,004.79 and special damages from 7 October 2017 of \$1771.72.**
- 2. The first defendant is permanently restrained from directly or indirectly publishing or causing to be published any of the matters, or substantially to the same effect as those matters, subject of her publications in this proceeding.**
- 3. Judgment for the plaintiff against the fourth defendant in the amount of \$157,261.41 including interest pursuant to s 58 of the *Civil Proceedings Act 2011* (Qld) at the rate of 3% per annum to the date of judgment on general damages from 21 June 2017 of \$27,657.53 and on special damages from 7 October 2017 of \$805.38.**
- 4. Unless either party applies for a different costs order within 14 days of this judgment, I will also order that**

the first defendant and fourth defendant will pay the plaintiff's costs of the proceeding (including reserved costs) to be assessed on the standard basis of the proceedings against each of them, respectively.

5. I will hear the parties as to costs.

CATCHWORDS: CIVIL PROCEEDING – DEFAMATION – liability first defendant for 36 publications by early determination of proceeding – assessment of damages against the first defendant – liability of and any damages to be assessed against the fourth defendant – interest - costs.

AS AGAINST THE FIRST DEFENDANT - what damages ought to be awarded to the plaintiff against the first defendant – whether a permanent injunction be made against the first defendant.

AS AGAINST THE FOURTH DEFENDANT – did the fourth defendant publish one or more of five publications - was one or more of the publications of and concerning the plaintiff - did the publications have the capacity to convey any of their pleaded imputations - did the publications convey any of their pleaded imputations - were the imputations conveyed in the publications defamatory of the plaintiff - what damages ought to be awarded to the plaintiff against the fourth defendant.

LEGISLATION: *Civil Proceedings Act 2011 (Qld) s 58*
Defamation Act 2005 (Qld) ss 6 & 8
District Court of Queensland Act 1967 (Qld) s 69

CASES: *A v IPEC Australia Ltd and Crew* [1973] VR 39
Ali v Nationwide News Pty Ltd [2008] NSWCA 183
Allsopp v Incorporated Newsagencies Co. Pty Ltd (1975) 26 FLR 238
Amalgamated Television Services Pty Ltd v Marsden (1998) 43 NSWLR 158
Amalgamated Television Services v Marsden [2002] NSWCA 419
Andrews v John Fairfax & Sons Ltd (1980) 2 NSWLR 225
Apotex v Servier (No. 2) (2012) 293 ALR 272
Baffsky v John Fairfax & Sons Pty Ltd (1991) 106 FCR 21
Banks v Cadwalladr [2022] EWHC 1417
Bauer Media Pty Ltd v. Wilson (No. 2) [2018] VR 674
Belbin & Ors v Lower Murray Urban and Rural Water Corporation [2012] VSC 535
Bickel v John Fairfax & Sons Ltd (1981) 2 NSWLR 474
Broome v Cassell & Co [1972] AC 1027
Browne v Dunn (1893) 6 R 67
Cantwell v Sinclair [2011] NSWSC 1244

Carson v John Fairfax & Sons Ltd (1993) 113 ALR 577
Cerrutti v Crestside Pty Ltd [2016] 1 QdR 89
Chakravarti v Adelaide Advertiser (1998) 193 CLR 519
Channel Seven Sydney Pty Ltd v. Mahommed [2010] NSWCA 355
Chappel v Hart (1998) 195 CLR 232
Chester v Waverley Corporation (1939) 62 CLR 1
Clark v Ainsworth (1996) 40 NSWLR 463
Commonwealth v McLean (1996) 41 NSWLR 389
Consolidated Trust Co Ltd v Brown (1949) 49 SR (NSW) 86
Costello v Random House Pty Ltd (1999) 137 ACTR 1
Coyne v Citizen Finance Ltd (1991) 172 CLR 211
Cross v Denley (1952) 52 SR (NSW) 112
David Syme & Co v Can (1918) 25 CLR 234
Dingle v Associated Newspapers [1961] 2 QB 162
Dow Jones & Co v Gutnick (2002) 210 CLR 575
Dutton v Bazzi [2021] FCA 1474
Favell v Queensland Newspapers Pty Ltd (2005) 79 ALJR 1716
Goldsborough v John Fairfax & Sons Ltd (1934) 34 SR (NSW) 524
Greville v Wiseman (1967) NCLR 795
Hallam v Ross [2012] QSC
Harbour Radio Pty Ltd v Wagner Harbour Radio Pty Ltd v Wagner (2019) 2 QdR 468
Higgins v Sinclair [2011] NSWSC 163
Hockey v Fairfax Media Publications Pty Ltd (2015) 237 FCR 33
Holland v O'Connell (1984) A def R 40,149
Hughes v Mirror Newspapers Ltd (1985) 3 NSWLR 504
Humphries v TWT Ltd (1993) 113 FLR 402
Hyams v Peterson (1991) 1 NZLR 711
John Fairfax & Sons Ltd v Foord (1988) 12 NSWLR 706
John Fairfax & Sons Ltd v Kelly (1987) 8 NSWLR 131
John Fairfax Publications v Rivkin (2003) 77 ALJR 165
John v MGN Ltd [1997] Q.B. 586 (CA)
Jones v Skelton [1963] 3 All ER 952
Lower Murray Urban and Rural Water Corporation v Di Masi (2014) 43 VR 348
March v Stramare (E & MH) Pty Ltd (1991) 171 CLR 506
Mirror Newspapers Ltd v World Hosts Pty Ltd (1979) 141 CLR 632
Moit v Bristow [2005] NSWCA 322
Morgan v Odhams Press Ltd (1971) 2 All ER 1156
Mount Isa Mines Ltd v Pusey (1971) 125 CLR 383
Nationwide News Pty Ltd v. Rush [2020] FCAFC 115
Neall v Watson (1960) 34 ALJR 364
Palmer Bruyn & Parker v Parsons (2001) 208 CLR 388
Phillips v Robab Pty Ltd [2014] NSWSC 1520
Plymouth Brethren (Exclusive Brethren) Christian Church v The Age Company Ltd (2018) 97 NSWLR 739

Polias v Ryall [2014] NSWSC 1692
Praet v Graham [1889] 24 QBD 53
Readers Digest Services Pty Ltd v Lamb (1982) 150 CLR 500
Rigby v Associated Newspapers Ltd (1969) 1 NSWLR 729
Rogers v. Nationwide News Pty Ltd (2003) 216 CLR 327
Romeo v Conservation Commission of the Northern Territory (1998) 192 CLR 431
Rubber Improvement Ltd v Daily Telegraph Ltd (1964) AC 239
Sierocki & Anor v. Klerck & Ors (No. 2) [2015] QSC 92
Singleton v Ffrench (1986) 5 NSWLR 425
Slayter v Daily Telegraph Co Ltd (1908) 6 CLR 1
Slim v Daily Telegraph (1968) 2 QB 157
Steele v Mirror Newspapers Ltd (1974) 2 NSWLR 848
Stocker v Stocker (2020) AC 593
Tame v New South Wales (2002) 211 CLR 317
Television New Zealand Ltd v Ah Koy (2002) 2 NZLR 616
Ten Group v Cornes. (2012) 114 SASR 46
Triggell v Pheeney (1951) 82 CLR 497
Trkulja v Google LLC (2018) 92 ALJR 619.
Uren v John Fairfax & Sons Pty Ltd (1966)
Wagner & Ors v Nine Network Australia & Ors [2019] QSC 284
Wagner v Harbour Radio Pty Ltd [2018] QSC 201
Wagner v Nine Network [2019] QSC 284
Wagner v Nine Network [2020] QCA 221
Wilson v Bauer Media Pty Ltd [2017] VSC 521

COUNSEL: M Amerena for the Plaintiff

SOLICITORS: King & Company, Solicitors, for the Plaintiff/Applicant
 First Defendant Self Represented
 Second Defendant Self Represented

SUMMARY

- [1] The plaintiff, who was then the Chief Executive Officer of the Local Government Association of Queensland Ltd, was the subject of public reputational damage, hurt and humiliation by multiple publications and being likened to the Star Wars movie character, *Jabba the Hutt*, on the Facebook social media platform. The plaintiff now sues for damages for defamation by the first defendant in respect of 36 publications, and the fourth defendant in respect of 5 publications.
- [2] The first defendant's liability was the subject of default judgments on 18 September 2020 and 30 November 2020. Accordingly, the case against the first defendant involved assessing damages for the adjudged pleaded imputations from the 36 publications made by the first defendant under "Elizabeth Kennedy" for 13 and "Lyn O'Connor" for another 23. The plaintiff also seeks a permanent injunction against the first defendant.

- [3] The case against the fourth defendant involved both liability and the assessment of any damages regarding five alleged defamatory publications. I have found the fourth defendant liable in respect of four of the five disputed publications. I further found the fourth defendant published all five publications of and concerning the plaintiff, and all publications had the capacity to convey, and did in fact, convey, all but four of the pleaded imputations.¹ I am satisfied that the imputations I found in the 1st, 2nd, 4th and 5th Rob Pyne Publications are defamatory of the plaintiff, but I was not so satisfied with respect to the imputations I found in the 3rd Rob Pyne Publication.
- [4] The first and fourth defendants are properly to be classified as several concurrent tortfeasors, each causing indivisible harm through their respective and overlapping publications. While avoiding double recovery, the case warrants separate awards of damages against each defendant, and disparate consideration of aggravated damages.
- [5] I assess damages against the first defendant for \$283,355.00, comprising non-economic loss damages of \$275,000.00 (including \$55,000.00 for aggravated damages) and special damages of \$8,355. I will award judgment accordingly, together with interest at the rate of 3% per annum from the first publication on 10 June 2017 on general damages of \$61,004.79 and special damages from 7 October 2017 of \$1771.72. The circumstances also warrant a permanent injunction prohibiting future defamatory publication of and concerning the plaintiff.
- [6] I assess damages against the fourth defendant for \$128,798.50, comprising non-economic loss of \$125,000.00 (including \$25,000.00 for aggravated damages) and special damages of \$3,798. I will award judgment accordingly, together with interest at the rate of 3% per annum on general damages from the first publication of 21 June 2017 of \$27,657.53 and on special damages from 7 October 2017 of \$805.38.
- [7] I will hear the parties on disposition of costs, which ought to follow the event unless either party seeks a different order within 14 days of this judgment.

ISSUES

- [8] The determinative issues in respect of the First Defendant are:
1. What damages ought to be awarded to the plaintiff against the defendant?
 2. Should a permanent injunction be made against the first defendant?
- And in respect of the Fourth Defendant, they are:
3. Did the fourth defendant publish one or more of five publications?
 4. Was one or more of the publications of and concerning the plaintiff?
 5. Did the publications have the capacity to convey any of their pleaded imputations? If so, did the publications convey any of their pleaded imputations?
 6. Were the imputations conveyed in the publications defamatory of the plaintiff?
 7. What damages ought to be awarded to the plaintiff against the fourth defendant?

¹ I disallowed pleaded imputations (a) and (b) in the 1st Rob Pyne Publication, and pleaded imputations (b) and (e) of the 3rd Rob Pyne Publication.

LIABILITY

- [9] The plaintiff obtained default judgments pursuant to r 374 of the *Uniform Civil Procedure Rules* 1999 (Qld) against the first defendant on 18 September 2020 and 30 November 2020, which determined the liability of the first defendant in respect of the following defamatory imputations of and concerning the plaintiff in the 36 publications using “Elizabeth Kennedy” for 13 and “Lyn O’Connor” for another 23 publications:

Publication	Period	Defamatory imputations
1 st Elizabeth Kennedy Publication	10.6.17 to 23.4.18	<p>(a) the plaintiff deserved to be raucously mocked for his efforts in advancing LGAQ policies intended to achieve, responsibly and fairly, accountability and transparency in local government matters; and</p> <p>(b) in so advancing LGAQ policy the plaintiff was, in fact, motivated by his own personal self-interest; and</p> <p>(c) the plaintiff caused the LGAQ not to care at all about the people of Queensland and the staff of the local government.</p>
2 nd Elizabeth Kennedy Publication	18.6.17 to 23.4.18	<p>(a) the plaintiff was a powerful crime boss; and</p> <p>(b) the plaintiff operated through the LGAQ as a cartel, a profitable criminal empire; and</p> <p>(c) the plaintiff was corrupt; and</p> <p>(d) the plaintiff sought to corruptly influence public officials including elected members of the Queensland Parliament; and</p> <p>(e) the plaintiff had overborne the ethical standards which the LGAQ should have provided to local government; and</p> <p>(f) that the above imputations about Mr Hallam had been revealed in evidence before the Crime and Corruption Commission.</p>
3 rd Elizabeth Kennedy Publication	18.6.17 to 23.4.18	<p>(a) the plaintiff was a powerful crime boss; and</p> <p>(b) the plaintiff was corrupt; and</p> <p>(c) the plaintiff had been responsible for turning the LGAQ to what appeared to be a cult-like body; and</p>

Publication	Period	Defamatory imputations
		<ul style="list-style-type: none"> (d) the plaintiff operated through the LGAQ as a cartel, a profitable criminal empire; and (e) the plaintiff exercised a control over Government which control neither recognised nor tolerated those with a different opinion; and (f) the plaintiff improperly caused or permitted taxpayers and ratepayers' funds to be spent on an LGAQ annual conference; and (g) the plaintiff was an authoritarian leader of a cult-like body abusing funds provided by taxpayers and ratepayers.
4 th Elizabeth Kennedy Publication	18.6.17 to 23.4.18	<ul style="list-style-type: none"> (a) the plaintiff was a powerful crime boss; and (b) the plaintiff was corrupt; and (c) the plaintiff attempting to exercise totalitarian control, as the CEO of the LGAQ, over the elected government of Queensland; and (d) the plaintiff was attempting to have the Premier of Queensland, Ms Annastacia Palaszczuk, influence a member of the Parliamentary Crime and Misconduct Committee, Mr Peter Wellington MP, to cause the Crime and Corruption Commission to dishonestly and improperly not adequately or at all investigate the conduct of Mr Paul Pisasale, the former Mayor of the Ipswich City Council.
5 th Elizabeth Kennedy Publication	19.6.17 to 23.4.18	<ul style="list-style-type: none"> (a) the plaintiff as the CEO of the LGAQ caused the LGAQ to deny values of ethical, transparent and accountable local government; and (b) the plaintiff was blinded by lust of power, greed and self-importance.
6 th Elizabeth Kennedy Publication	19.6.17 to 23.5.18	<ul style="list-style-type: none"> (a) the plaintiff was a grub; and (b) the plaintiff was a criminal who deserved to be in prison; and

Publication	Period	Defamatory imputations
		<ul style="list-style-type: none"> (c) the plaintiff caused all local councils in Queensland to be without morals, principles or accountability; and (d) the plaintiff controlled the Queensland Government by providing them with a nice cushy little retirement package at the expense of the ratepayers.
7 th Elizabeth Kennedy Publication	20.6.17 to present	<ul style="list-style-type: none"> (a) the plaintiff was an idiot; and (b) the plaintiff deserved to be the subject of an ICAC investigation; and (c) the plaintiff had gravely damaged the interests of Queensland; and (d) the plaintiff was a powerful crime boss; and (e) the plaintiff operated through the LGAQ as a cartel, a profitable criminal empire; and (f) the plaintiff was corrupt.
8 th Elizabeth Kennedy Publication	20.6.17 to present	<ul style="list-style-type: none"> (a) the plaintiff was a criminal deserving imprisonment; and (b) the plaintiff was involved in the wrongdoing that former Mayor Pisasale was arrested for and thereby deserved to be imprisoned with former Mayor Pisasale for his criminal activities.
9 th Elizabeth Kennedy Publication	20.6.17 to present	<ul style="list-style-type: none"> (a) the plaintiff was a criminal deserving of imprisonment; and (b) the plaintiff was an associate of criminals deserving of imprisonment.
10 th Elizabeth Kennedy Publication	19.9.17 to 23.4.18	<ul style="list-style-type: none"> (a) the plaintiff was central to the persistent covering up of systemic corruption in Queensland; and (b) the plaintiff had arguably compromised the integrity of both the ALP and the LNP political parties.

Publication	Period	Defamatory imputations
11 th Elizabeth Kennedy Publication	2.12.17 to 25.4.18	<ul style="list-style-type: none"> (a) the plaintiff was willing to cover up systemic corruption in local government; and (b) the plaintiff was part of the reason corruption was alive and well in local government in Queensland; and (c) the plaintiff contributed to improperly cultivating the Crime and Corruption Commission to cover up systemic corruption in local government in Queensland.
12 th Elizabeth Kennedy Publication	2.12.17 to 25.4.18	<ul style="list-style-type: none"> (a) the plaintiff was gutless; and (b) that the LGAQ's influence through Mr Hallam as the LGAQ's CEO caused corruption to be rife in local government in Queensland; and (c) that the Australian Federal Police were needed to properly investigate Mr Hallam and the organisation, the LGAQ, of which he was the Chief Executive Officer.
13 th Elizabeth Kennedy Publication	5.12.17 to 25.4.18	<ul style="list-style-type: none"> (a) the plaintiff was not prepared to expose systemic corruption in Queensland local government and State Government; and (b) the plaintiff was not willing to tell the truth; and (c) the plaintiff contributed to crime and corruption being rife in Queensland politics at all levels; and (d) the plaintiff was a person who persecuted "truth Sayers" like Mr Pyne; and (e) the plaintiff had his snout in the "Trough"; and (f) the plaintiff was receiving government funds he was not entitled to.

Publication	Period	Defamatory imputations
1 st Lyn O'Connor Publication	29.5.17 to 23.4.18	<p>(a) that as the CEO of LGAQ, Mr Hallam knowingly drove the metaphorical getaway car for crooks involved in Local Government matters; and</p> <p>(b) that as the CEO of LGAQ, Mr Hallam dishonestly controlled a complaint system which was a complete stitch-up; and</p> <p>(c) that as the CEO of the LGAQ, Mr Hallam hung good people out to dry.</p>
2 nd Lyn O'Connor Publication	16.6.17 to 23.4.18	<p>(a) the plaintiff was a bully; and</p> <p>(b) the plaintiff was, by demanding to know who had provided documents tabled under parliamentary privilege, active in a way typical of persons who had abused whistle-blowers by having "their chickens ... slaughtered and smeared throughout their home ... "; and</p> <p>(c) the plaintiff by demanding to know who had provided documents tabled under parliamentary privilege was acting in a way typical of persons who had liaised "hits" upon whistle-blowers; and</p> <p>(d) the plaintiff was naive or involved directly, indirectly or in the many, many layers of cover-ups.</p>
3 rd Lyn O'Connor Publication	20.6.17 to 25.5.18	<p>(a) the plaintiff as CEO of the LGAQ presided over a system in local government which improperly financially favoured persons connected with the LGAQ; and</p> <p>(b) the plaintiff as CEO of the LGAQ acted thereby to the detriment of Queensland ratepayers who were financially disadvantaged by that system.</p>
4 th Lyn O'Connor Publication	27.6.17 to 26.4.18	<p>(a) the plaintiff with the resignation of Mr Pisasale as Mayor of the Ipswich City Council had usurped control of the Ipswich City Council's affairs; and</p> <p>(b) the plaintiff had ordered the assault by thugs</p>

Publication	Period	Defamatory imputations
		<p>upon Mr Dodrill which had left him bloodied, injured and hospitalised; and</p> <p>(c) the plaintiff had ordered such assault on Mr Dodrill because he had exposed Mayor Pisasale as being corrupt; and</p> <p>(d) the plaintiff ought be investigated for ordering such assault on Mr Dodrill; and</p> <p>(e) the plaintiff was a powerful crime boss; and</p> <p>(f) the plaintiff operated through the LGAQ as a cartel, a profitable criminal empire; and</p> <p>(g) the plaintiff was corrupt; and</p> <p>(h) the plaintiff sought to corruptly influence public officials including elected members of the Queensland Parliament; and</p> <p>(i) the plaintiff had overborne the ethical standards which the LGAQ should have provided to local government.</p>
5 th Lyn O'Connor Publication	04.7.17 to 25.5.18	<p>(a) the plaintiff was possibly the possessor of a suitcase and \$1.6m in cash found therein which had been found by the Australian Federal Police in a drug bust which monies were suspected to be the proceeds of crime; and</p> <p>(b) the plaintiff was possibly involved in serious drug-related crime; and</p> <p>(c) the plaintiff took advantage of investigatory authorities which failed to investigate him properly.</p>
6 th Lyn O'Connor Publication	29.8.17 to 26.4.18	<p>(a) the plaintiff was a person for whom the concept of telling the truth seemed to be very foreign; and</p> <p>(b) the plaintiff was a person who on account of not telling the truth, did not act in the public interest.</p>

Publication	Period	Defamatory imputations
7 th Lyn O'Connor Publication	12.9.17 to 26.4.18	<p>(a) the plaintiff was as the CEO of the LGAQ supervising the design of another money-laundering business at LGAQ; and</p> <p>(b) the plaintiff as CEO of the LGAQ, was supervising the crafting of another metaphorical getaway car for the metaphorical bank robbers; and</p> <p>(c) the plaintiff was as the Chief Executive Officer of the LGAQ, supervising the preparation of policy advice and research to be used by local government mayors, councillors and other council officials to escape investigation and prosecution for wrongdoing.</p>
8 th Lyn O'Connor Publication	20.9.17 to 26.4.18	<p>(a) the plaintiff sought to endorse the appointment of a person, Mr Kellar, who Mr Hallam knew was involved in crime, corruptions and cover-ups; and</p> <p>(b) the plaintiff supported crime, corruption and cover-ups in local government.</p>
9 th Lyn O'Connor Publication	20.9.17 to 26.4.18	<p>(a) the plaintiff was dishonest in endorsing the Ipswich City Council's choice of Mr Kellar as its acting CEO; and</p> <p>(b) the plaintiff along with Mr Kellar, in fact did not have a long and distinguished career; and</p> <p>(c) the plaintiff along with Mr Kellar, had not obtained his position on the merits but, rather, through inappropriate associations within the LGAQ.</p>
10 th Lyn O'Connor Publication	20.9.17 to 26.4.18	<p>(a) the plaintiff as CEO of the LGAQ knowing or reasonably suspecting the serious criminal and corrupt conduct of local government CEO's and executives, enabled such local government CEO's and executives to continue their careers in different local governments in Queensland; and</p>

Publication	Period	Defamatory imputations
		<ul style="list-style-type: none"> (b) the plaintiff engaged in covering up the wrongdoing of local government CEO's and executives; and (c) the plaintiff assisted immoral local government CEO's and executives; and (d) the plaintiff as CEO of the LGAQ, caused the LGAQ to adopt a "Boys' Club" culture which disdained true worth and merit in favour of whom the local government CEO or executive knew.
11 th Lyn O'Connor Publication	3.10.17 to 23.4.18	<ul style="list-style-type: none"> (a) the plaintiff as CEO of the LGAQ was protecting mayors in Queensland local government who were, in fact, guilty of crimes; and (b) the plaintiff as CEO of the LGAQ, was assisting mayors who were in fact guilty of crimes, to escape responsibility for their wrongful actions.
12 th Lyn O'Connor Publication	16.12.17 to 26.4.18	<ul style="list-style-type: none"> (a) the plaintiff was of low and tainted personal character; and (b) the plaintiff was deserving of close investigation by an anti-corruption body over a long period; and (c) the plaintiff would eventually be found to be a corrupt wrongdoer.
13 th Lyn O'Connor Publication	7.12.17 to 23.4.18	<ul style="list-style-type: none"> (a) the plaintiff as CEO of the LGAQ, had contributed to the LGAQ as being an organisation out of control; and (b) the plaintiff as CEO of the LGAQ, had caused or allowed the LGAQ's operations to be other than in the public interest; and (c) the plaintiff as CEO of the LGAQ, had allowed its operations to protect local government, mayors, councillors and executives when they did not deserve such protection; and (d) the plaintiff as CEO of the LGAQ had allowed its operations to enable persons to

Publication	Period	Defamatory imputations
		<p>obtain funds, benefits or advantages which they did not deserve or were not entitled to; and</p> <p>(e) the plaintiff was amongst those whose wrongdoing would be eventually exposed.</p>
14 th Lyn O'Connor Publication	29.06.18 to 29.06.18	(a) that reasonable grounds existed to warrant Mr Hallam being investigated for possible corruption.
15 th Lyn O'Connor Publication	21.12.18 to present	<p>(a) that reasonable grounds existed to warrant Mr Hallam being investigated for his part in the erosion of ethics and honesty in local government; and</p> <p>(b) the plaintiff, as the CEO of the LGAQ, had permitted the LGAQ to substantially contribute to local government being void of ethics and honesty; and</p> <p>(c) the plaintiff had a suspicious association with one Ms Oxenbridge, the wife of a council CEO, Mr Wulff.</p>
16 th Lyn O'Connor Publication	21.12.18 to 22.1.19	<p>(a) that reasonable grounds existed to warrant Mr Hallam being investigated by a parliamentary select committee in respect to his possible relationship to local government corruption; and</p> <p>(b) the plaintiff was suspiciously associated with Ms Oxenbridge who had pleaded guilty to corruption charges.</p>
17 th Lyn O'Connor Publication	3.2.19 to present	<p>(a) Mr Hallam had a suspicious association with the corrupt wife, Ms Oxenbridge, of a corrupt council CEO, Mr Wulff, in circumstances where Mr Hallam had unreservedly endorsed a Mr Walker who had been convicted of facilitating Ms Oxenbridge's and Mr Wulff's corruption; and</p> <p>(b) the plaintiff was associated with a lot of people who are guilty of or charged with corruption and the CCC would probably</p>

Publication	Period	Defamatory imputations
		<p>uncover more such people; and</p> <p>(c) that reasonable grounds existed for Mr Hallam to be investigated by the Crime and Corruption Commission; and</p> <p>(d) that reasonable grounds existed obliging Mr Hallam to publicly disclose how he came to be in ownership of a successful race horse with Mr Oxenbridge, who was guilty of corruption.</p>
18 th Lyn O'Connor Publication	18.2.19 to present	<p>(a) that reasonable grounds existed to fully and properly investigate and publicly expose Mr Hallam because he was so well linked to other characters/criminals like the four Ipswich criminals jailed on Friday; and</p> <p>(b) that though not corrupt himself, Mr Hallam and the LGAQ of which he was the CEO undesirably contributed to corruption in local government.</p>
19 th Lyn O'Connor Publication	5.11.19 to present	<p>(a) the plaintiff had a suspicious association with Ms Oxenbridge, who together with her husband, a council CEO Mr Wulff, had been convicted and jailed on charges of corruption; and</p> <p>(b) the plaintiff seemed to have a bit of a habit of associating with criminal and dodgy types; and</p> <p>(c) the plaintiff had questionable judgement; and</p> <p>(d) that reasonable grounds existed to warrant Mr Hallam being investigated for possible corruption.</p>
20 th Lyn O'Connor Publication	20.11.19 to present	<p>(a) the plaintiff had a suspicious association with Ms Oxenbridge, who together with her husband, a council CEO Mr Wulff, had been convicted of charges of corruption; and</p> <p>(b) that reasonable grounds existed to suspect Mr Hallam was dodgy.</p>


Publication	Period	Defamatory imputations
21 st Lyn O'Connor Publication	24.11.19 to present	<p>(a) the plaintiff had a suspicious association with Ms Oxenbridge who together with her husband Mr Carl Wulff had been convicted of charges of corruption; and</p> <p>(b) that reasonable grounds existed to warrant Mr Hallam being investigated for his role in criminality associated with local government figures.</p>
22 nd Lyn O'Connor Publication	2.12.19 to present	<p>(a) the plaintiff had a suspicious association with Ms Oxenbridge who together with her husband, the ex-CEO of the Ipswich Council had been convicted and jailed on charges of corruption; and</p> <p>(b) that reasonable grounds existed to warrant Mr Hallam being investigated for possible corruption.</p>
23 rd Lyn O'Connor Publication	9.12.19 to present	<p>(a) the plaintiff had a suspicious association with Ms Oxenbridge who together with her husband, Mr Wulff, had been convicted and jailed on charges of corruption; and</p> <p>(b) that reasonable grounds existed to warrant Mr Hallam being investigated for possible corruption.</p>

- [10] The assessment of damages against the first defendant will be so based. I will first address liability against the fourth defendant to provide the factual matrix necessary for assessing damages against the first defendant and fourth defendant, as applicable.

Did the fourth defendant publish one or more of five publications?

- [11] The fourth defendant's liability, if any, must be determined in respect of five posts or comments on his public Facebook page between 21 June 2017 until they were taken down on 8 January 2018. The plaintiff sues the fourth defendant for the following five alleged defamatory publications on his public Facebook page:

Post	Period	Matter
1 st Rob Pyne Publication	21/6/17 - 8/1/18	<i>"Thanks to all people supporting a Queensland ICAC. Those in power rarely welcome increased scrutiny, but the ordinary decent people in</i>

Post	Period	Matter
		<i>government roles (who are often the victims) need us to maintain the rage!"</i>
		These words were followed by this caricature.
		
2 nd Rob Pyne Publication	7/8/17 - 8/1/18	<i>"We all put our recyclables in the bin, doing the right thing. After that, the truth is a disgrace! Corruption is rife and it is no surprise that local government is at the heart of the crooked behaviour. Please watch this doc @ http://www.facebook.com/abc4corners/videos/10154861721440954".</i>
3 rd Rob Pyne Publication	9/8/17 - 8/1/18	<i>"Those in power are the problem. Rather than attack the cause of systemic corruption they are attacking and trying to discredit me. The politics of 'power and privilege' by insider groups has dominated for too long and it is time to smash it open!"</i>
4 th Rob Pyne Publication	10/8/17 - 8/1/18	<i>"I have never dodged a bill or traded while insolvent in my life. Never taken an overseas trip at ratepayer/taxpayer expense or taken money from developers. Those who want to silence me need to be held to account and these weak little men with big expense accounts need to understand, you are not scaring anyone and people are awake to you!"</i>
5 th Rob Pyne Publication	23/8/17 - 8/1/18	<i>"When will this government act on corruption? The evidence is overwhelming. If the premier will</i>

Post	Period	Matter
		<i>not announce a Commission of inquiry into corruption in government administration, the parliament should with true confidence and demand a state election. We must stop the rot!"</i>

- [12] Once the posts are made available in a comprehensible form and are seen and read, that is, comprehended by third-party readers, the bilateral act of publication is complete.²
- [13] There is no dispute that the fourth defendant posted the following words and images on his public Facebook page. However, he initially did not admit that the posts were read or understood by anyone until during oral testimony at trial. In any event, by then, the plaintiff adduced direct evidence of publication through a solicitor and a secretary employed by the plaintiff's solicitors.
- [14] Therefore, I find that the fourth defendant published each of the five publications attributed to him.

Was one or more of the publications of and concerning the plaintiff?

- [15] The plaintiff must prove that each of the 1st through 5th Rob Pyne publications were of and concerning the plaintiff. That is, each of these publications could and would, on the balance of probabilities, have been understood as referring to him.³
- [16] The fourth defendant argues that publications concerned other individuals and entities and would not be read as identifying the plaintiff.
- [17] The test of identification is an objective one, using the standard of whether a hypothetical ordinary and reasonable reader acquainted with the plaintiff would have understood the publication as referring to the plaintiff. The publication's contents should be considered based on what a hypothetical ordinary and reasonable reader would know as general knowledge or public awareness, not on special knowledge known only to a limited group.⁴ Such a reader does not read with care, or with cautious and critical analytical care, or mindfully to formulate reasons, but such a reader gets a general impression, and may look again before coming to a conclusion and acting on it.⁵
- [18] In this case the plaintiff points to the contextual identification of the plaintiff:

² *Dow Jones & Co v Gutnick* (2002) 210 CLR 575 at [26], [27] per Gleeson CJ, McHugh, Gummow and Hayne JJ.

³ *Plymouth Brethren (Exclusive Brethren) Christian Church v The Age Company Ltd* (2018) 97 NSWLR 739 at [58] per McColl JA (Beazley P agreeing).

⁴ *Consolidated Trust Co Ltd v Brown* (1949) 49 SR (NSW) 86 at 91 per Jordan CJ (Street J agreeing) and at 92 and 93 per Davidson J; *Cross v Denley* (1952) 52 SR (NSW) 112 at 116 per Owen J (Street CJ and Herron J agreeing); *Mirror Newspapers Ltd v World Hosts Pty Ltd* (1979) 141 CLR 632 at 639 and 640 per Mason and Jacobs JJ.

⁵ *Morgan v Odhams Press Ltd* (1971) 2 All ER 1156 at 1160 and later at 1162-1163 per Lord Reid, at 1190 per Lord Morris, at 1184 per Lord Pearson, followed in the MSW of Appeal in *Steele v Mirror Newspapers Ltd* (1974) 2 NSWLR 348 at 354 per Moffitt P, at 362-364 per Hutley JA, at 372-374 per Samuels JA, and affirmed in *Plymouth Brethren* (2018) 17 NSWLR 739 at [70], [74], [75] and [76] per McColl JA (Beazley P agreeing).

- (a) All of the 1st to 5th Rob Pyne publications (including the first Jabba the Hutt caricature) is context for each other: The fourth defendant's Facebook page likely attracted a growing readership who could scroll back to view earlier posts. The publications were contemporaneously available for months.
- (b) The earnest political and purportedly factual nature of the fourth defendant's public Facebook page. The fourth defendant's Facebook page is distinct from print, radio, or TV media due to easier access to past posts. The page's name "Rob Pyne: Putting Cairns First" and its presentation resembled an election sign. It was a platform for political communication, promotion, and public interaction.
- (c) The politically aware and inquiring nature of the likely readership of the fourth defendant's public Facebook page. Readers were likely interested in politics and possibly supportive of the fourth defendant's political agenda. The page was used to communicate with constituents, supporters, and the media.
- (d) The "LGAQ" is a reference to the Local Government Association of Queensland. It is known to the public. Its membership consists of all local governments in Queensland and is broad in its engagement with media, government, and public issues.
- (e) The plaintiff was well known to the public as the chief executive officer and public face of the association, having been in that role for 25 years, which involved him in public and media engagement.
- (f) The plaintiff's physical appearance, including his obesity was publicly recognisable.
- (g) The public discourse between the plaintiff (amongst others) and the fourth defendant is critical of the fourth defendant's use of parliamentary privilege to table documents sensationally asserting local government corruption. The controversy in the public mainstream media was well underway by December 2015.
- (h) Whilst the plaintiff, as head of the association, had been criticising the fourth defendant's persistent and repeated use of parliamentary privilege since 2015, it is tolerably clear that the intensity of that criticism and the support it was attracting from others did not occur until on or shortly before 15 June 2017.
- (i) The fourth defendant continued to table documents purportedly concerning wrongdoing and corruption in local government on numerous occasions between 11 May 2016 and 24 May 2017.
- (j) On 15 June 2017, an LGAQ press release consisting of a statement by the plaintiff indicating that the LGAQ rejected the fourth defendant's allegations and calls for a special inquiry into local government and accusing the fourth defendant of allegations as being made without foundation, though under parliamentary privilege. It was just part of the wider criticism and comments about the fourth defendant's use of parliamentary privilege.
- (k) On 14 June 2017, the fourth defendant tabled under privilege in Parliament a document entitled "Ipswich Inc", which marked a high flashpoint in the parliamentary privilege and public discourse.

- (l) In the midst of all this, the fourth defendant published the 1st Rob Pyne publication including the Jabba the Hutt caricature his public Facebook page on 21 June 2017.
 - (m) After 21 June 2017 and throughout the period covering the initial publications of the 2nd, 3rd, 4th and 5th Rob Pyne publications the fourth defendant continued to table documents under privilege in Parliament about purported local government wrongdoing and corruption, which continued to fuel public discourse about his use of parliamentary privilege including criticism from the plaintiff.
 - (n) The publications and the fourth defendant's actions kept the debate in the public eye up to the November 2017 state election.
- [19] Although the plaintiff is not named in words, he may, nevertheless, be described to be recognised. Whether that description takes the form of a word picture of an individual, a reference to a class of persons of which he is or is believed to be a member or any other form, if in the circumstances the description is such that a person hearing or reading the publication would reasonably believe that the plaintiff was referred to, that is a sufficient reference to him.⁶
- [20] The 1st Rob Pyne publication containing the words and associated '*Jabba the Hutt*' caricature is persuasive evidence of identification. The fourth defendant argues that the caricature depicts a toad and thereby refers to the Queensland local government and that references to "the establishment" were directed at government leaders, not the plaintiff. However, it seems to me that the depiction of the catchy meme is likely to be read and understood by the ordinary reasonable reader to refer to the plaintiff. The caricature visually parodied the plaintiff, who appeared as a witness and exhibited similar physical features. The caricature's physical qualities and contextual elements (like "LGAQ" on the shirt and book) reinforced its connection to the plaintiff and would lead an ordinary reasonable reader to identify the plaintiff as within the class of "*those in power*" as distinct from "*the ordinary decent people in government roles (who are often the victims)*".
- [21] Witnesses' direct testimony they understood the publication as referring to the plaintiff can also indicate whom the hypothetical ordinary and reasonable reader would understand as being referred to.⁷ In this case, Mr Jamieson, Ms Browning and Mr Millar testified that they recognised the plaintiff in the caricature.
- [22] There is also at least one recipient of the publication who had special knowledge, based on extrinsic facts, to understand it referred to the plaintiff, including prior or contemporaneous third-party publications.⁸ Even without direct evidence of a witness identifying the plaintiff based on extrinsic facts, identification can be inferred if at least one person would have made the connection. The weight of the evidence depends on the timing of the identifying and sued publications, the relevance of the subject matter, and the interest to the overlapping readership.

⁶ *David Syme & Co v Can* (1918) 25 CLR 234 at 238 per Isaacs J.

⁷ *Steele v Mirror Newspapers Ltd* (1974) 2 NSWLR 848 at 364-365 per Hutley JA and at 371-375 per Samuels JA.

⁸ *Hyams v Peterson* (1991) 1 NZLR 711 at 720-721; *John Fairfax & Sons Ltd v Foord* (1988) 12 NSWLR 706 at 708-709 per Mahoney JA

- [23] Identification innuendo is established by the broader context of publications and posts, suggesting cross-readership and shared interests among the relevant Facebook groups in the period between the initial publication of the 1st to 5th Rob Pyne publications, respectively on 21 June 2017, 7 August 2017, 9 August 2017, 10 August 2017 and 23 August 2017, and when they were removed between 8 January 2018 but more likely closer to 17 January 2018. The fourth defendant's Facebook page had a regular and growing readership with over 5000 followers in 2017, and the posts were likely receiving significant engagement. Regular readers were likely exposed to all relevant publications, increasing their familiarity with the context and subjects discussed. There was significant discourse surrounding the 1st Rob Pyne Publication, including the express naming of the plaintiff, also linked to the Jabba the Hutt figure in Jabba the Hutt caricatures in the first defendant's publication made on the same day, 20 June 2017. Further, Facebook's algorithm likely ensured that readers of the first publication would see subsequent related posts, maintaining visibility and reinforcing the connection between the publications. The context of the thought bubble in the caricature, especially the public controversy involving the plaintiff and the association, would lead an ordinary reasonable reader to identify the plaintiff as one of the targets of the caricature and related posts.
- [24] The evidence, both direct and inferential, strongly supports the plaintiff's identification. It seems to me that the 1st Rob Pyne publication is temporally proximate and posted in the same Facebook page to lend significant context to the 2nd to 5th Rob Pyne Publications, to lead an ordinary reasonable reader to identify the plaintiff:
- (a) as a key individual associated the "*local government*", which is slated as being "*at the heart of the crooked behaviour*" where "*corruption is rife!*" in the 2nd Rob Pyne Publication.
 - (b) as being within one of "*Those in power*" who had publicly engaged in criticism of the fourth defendant, and therefore "*Rather than attack the cause of systemic corruption, they are attacking and trying to discredit me*". He was also the head of one of the "*insider groups*" that long dominated with "*power and privilege*" in the 3rd Rob Pyne Publication.
 - (c) as being within the class of "*those who want to silence*" the fourth defendant who "*need to be held to account*" and as a member of the class of "*weak little men*" who "*people are awake to*" in the 4th Rob Pyne Publication; and
 - (d) as a key individual "*in government administration*," about which there is a call for the government to act on corruption and for the premier to announce an inquiry into "*corruption*" to "*stop the rot*" in the 5th Rob Pyne Publication.
- [25] Therefore, I conclude that each of the 1st to 5th Rob Pyne publications could and would, on the balance of probabilities, have been understood to be of and concerning the plaintiff.

Did the publications have the capacity to convey any of their pleaded imputations? If so, did the publications convey any of their pleaded imputations?

- [26] The standard of the hypothetical ordinary and reasonable reader applies to both questions.

[27] This requires consideration not only of the literal words and images in the publication but also of the implications and inferences conveyed by the whole publication in its context.⁹

[28] As to the scope of the test, the High Court in *Trkulja v Google LLC*¹⁰ explained:

“[31] The test for whether a published matter is capable of being defamatory is what ordinary reasonable people would understand by the matter complained of. In making that assessment, it is necessary to bear in mind that ordinary men and women have different temperaments and outlooks, degrees of education and life experience. As Lord Reid observed in *Lewis v Daily Telegraph Ltd*, ‘[s]ome are unusually suspicious and some are unusually naïve’. So also are some unusually well educated and sophisticated while others are deprived of the benefits of those advantages. The exercise is, therefore, one of attempting to envisage a mean or midpoint of temperaments and abilities and on that basis to decide the most damaging meaning that ordinary reasonable people at the midpoint could put on the impugned words or images considering the publication as a whole.

[32] As the Court of Appeal of England and Wales observed in *Berezovsky v Forbes Inc*, that exercise is one in generosity not parsimony. The question is not what the allegedly defamatory words or images in fact say or depict but what a jury could reasonably think they convey to the ordinary reasonable person; and it is often a matter of first impression. The ordinary reasonable person is not a lawyer who examines the impugned publication over-zealously but someone who views the publication casually and is prone to a degree of loose thinking. He or she may be taken to ‘read between the lines in the light of his general knowledge and experience of worldly affairs’, but such a person also draws implications much more freely than a lawyer, especially derogatory implications, and takes into account emphasis given by conspicuous headlines or captions. Hence, as Kirby J observed in *Chakravarti v Advertiser Newspapers Ltd*, [w]here words have been used which are imprecise, ambiguous or loose, a very wide latitude will be ascribed to the ordinary person to draw imputations adverse to the subject.” (references omitted)

[29] Cases have recognised other characteristics of the ordinary reasonable reader, including:

- (a) having fair average intelligence;¹¹
- (b) reading between the lines¹² in light of his or her general knowledge¹³ and experience in worldly affairs;¹⁴

⁹ *Dutton v Bazzi* [2021] FCA 1474 at 2[20]-[28].

¹⁰ *Trkulja v Google LLC* (2018) 92 ALJR 619.

¹¹ *Slayter v Daily Telegraph Co Ltd* (1908) 6 CLR 1 at 7 per Griffith CJ (O’Connor and Isaacs JJ agreeing).

¹² *Favell v Queensland Newspapers Pty Ltd* (2005) 79 ALJR at [10] 1716 per Gleeson CJ, McHugh, Gummow and Heydon JJ.

¹³ *Jones v Skelton* (1963) 3 All ER 952 at 958 per Lord Morris.

¹⁴ *Rubber Improvement Ltd v Daily Telegraph Ltd* (1964) AC 239 at 258 per Lord Reid.

- (c) reading the entire matter complained of and considering the context as a whole,¹⁵ not just the isolated statement. Words that may not be defamatory alone can gain a different meaning in context, and vice versa.
- (d) are informed by matters of public notoriety or awareness and general knowledge of public matters.¹⁶
- (e) not being prone to reading publications carefully, less still, reading them with cautious and critical analytical care, let alone re-reading the same publication;¹⁷
- (f) drawing conclusions from general impressions and in the process perhaps overlooking details inconsistent with such impressions.¹⁸ Facebook and Twitter posts require an impressionistic approach rather than detailed analysis. Social media users interpret messages quickly and casually, reflecting the conversational nature of these platforms.¹⁹
- (g) having a much greater capacity for implication than a lawyer or a judge²⁰ even to the extent of drawing farfetched inferences;²¹
- (h) engaging in a certain amount of loose thinking;²²
- (i) being specially influenced by captions and their digital equivalents including, it is submitted, caricature memes on Facebook;²³
- (j) being fair minded in the sense of trying to strike a balance between the most extreme meaning the publication could have and the most innocent meaning the publication could have.²⁴
- (k) does not give equal weight to every part of a publication;²⁵ emphasis from headlines, headings, captions and images significantly influences their interpretation.
- (l) can attribute a meaning shaped by insinuations or suggestions in the publication, including being guided by the publisher to suspicious interpretation without directly stating it.²⁶
- (m) draw implications more freely, especially when derogatory. If a publisher invites a suspicious or conjectural approach, they are liable for the conclusions that an ordinary reasonable listener might draw.²⁷

¹⁵ *John Fairfax Publications v Rivkin* (2003) 77 ALJR 165 at [26] per McHugh J.

¹⁶ *Hockey v Fairfax Media Publications Pty Ltd* (2015) 237 FCR 33 at [90]-[92].

¹⁷ *Morgan v Odhams Press Ltd* (1971) 2 All ER 1156 at 1170 per Lord Morris and at 1184 per Lord Pearson; and *Dutton v Bazzi* [2021] FCA 1474 at [19], not disturbed on appeal on this point.

¹⁸ *Morgan v Odhams Press Ltd* (1971) 2 All ER 1156 at 1162 and 1165 per Lord Reid.

¹⁹ *Stocker v Stocker* (2020) AC 593 at [47] per Lord Reed, Lady Black, and Lords Briggs (Kitchin agreeing). Cf. *Dutton v Bazzi* [2021] FCA 1474 at [23]-[24].

²⁰ *Plymouth Brethren* (2018) 97 NSWLR 739 at [75] per McColl JA (Beazley P agreeing).

²¹ *Morgan v Odhams Press Ltd* (1971) 2 All ER 1156 at 1162 per Lord Reid.

²² *Morgan v Odhams Press Ltd* (1971) 2 All ER 1156 at 1163 per Lord Reid.

²³ *Chakravarti v Adelaide Advertiser* (1998) 193 CLR 519 per Kirby J at [134] item 4.

²⁴ *John Fairfax Publications v Rivkin* (2003) 77 ALJR 165 per McHugh J at [26].

²⁵ Cf. *Wagner v Harbour Radio Pty Ltd* [2018] QSC 201 at [35].

²⁶ *John Fairfax Publications v Rivkin* (2003) 77 ALJR 165 per McHugh J at [26].

²⁷ *John Fairfax Publications v Rivkin* (2003) 77 ALJR 165 per McHugh J at [26].

- [30] Ordinary readers draw implications much more freely than lawyers, including judges, especially when these implications are derogatory.²⁸ But if an imputation can only emerge as the product of a strained, forced or utterly unreasonable interpretation, it must be so unreasonable, i.e. utterly unreasonable, that a jury could not find such an interpretation open to the hypothetical ordinary and reasonable reader.²⁹
- [31] The ordinary and reasonable reader is presumed to have a uniform understanding of the language and images used in a publication.³⁰ When words or images are unclear, ambiguous, or unusual, the ordinary and reasonable reader is given a lot of leeway to draw imputations adverse to the defendant.³¹ But where there are multiple interpretations, the court must select one single meaning that the impugned matter is taken to convey.³² If there are competing meanings, then the most prominent is adopted; if meanings are equally open, then the most defamatory meaning to be selected.³³

1st Rob Pyne Publication

Thanks to all people supporting a Queensland ICAC. Those in power rarely welcome increased scrutiny, but the ordinary decent people in government roles (who are often the victims) need us to maintain the rage!"



- [32] The plaintiff asserts that the following imputations are contained in the 1st Rob Pyne publication:
- (a) The plaintiff was a powerful crime boss; and

²⁸ *Favell v Queensland Newspapers Pty Ltd* (2005) 79 ALJR 1716 at [10]-[11] per Gleeson CJ, McHugh, Gummow and Heydon JJ.

²⁹ *Favell v Queensland Newspapers Pty Ltd* (2005) 79 ALJR 1716 at [9] per Gleeson CJ, McHugh, Gummow and Heydon JJ.

³⁰ *Readers Digest Services Pty Ltd v Lamb* (1982) 150 CLR 500 at 505-506 per Brennan J (Gibbs, Stephen and Wilson agreeing) cited with approval in *Radio 2UE Sydney Pty Ltd v Chesterton* (2009) 238 CLR 460 at [7].

³¹ *Trkulja v Google LLC* (2018) 92 ALJR 619 at [32]; *Amalgamated Television Services Pty Ltd v Marsden* (1998) 43 NSWLR 158 at 165; *Wagner v Harbour Radio Pty Ltd* [2018] QSC 201 at [34] per Flanagan J.

³² *Slim v Daily Telegraph* (1968) 2 QB 157 at 173; *Ten Group v Cornes* (2012) 114 SASR 46 at [43]-[50] per Kourakis CJ (Gray J agreeing); *Hockey v Fairfax Media Publications Pty Ltd* (2015) 237 FCR 33 at [73]; *Dutton v Bazzi* [2021] FCA 1474 at [17].

³³ *Ten Group v Cornes*. (2012) 114 SASR 46 at [171], [175], [176], [193]-[197] and [214]-[219] per Blue J.

- (b) further and alternatively, the plaintiff operated through the LGAQ as a cartel, a profitable criminal empire; and
 - (c) further and alternatively, the plaintiff was corrupt; and
 - (d) further and alternatively, the plaintiff sought to corruptly influence public officials including elected members of the Queensland Parliament; and
 - (e) further and alternatively, the plaintiff had overborne the ethical standards which the LGAQ should have provided to local government; and
 - (f) further and alternatively, the plaintiff as the CEO of the LGAQ, did not welcome appropriate scrutiny of himself or the LGAQ; and
 - (g) further and alternatively, the plaintiff as CEO of the LGAQ, contributed to ordinary decent people in government roles becoming victims by the misuse of power.
- [33] The caricature's physical features and contextual elements (like "LGAQ" on the shirt and book) identified the plaintiff in a controlling role in the Association, and would lead an ordinary reasonable reader to identify the plaintiff in the 1st Rob Pyne Publication as being within the class of "*those in power*" who "*rarely welcome increased scrutiny*" as distinct from "*the ordinary decent people in government roles (who are often the victims)*". In my view, when read with the wording in the publication, in the context of the parliamentary conduct, public debate, and other proximate posts and comments, the caricature goes beyond mere satire or vulgarity that might be considered fair comment or the 'rough and tumble' of political debate.
- [34] The asserted imputations (a) and (b) largely depend upon the ordinary and reasonable reader recognising that the plaintiff has attributed to him Jabba the Hutt's essential characteristics of being a corrupt and criminal villain, a 'baddie', and a very negative person.
- [35] As to imputation (a) that the plaintiff was a powerful crime boss, the plaintiff argues that he was well known as the CEO of the LGAQ and its public spokesman, and therefore in effect, the boss, and if the ordinary honest and reasonable reader perceives him as doing corrupt criminal and villainous things, then the 1st Rob Pyne publication conveys the meaning that he was a crime boss. It is further argued that the meaning was that of a powerful crime boss since he contemplated speaking to the government and the Speaker and was, after all, one of those "in power".
- [36] The plaintiff led no evidence about the role and character of Jabba the Hutt in the movie Star Wars. Instead, he relied upon his presumed public notoriety inferentially known to the ordinary reasonable reader as a criminal figurehead. I am not satisfied on the evidence that there is any such prolific notoriety to safely attribute such the ordinary reasonable reader.
- [37] The fourth defendant confirmed that he was "now" aware that the role which Jabba the Hutt played in the Stars Wars movie franchise was as "a corrupt and criminal villain", "a baddie" and a pretty negative person, having learned of such content in this proceeding, and was not otherwise aware by some general notoriety. Instead, he attributed the caricature as depicting a cane toad being a notorious pest in Queensland and associate with representative sporting teams, and other Queensland figures. At

best, his evidence – to the extent that it might be indicative of an ordinary reasonable reader – showed that Jabba the Hutt was an image used in cartoon political satire, not because of his movie persona, but of an overbearing, overweight and ugly character (e.g. a similar use regarding Clive Palmer and Senator Lambie). This is also consistent with the evidence of the first defendant that the Jabba the Hutt imagery was in common use due to its visual feature in relation to Donald Trump and in relation to Clive Palmer, not in the context of the movie. Although I note that Mr Millar testified that he was familiar with Jabba the Hutt as a large villainous and evil character from the fictional Star Wars franchise.

- [38] It seems to me that the alleged imputation (a) that the plaintiff is a powerful crime boss and (b) that the plaintiff operated through the LGAQ as a cartel, a profitable criminal empire, can only emerge as the product of a strained, forced or utterly unreasonable interpretation with knowledge of the character and role of Jabba the Hutt in the movie Star Wars. In my view, without such notoriety, a jury could not find such an interpretation open to the ordinary and reasonable reader as alleged in imputations (a) and (b). Therefore, the 1st Rob Pyne Publications does not have the capacity to convey any of their pleaded imputations (a) and (b).
- [39] Even if the 1st Rob Pyne Publications had the capacity to convey any of their pleaded imputations (a) and (b), I do not accept that a jury could find the contended interpretation open to the ordinary and reasonable reader. The 1st Rob Pyne publication will more likely be interpreted as a broad critique of power dynamics and systemic issues between political parties and the LGAQ rather than conveying the specific defamatory imputations of the plaintiff as a crime boss or that he operated a profitable criminal empire as a cartel through the association.
- [40] However, the Jabba the Hutt movie role attributes are not necessary to convey imputations (c), (d), (e), (f) and (g).
- [41] Imputations (c) and (d) are anchored by the opening sentence, “*Thanks to all people supporting a Queensland ICAC,*” which would be understood by a reasonable reader as referring to the Independent Commission Against Corruption. Corruption in the context of a public commission implies bad or improper behaviour, dishonesty, and a willingness to act without integrity for personal gain or an improper purpose in public office.
- [42] The plaintiff argues that imputation (d) is evident from the thought bubble, which shows the plaintiff contemplating influencing public officials, including Queensland Parliament members. The bags of money behind the figure imply ill-gotten gains that would be lost if the plaintiff’s meetings with the government and the Speaker failed to silence the fourth defendant. This suggests the plaintiff is acting dishonestly for personal gain. To a reasonable reader, the caricature indicates that the plaintiff is seeking to corruptly influence public officials. This level of corruption justifies the call to “maintain the rage!” The plaintiff also contends that Imputation (c) follows from imputation (d), as it involves covering up unethical actions. The depiction suggests that the plaintiff has benefited from dishonest gains and is trying to protect them.
- [43] Whilst it is tolerably clear that imputation (c) draws from the notion that corruption involves covering up improper actions and imputation (d) is derived from the thought bubble’s words. I think it is an utterly unreasonable interpretation to attribute a return

of some personal improper benefit, gain or money in doing so to the plaintiff himself. It seems to me that the depiction of the plaintiff is as representative of the LGAQ body, that is, as the embodiment of the LGAQ, with its political support found in the acronyms on the figure's shirt. The embodiment is constraining the LGAQ's ethics manual, which sandwiches cash money, suggesting to a reasonable reader that the association, albeit under his leadership, is engaged in money-motivated unethical behaviour, which the plaintiff seeks to protect from unwelcome scrutiny by a corruption watchdog. In that sense, I think the publication is capable of conveying imputation (c) and did convey that imputation.

- [44] Imputation (d) is derived from the thought bubble's words. The figure depicts the plaintiff contemplating influencing public officials, including Queensland Parliament members, to oppose the creation of such a body at the urging of the fourth defendant lest he "ruin everything" of the status quo. The bags of money behind the figure depicting the acronyms "ALP" for the Australian Labour Party and "LNP" for the Liberal National Party suggest not ill-gotten gains but the political funding protecting the association's interests. Again, I do not accept the plaintiff's contention that it represents personal ill-gotten gain by the plaintiff, but instead, it represents the unscrutinised political relationships and gain of the association. Nor do I accept that it implies to a reasonable reader that the plaintiff intended to act dishonestly and without integrity for personal gain, seeking to corruptly influence public officials. But it highlights the close relationship with, and perceived power and ease of access to, the government and speaker to lobby against the fourth defendant's use of his position and mode for agitating for an anti-corruption commission. It follows that the figure depicts the plaintiff contemplating meeting public officials, including Queensland Parliament members, for an improper purpose to oppose the creation of such a body at the urging of the fourth defendant lest he "*ruin everything*" of the status quo for an improper purpose of protecting the associations unethical practices. In that sense, I think the publication is capable of conveying imputation (c) and did convey that imputation.
- [45] Imputation (e) is based on the caricature of the plaintiff holding a chain restraining the LGAQ Ethics Manual, depicted as a book-like figure. Chains symbolise slavery, leading a reasonable reader to infer that the plaintiff unethically subjugated the ethical standards the LGAQ should have provided to local government.
- [46] I accept the plaintiff's argument regarding that imputation (f). It is based on the post's statement, "*Those in power rarely welcome increased scrutiny,*" and the accompanying caricature. The caricature depicts the plaintiff as a powerful figure contemplating silencing "*that bloody Rob Pyne*" by speaking to the government and the Speaker. References to the LGAQ and the controversy over the plaintiff's criticism of the fourth defendant's use of parliamentary privilege further support this interpretation. Therefore, the publication is capable of conveying imputation (f) and did convey that imputation.
- [47] Imputation (g) follows from the words, "... *but the ordinary decent people in government roles (who are often the victims) need us to maintain the rage!*" The word "*victim*" means a sufferer from an adverse action or agency. I agree with the plaintiff's submission that an ordinary reasonable reader would have inferred that decent people in government were being adversely affected by "*those in power,*" a class that included the plaintiff as the LGAQ executive head, and that is why they did not welcome increased scrutiny. The accompanying caricature would have reinforced

this idea by illustrating what those in power did not want to be scrutinized: the fourth defendant's revelations under parliamentary privilege and the undermining of the ethical standards the LGAQ should have provided to local government. But I do not accept, as being utterly unreasonable for the reasons already discussed for Imputation (c) & (d), the interpretation the resistance of scrutiny was to protect that the ill-gotten gains (represented by the bags of money behind the figure's tail). Nevertheless, with that small reservation, I find that the publication is capable of conveying imputation (g) and did convey that imputation.

- [48] Therefore, I find that the 1st Rob Pyne Publication was capable of, and did in fact convey, the imputations (c), (d), (e), (f) and (g).

2nd Rob Pyne Publication

"We all put our recyclables in the bin, doing the right thing. After that, the truth is a disgrace! Corruption is rife and it is no surprise that local government is at the heart of the crooked behaviour. Please watch this doc @ <http://www.facebook.com/abc4corners/videos/10154861721440954>".

- [49] The plaintiff alleges that the following imputations are contained in the 2nd Rob Pyne publication:

- (a) The plaintiff was at the heart of crooked behaviour; and
- (b) further and alternatively, the plaintiff contributed to corruption being rife.

- [50] I have already found that an ordinary reasonable reader is able to identify the plaintiff in the 2nd Rob Pyne Publication as a key individual associated with "*local government*", which is slated as being "*at the heart of the crooked behaviour*" where "*corruption is rife!*"

- [51] Whilst the wording draws the reader to watch the Facebook report of the ABC program Four Corners and its wider context of improper recycling practices in local government, the publication must be read in the context of the surrounding discourse. It is made in the context of the call for the anti-consumption commission, use of parliamentary privilege, reactive posts and comments by others, and the 1st Rob Pyne Publication.

- [52] It seems to me to plainly follow that, both imputation (a) and (b) are capable, and in fact conveyed, by the 2nd Rob Pyne Publication.

3rd Rob Pyne Publication

"Those in power are the problem. Rather than attack the cause of systemic corruption they are attacking and trying to discredit me. The politics of 'power and privilege' by insider groups has dominated for too long and it is time to smash it open!"

- [53] The plaintiff asserts that the following imputations are contained in the 3rd Rob Pyne:

- (a) the plaintiff was, with others, a member of insider groups, including the LGAQ, who had dominated for too long; and
 - (b) further and alternatively the plaintiff was, with others, not prepared to attack the systemic cause of corruption; and
 - (c) further and alternatively the plaintiff was, with others, the problem; and
 - (d) further and alternatively, the plaintiff with others, deserved to be smashed open; and
 - (e) further and alternatively, the plaintiff was facilitating and further and alternatively, allowing systemic corruption.
- [54] Again, context remains important to considering the alleged imputations, including the earlier publications by the fourth defendant, other posts and comments, and the continuing controversy regarding parliamentary privilege.
- [55] I have already found that an ordinary reasonable reader would identify the plaintiff in the 3rd Rob Pyne Publication as being within one of “*Those in power*” who had publicly engaged in criticism of the fourth defendant, and therefore “*Rather than attack the cause of systemic corruption, they are attacking and trying to discredit me*”. He was also the head of one of the “*insider groups*” that long dominated with “*power and privilege*” as described in the 3rd Rob Pyne Publication.
- [56] The last sentence of this post supports imputation (a), particularly considering the first two sentences. In this context, the LGAQ and its CEO, the plaintiff, could be seen by a hypothetical ordinary and reasonable reader of the Rob Pyne Facebook pages as one of the “*insider groups*” that have “*dominated for too long*”. Therefore, imputation (a) is capable, and in fact conveyed, by the 3rd Rob Pyne Publication.
- [57] As for imputations (b) and (e) the plaintiff argues that, due to the plaintiff’s criticism of the fourth defendant in the course of the public controversy, which involves the plaintiff attacking the fourth defendant and necessarily trying to discredit him, these words were previously observed as identifying the plaintiff. However, as the argument goes, in the minds of the ordinary and reasonable reader of the fourth defendant’s Facebook page, they also ascribe to the plaintiff in his doing so a desire not to attack the systemic cause of corruption.
- [58] I disagree. It seems to me that the alleged imputations (b) and (e) could only arise from a strained, forced, or completely unreasonable interpretation, especially when considering the context of the public discourse, other posts, comments, and the publication itself. In my view, the public discourse, including the plaintiff’s criticism, was focused on the fourth defendant’s reckless use of parliamentary privilege and not a failure of preparedness to “*attack the cause of systemic corruption*” and not to somehow facilitate or allow systemic corruption. Therefore, I do not believe that a jury could reasonably interpret the publication as conveying the imputations claimed by the plaintiff in (b) and (e). Consequently, I do not accept that these imputations are capable of being, or were actually, conveyed by the third Rob Pyne publication.
- [59] The first sentence of this post clearly supports imputation (c) through its literal wording. The plaintiff is identified as one of “*those in power*” who collectively form “*the problem.*” Similarly, imputation (d) is derived from the literal words, “*it’s time*

to smash it open,” by reference to the “insider groups,” including the LGAQ under the plaintiff’s leadership, who were engaging in the politics of “*power and privilege*.” Therefore, imputations (c) and (d) are capable, and are in fact conveyed, by the 3rd Rob Pyne Publication.

4th Rob Pyne Publication

“I have never dodged a bill or traded while insolvent in my life. Never taken an overseas trip at ratepayer/taxpayer expense or taken money from developers. Those who want to silence me need to be held to account and these weak little men with big expense accounts need to understand, “you are not scaring anyone” and people are awake to you!”

- [60] The plaintiff asserts that the following imputations are contained in the 4th Rob Pyne publication:
- (a) the plaintiff had acted in a way which inappropriately silenced the fourth defendant; and
 - (b) further and alternatively, the plaintiff needed to be held to account;
 - (c) further and alternatively, the plaintiff should be aware that people were awake to his wrongdoing.
- [61] The plaintiff emphasis that the context is important in determining the imputations because of the regular readership of the fourth defendant’s Facebook page, including the public controversy of him using parliamentary privilege, but also the proximate 1st, 2nd and 3rd Rob Pyne publications.
- [62] I have found that an ordinary reasonable reader is able to identify the plaintiff in the 4th Rob Pyne Publication as being within the class of “*those who want to silence*” the fourth defendant, who “*need to be held to account*” and as a member of the class of “*weak little men*” who “*people are awake to*”.
- [63] The plaintiff relies upon the third sentence of this post as the basis for imputations (a) and (b).
- [64] While I disagree that the imputation is derived from the wording “*must be held to account*”, it seems to me that “*those who want to silence*” the fourth defendant, which included the plaintiff, did so for the improper purpose of “*scaring*” the fourth defendant and anyone of his supporters, then their intimidatory purpose is suggestive of “*inappropriate*” conduct. Imputation (b) is capable of being conveyed by reference to the third sentence. Stating that the plaintiff, among others, “*must be held to account*”, as distinct from being called to account, suggests that the plaintiff must face punishment or other forms of sanction or condemnation to account for past wrongful actions. In contrast, being called to account simply requires a person to explain their actions. Therefore, the 4th Rob Pyne Publications does have the capacity to convey, and did, in fact, convey the pleaded imputation (a) and (b). Imputation (c) is also, therefore, capable of being conveyed by the last sentence that “*people were a wake-up to his wrongdoing*”, for which the plaintiff “*must be held to account*”.

- [65] Therefore, the 4th Rob Pyne Publications does have the capacity to convey, and did convey the overlapping pleaded imputations (a), (b) and (c).

5th Rob Pyne Publication

“When will this government act on corruption? The evidence is overwhelming. If the premier will not announce a Commission of inquiry into corruption in government administration, the parliament should with true confidence and demand a state election. We must stop the rot!”

- [66] The plaintiff alleges that the following imputations are contained in the 5th Rob Pyne publication are that the plaintiff:

- (a) amongst others, the plaintiff was subject to overwhelming evidence of corruption; and
- (b) further and alternatively, the plaintiff, amongst others, ought because of that corruption, be the subject of government action; and
- (c) further and alternatively, the plaintiff, amongst others, was contributing to the rot of corruption.

- [67] Of course, the relevant context includes the public discourse of the fourth defendant’s use of parliamentary privilege, the attribution of corruption and need for a corruption commission in the 1st Rob Pyne publications, other proximate posts and comments in the fourth defendant’s public Facebook page, and the cumulation of the series of the 2nd 3rd and 4th Rob Pyne publications.

- [68] I have found that an ordinary reasonable reader to identify the plaintiff in the 5th Rob Pyne Publication as a key individual *“in government administration”* about which there is a call for the government to act on corruption and for the premier to announce and inquiry into *“corruption”* to *“stop the rot”*.

- [69] It follows from the literal interpretation that imputations (a), (b) and (c) are capable of being conveyed, and were conveyed, by the 5th Rob Pyne publication.

Were the imputations conveyed in the publications defamatory of the plaintiff?

- [70] The test for defamatory matter is whether the published content is likely to make an ordinary reasonable person think less of the plaintiff, considering all aspects of a person’s standing in the community.³⁴ While general community standards are not part of the test, they may be relevant when assessing the impact of an imputation on the plaintiff’s reputation, particularly for determining damages.³⁵

- [71] I have found the fourth defendant’s publications conveyed the following imputations:

³⁴ *Radio 2UE Sydney Pty Ltd v Chesterton* (2009) 238 CLR 460 at [2] – [7], [36] per French CJ, Gummow, Kiefel and Bell JJ.

³⁵ *Radio 2UE Sydney Pty Ltd v Chesterton* (2009) 238 CLR 460 at [41] per French CJ, Gummow, Kiefel and Bell JJ.

Publication	Period	Imputation
1 st Rob Pyne Publication	21/6/17 - 8/1/18	<p>(a) [not allowed]</p> <p>(b) [not allowed]</p> <p>(c) The plaintiff had overborne the ethical standards which the LGAQ should have provided to local government; and</p> <p>(d) The plaintiff as the CEO of the LGAQ, did not welcome appropriate scrutiny of himself or the LGAQ; and</p> <p>(e) The plaintiff as CEO of the LGAQ, contributed to ordinary decent people in government roles becoming victims by the misuse of power.</p>
2 nd Rob Pyne Publication	7/8/17 - 8/1/18	<p>(a) The plaintiff was at the heart of crooked behaviour; and</p> <p>(b) The plaintiff contributed to corruption being rife.</p>
3 rd Rob Pyne Publication	9/8/17 - 8/1/18	<p>(a) The plaintiff was, with others, a member of insider groups, including the LGAQ, who had dominated for too long; and</p> <p>(b) [Not allowed]</p> <p>(c) The plaintiff was, with others, the problem; and</p> <p>(d) The plaintiff with others, deserved to be smashed open.</p> <p>(e) [Not allowed]</p>
4 th Rob Pyne Publication	10/8/17 - 8/1/18	<p>(a) The plaintiff had acted in a way which inappropriately silenced the fourth defendant; and</p> <p>(b) The plaintiff needed to be held to account; and</p> <p>(c) The plaintiff should be aware that people were awake to his wrongdoing.</p>
5 th Rob Pyne Publication	23/8/17 - 8/1/18	<p>(a) The plaintiff, amongst others, was subject to overwhelming evidence of corruption; and</p>

Publication	Period	Imputation
		(b) the plaintiff amongst others, ought because of that corruption, be the subject of government action; and
		(c) the plaintiff, amongst others, was contributing to the rot of corruption.

- [72] In my view, each of the imputations found in the 1st, 2nd, 4th and 5th Rob Pyne Publications are likely to make an ordinary, reasonable person think less of the plaintiff, but I do not think so in relation to the imputations found in the 3rd Rob Pyne Publication.
- [73] The 1st, 2nd, 4th and 5th Rob Pyne Publications are sensationalist in tone and pregnant with insinuation and suggestion of improper conduct and wrongdoing, which invites readers to adopt a suspicious approach and repeatedly invites conjecture. Whereas, even amidst the negative context surrounding the publications, I think that an ordinary reasonable reader is sufficiently familiar with political workings to see that the imputations derived from the 3rd Rob Pyne Publication use a different tone for statements of broader political application and are unlikely to make an ordinary, reasonable person think less of the plaintiff. This is because: “*insider groups*” insinuate internal organisations (not individuals) who have an advisory influence on the political workings of government rather than carrying an impropriety connotation; “*dominated for too long*” is an observation about the groups’ effective policy influence, again not an implication of wrongdoing, but a desire to disrupt that dominance; “*power and privilege*” is widely used as a descriptor of those perceived with higher social economic status who gain positions of authority, but without implying misuse of their entitled background; the publication makes general observations about the nature of the groups, to which the LGAQ belongs, without suggesting that the LGAQ or, and even less so the plaintiff, engaged in unethical or improper domination; and it is preferable to the legitimate role in government systems, rather than as a personal indictment of the plaintiff.
- [74] Therefore, the imputations in the 3rd Rob Pyne publication would likely be seen as factual observations, rather than defamatory statements that could harm the plaintiff’s reputation in the eyes of an ordinary, reasonable reader.
- [75] The fourth defendant, having raised no positive defences, is liable for defaming the plaintiff as found in respect of the 1st, 2nd, 4th and 5th Rob Pyne Publications,³⁶ and damages will be assessed based on all of the imputations found for each of those publications.

ASSESSMENT OF DAMAGES

- [76] By virtue of section 6(2) of the *Defamation Act 2005* (Qld) (the Act), the operation of the general law in relation to the tort of defamation is not affected, except to the extent expressly or by necessary implication it provides otherwise. Subsection (3) provides that:

³⁶ *Defamation Act 2005* (Qld), s 8.

“Without limiting subsection (2), the general law as it is from time to time applies for the purposes of this Act as if the Defamation Act 1889 had never been enacted.”³⁷

- [77] Pursuant to s 34 of the Act, the amount of damages must reflect “an appropriate and rational relationship to the harm sustained by the plaintiff”. The section reflects the three purposes of compensation at general law.
- [78] In *Rogers v Nationwide News Pty Ltd* [2003] HCA 52³⁸ Hayne J (Gleeson CJ and Gummow J agree) refer to *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44,³⁹ to affirm the three main purposes of damages in defamation: first, they provide consolation to the plaintiff for the personal distress and hurt caused by the publication; secondly (and often considered with the first), they offer reparation for the harm inflicted on the plaintiff’s personal and professional reputation; and thirdly, they aim to vindicate the plaintiff’s reputation by influencing the opinion of others.
- [79] All three purposes of consolation, reparation and vindication are relevant here and a single amount must be awarded to serve each purpose and there must be an appropriate and rational relationship between the harm sustained by the plaintiff and the amount of damages awarded.
- [80] The recent Court of Appeal decision in *Nine Network Australia Pty Ltd & Ors v Wagner & Ors*⁴⁰ clarified the principles for awarding damages when multiple defendants are sued for multiple defamatory publications. The principle of indivisible harm was central to this case, as the harm caused by multiple defamatory publications was treated as one.
- [81] Here, applying those principles, the respective defendants should be classified as a separate tortfeasor, a joint tortfeasor, or several concurrent tortfeasors. Separate tortfeasors act independently, while joint tortfeasors collaborate in committing the defamatory act, and several concurrent tortfeasors cause indivisible harm through separate but related acts. Indivisible harm occurs when multiple acts contribute to a single, undivided injury that cannot be apportioned among the tortfeasors. In those circumstances, each tortfeasor will be liable for the entire harm if their conduct is a cause of that harm, regardless of whether they acted together or separately. The courts have consistently rejected the need for a global damages approach, instead supporting separate awards for different harms caused by each defendant. But, double recovery is not permitted, ensuring fair compensation for the plaintiff while preventing overlapping compensation for the same harm. Further, separate awards must be made for any aggravated damages (where all defendants do not jointly engage in the aggravating conduct) such that the same amount is not to be assessed against several concurrent tortfeasors for aggravating conduct.
- [82] Since the defendants’ respective and multiple applications are made in the context of the broader Facebook discourse, I think that the first and fourth defendants are

³⁷ *Defamation Act 2005* (Qld), s 6(3).

³⁸ *Rogers v Nationwide News Pty Ltd* [2003] HCA 52

³⁹ *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44

⁴⁰ *Nine Network Australia Pty Ltd & Ors v Wagner & Ors* [2020] QCA 221 at [39], [51]-[65], [76]-[82] referring to *Dingle v Associated Newspapers* (1961) 2 QB 162 and Glanville Williams, “Joint Torts and Contributory Negligence”, London, 1951. See also *Television New Zealand Ltd v Ah Koy* (2002) 2 NZLR 616 at [31].

properly to be classified as several concurrent tortfeasors, each causing indivisible harm through their respective publications but avoiding double recovery. The circumstances of the defendants' numerous, disjointed, separate, and different publications warrant separate awards of damages against each defendant and disparate consideration of aggravated damages.

[83] In the circumstances here, where the first and fourth defendants have now been adjudged liable for the imputations, some damage to the plaintiff's reputation is presumed. Any allowance on account of consolation and reparation should reflect the subjective impact of the defamation upon the plaintiff.

[84] The assessment of damages in defamation is governed by the general principles of tort concerning causation and remoteness of damage.⁴¹ In *Carson v John Fairfax & Sons Ltd*,⁴² McHugh J said in relation to damages being 'at large' that:

"No doubt the rough-and-ready process by which juries assess damages in a defamation action is not one which appeals to the many sophisticated minds of the spreadsheet generation. It does not, as the speech of Lord Shaw makes plain, purport to be a scientific, or even a pseudo-scientific, process. There are no columns and rows into which the components of the verdict can be conveniently placed, no relationships which can be made the subject of mathematical formulas. The assessment depends upon nothing more than the good sense and sound instincts of jurors as to what is a fair and reasonable award, having regard to all the circumstances of the case. That is why the damages are said to be 'at large'."

[85] The plaintiff must show causation as a pre-condition for the recovery of substantial damages for a defamatory wrong. It is sufficient that wrongful conduct is just one of several conditions sufficient to produce that damage.⁴³ Causation is a factual question decided by common sense and experience.⁴⁴ The issue is whether the injuries and damage suffered by the plaintiff were caused or materially contributed to by the defendant's wrongful conduct.⁴⁵ A defamatory wrong need not be the sole or predominant cause of damage; it is enough that it materially contributed to the damage.⁴⁶ Once the plaintiff shows causation, the evidential burden shifts to the defendant to disprove causation or entitlement.⁴⁷

[86] As Lord Diplock said in *Broome v Cassell & Co Ltd*:⁴⁸

⁴¹ *Channel Seven Sydney Pty Ltd v Mahommed* [2010] NSWCA at 244 per McColl JA (Spigelman CJ, Beazley JA, McClelland CJ in CL and Bergin CJ in Eq. agreeing)

⁴² *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44 at 115.

⁴³ *March v Stramare (E & MH) Pty Ltd* (1991) 171 CLR 506 at 509 per Mason CJ. *Medlin v State Government Insurance Commission* 1995) 162 CLR 1 at 7 per Deane, Dawson, Toohey and Gaudron JJ.

⁴⁴ *March v Stramare (E & MH) Pty Ltd* (1991) 171 CLR 506 at 522 per Mason CJ (Toohey and Gaudron JJ agreeing) at 515 and per Deane J.

⁴⁵ *March v Stramare (E & MH) Pty Ltd* (1991) 171 CLR 506 at 514 per Mason CJ, *Medlin v State Government Insurance Commission* (1995) 182 CLR 1 at 20 per McHugh J, *Romeo v Conservation Commission of the Northern Territory* (1998) 192 CLR 431 at [134] per Kirby J.

⁴⁶ *Chakravarti v Advertiser Newspapers* (1998) 193 CLR 519 at [177] per Kirby J, *March v Stramare (E & MH) Pty Ltd* (1991) 171 CLR 506 at 509 per Mason CJ, at 524 per Deane J and at 530 per McHugh J (Toohey J agreeing with Mason CJ and Gaudron J agreeing with Mason CJ and Deane J).

⁴⁷ *Chappel v Hart* (1998) 195 CLR 232 at [93] item 5 (on 271) and item 8 (on 273 and 274) per Kirby J.

⁴⁸ *Broome v Cassell & Co Ltd* [1972] AC 1027

“The harm caused to the plaintiff by the publication of a libel upon him often lies more in his own feelings, what he thinks other people are thinking of him, than in any actual change made manifest in their attitude towards him.”⁴⁹

- [87] Similarly, in *Carson v John Fairfax & Sons Ltd*,⁵⁰ McHugh J said that the damage produced by a defamation:

“... affects the feelings, sense of security, sense of esteem and self-perceptions of the person defamed. As a natural consequence, a defamation excites the anger and resentment of the victim and often enough generates a desire for retribution.”

- [88] Additional factors that are pertinent to assessing the level of the harm, also relevant here, caused by a defamatory publication include the seriousness of the accusations made in the publication, the manner and extent of its distribution, the identity and situation of the recipients and their connection with the particular plaintiff and any subsequent effects experienced by the recipients as a result of the publication.

- [89] By operation of s 35 of the Act, in defamation proceedings, damages for non-economic loss are capped, subject to an exception that the court can order a defendant to pay damages exceeding that maximum damages amount, currently \$487,500, if, and only if, the court is satisfied that the circumstances of the publication of the defamatory material warrant an award of aggravated damages. The provision does not set the upper limit of a range of damages that may be awarded for non-economic loss in defamation proceedings, but instead, merely sets a cap, which applies after damages have been assessed in accordance with s 34 and general law; aggravated damages do not need to be awarded separately; and the proviso enables the court to exceed the cap if convinced that the circumstances of the publication of the defamatory matter warrant an award of aggravated damages.⁵¹

- [90] Under s 36 of the Act, if a defendant’s malice or state of mind affects the harm suffered by a plaintiff, it is relevant to the award of damages. However, an innocent state of mind on a defendant’s part does not mitigate damages unless the plaintiff believes it to be the case. By s 37 of the Act the plaintiff cannot be awarded exemplary or punitive damages.

- [91] Section 38 provides a list of factors for mitigating damages, placing the onus on a defendant to prove these factors. The provision effectively prevents double compensation for the same loss by considering the similarities or differences in the defamatory imputations and the type of publication and its audience.⁵²

- [92] Section 39 grants the court discretion to assess damages in a single sum for multiple causes of action, provided it serves the statutory purpose of providing effective and fair remedies for harmed reputations. However, separate sums must always be assessed for each plaintiff against each defendant.⁵³ The assessment of damages for

⁴⁹ *Broome v Cassell & Co Ltd* [1972] AC 1027 at [1125]

⁵⁰ *Carson v John Fairfax & Sons Ltd* (1993) 113 ALR 577 at 623

⁵¹ Cf. *Bauer Media Pty Ltd v. Wilson (No. 2)* (2018) VR 674; *Nationwide News Pty Ltd v. Rush* [2020] FCAFC 115 at [442] to [468] per White, Gleeson and Wheelahan JJ; and *Wagner v. Nine Network Australia & Ors* [2019] QSC 284 at [245] per Applegarth J.

⁵² *Wagner & Ors v Nine Network Australia & Ors* [2019] QSC 284 at 208]-[210] and [338]-[340].

⁵³ *Sierocki & Anor v. Klerck & Ors (No. 2)* [2015] QSC 92 at [36].

non-economic loss is necessarily imprecise due to factors like the broad reach of defamatory statements, prolonged effects, lack of a market value for harm, and subjective and impressionable evaluation.⁵⁴ In cases of multiple defamatory publications by a single defendant, although mindful of overlap, a single sum can be awarded considering the cumulative impact on the plaintiff. Multiple defamatory publications, especially in social media proliferation and personal impact, may justify aggravated damages, potentially exceeding statutory caps.

- [93] The discretion under s 39 must be exercised judicially and in accordance with the general law where multiple defendants of the liability of separate, joint and several concurrent tortfeasors in the absence of express exclusion by the Act.

Consolation for personal hurt and distress

- [94] The plaintiff seeks ordinary compensatory damages for hurt and distress, a substantial component of damages for non-economic loss, as distinct from the claim for aggravated damages.
- [95] A plaintiff's personal hurt and distress include hurt feelings, anxiety, loss of self-esteem, indignity, and outrage.⁵⁵ Additionally, the grief or annoyance caused by the defamatory statement,⁵⁶ the anxiety and uncertainty experienced during litigation,⁵⁷ including media coverage of proceedings,⁵⁸ are also compensated. The harm might lie in the plaintiff's perception of what others think of them rather than actual changes in others' attitudes.⁵⁹ The seriousness and falsity of the defamatory statements are relevant to the level of personal hurt and distress and, therefore, affect the amount of compensatory damages.⁶⁰ Likewise, the plaintiff's knowledge of the extent and mode of publication, including the grapevine effect, is relevant.
- [96] The plaintiff impressed me as an intelligent, quietly spoken, effective and competent communicator who generally maintained a calm composure, with a typical display of annoyance when facing the first and second defendants during cross-examination over eight days.

⁵⁴ *Rogers v. Nationwide News Pty Ltd* (2003) 216 CLR 327 at [67] per Hayne. *Broome v. Cassell & Co.* (1972) AC 1027 at 1125 per Lord Diplock, at 1070-1072 per Lord Hailsham; *Channel Seven Sydney Pty Ltd v. Mahommed* [2010] NSWCA 355 at [220] to [222] and [236] per McColl JA (Spigelman CJ, Beazley JA, McClellan CJ at CL and Bergin CJ in EQ agreeing).

⁵⁵ *Carson v John Fairfax & Sons Ltd and Ali v Nationwide News Pty Ltd.* [2008] NSWCA 183 at [71] per Tobias and McColl JJA.

⁵⁶ *McCarey v Associated Newspapers Ltd (No. 2)* [1965] 2 QB 86 at 107 per Diplock LJ.

⁵⁷ *Broome v Cassell & Co.* (1972) AC 1027 at 1071 per Lord Hailsham; *John Fairfax & Sons Ltd v Kelly* (1987) 8 NSWLR 131 at 136; *Baffsky v John Fairfax & Sons Pty Ltd* (1991) 106 FCR 21 at 55; *Humphries v TWT Ltd* (1993) 113 FLR 402 per Miles CJ at 418; *Wagner v Nine Network* [2019] QSC 284 per Applegarth J at [1].

⁵⁸ *Cerrutti v Crestside Pty Ltd* (2016) 1 Qd.R 89 at [35] per Applegarth J (McMurdo P and Gotheson JA agreeing).

⁵⁹ *Broome v Cassell & Co* (1972) AC 1027 at 1125 per Lord Diplock; *Coyne v Citizen Finance Ltd* (1991) 172 CLR 211 at 241 per McHugh J; *Humphries v TWT Ltd* (1993) 113 FLR 402 at 416 and 417 per Miles CJ; *Ali v Nationwide News Pty Ltd* [2008] NSWCA 183 at [72] per Tobias JA and McColl JA.

⁶⁰ *Goldsborough v John Fairfax & Sons Ltd* (1934) 34 SR (NSW) 524; *Rigby v Associated Newspapers Ltd* (1969) 1 NSWLR 729 at 738 per Walsh JA; *Singleton v Ffrench* (1986) 5 NSWLR 425 at 442 per McHugh JA; *Hughes v Mirror Newspapers Ltd* (1985) 3 NSWLR 504 at 508 – 510 per Hunt J per Abadee A-JA (Sheller JA and Simos A-JA agreeing).

- [97] The plaintiff was 61 to 62 years old at trial and is now 65. He has had a distinguished career in local government administrative services and holds degrees in business and economics, as well as post-graduate qualifications in strategic corporate communications from the University of Melbourne and political campaign management from George Washington University. Over his extensive career, he held several prominent positions, including as CEO of the LGAQ from 1992 until his retirement in 2021. He also served on various boards, such as the Queensland Treasury Corporation, the Bruce Highway Trust, and the Sporting Wheelies Board for 20 years. He has received several honours, including appointment as a Member of the Order of Australia in 2018 for his significant contributions to local government, disaster recovery, and people with disabilities, a Public Service Medal in 2000 for outstanding service in local government, the Centenary Medal in 2001 in recognition of 500 leaders in Australia at the time the Centenary, National Emergency Management Medal for his efforts in the 2011/2012 natural disasters. He enjoyed coaching athletics and contributed to the community through amateur sports.
- [98] Consistent with his professional success and resilience, the plaintiff showed no apparent emotional distress. This is explicable since his evidence over eight days was predominately given by evidence in chief, and he was on his prescribed psychiatric medication. However, he did show some vocal and expressive annoyance when he was confronted by the first and second defendants during cross-examination and he was able to describe the impact he experienced due to defamatory publications.
- [99] Throughout his testimony, Mr Hallam recounted numerous instances where the defamatory statements caused him significant emotional turmoil. He felt that the publications, particularly those from the first and fourth defendants, were part of an orchestrated campaign against him, which left him feeling powerless and deeply anxious.
- [100] He described feeling angry, bewildered, and deeply hurt by the publications, which he treated as accusatory and damaged his public good reputation, particularly in local government, as follows:

Publication	Reaction
1 st Lyn O'Connor publication	<i>"Very angry. Taken back. Bewildered, really" and "It was simply untruthful."</i>
1 st Elizabeth Kennedy publication	<i>"Extremely annoyed." And "... the entire antithesis of the last 29 years of my life."</i>
2 nd Lyn O'Connor publication	<i>"I was sickened." He felt "Sick to my core."</i>
2 nd Elizabeth Kennedy publication	<i>"Well, clearly I'm the person or the thing being depicted" and "I saw it as a massive slur on my reputation." And "I was very distressed and disturbed. This (had) never happened in my professional career."</i>
3 rd Elizabeth Kennedy publication	By reason of the continuity of the Jabba the Hutt theme, the plaintiff "as someone who has been a student of political campaigning" believed there was an absolute

Publication	Reaction
	orchestrated malicious campaign against him; he did not know where this was going, did not know what was going to happen, and <i>“it just kept coming and there was more and more of it.”</i>
4 th Elizabeth Kennedy publication	<i>“... This was just out of the ordinary. I mean, as part of my job, I’m required to speak regularly with both sides of politics but more so the government of the day. And I do have dealings with the Speaker on... certain matters. And to suggest that I was doing something completely improper was, you know – I mean damaged me, in my mind, in terms of my standing with those people.”</i>
5 th Elizabeth Kennedy publication	<i>“It was more of the same. I thought it was very offensive. I... was just getting angrier and angrier.”</i>
6 th Elizabeth Kennedy publication	<i>“Just bloody angry. One of the things that we’ve done is to provide a service that no other state associations ever done in terms of training, advice, assistance to local government elected members. And we’re being accused of exactly the opposite.” and “Crime and cover up” and “just a falsehood” and “just, again, (a) very nasty attempt to belittle the LGAQ and what I had done.”</i>
7 th Elizabeth Kennedy publication	<i>“When people start to talk about inquiries and investigations that’s serious. That’s no small matter. And I was perturbed. Very perturbed.”</i>
8 th Elizabeth Kennedy publication	<i>“The post was calling for my investigation and making the very clear suggestion I should be jailed.” and “I’d never experienced anything like this previously in my life. I was disturbed, angry, perplexed.”</i>
9 th Elizabeth Kennedy publication	<i>“I was deeply angry and... feeling I had no control (over) people making outrageous complaints and statements about me.” and “The worst offence I’ve ever had in my life is a parking ticket. The LGAQ, in its 125-year history, has never been the subject of an adverse finding.” and “... pretty over the top and outrageous.”</i>
3 rd Lyn O’Connor publication	<i>“Just angry because that is the opposite of what we do. That is completely and utterly false and it was just attempts to malign the LGAQ and myself.” and “It was becoming increasingly personal, very nasty, very personal, very nasty, very directed.” and “I was obviously upset. Again, not knowing who either of these people were, what their motivations were, it was - ... quite bewildering. It’s just an extraordinary position to be in when these sorts of attacks are being made upon you...”</i>

Publication	Reaction
	<i>and multiple attacks, might I say, not one, multiple, day after day."</i>
1 st Rob Pyne publication	<i>"I changed my perspective on the whole matter. I mean, all of a sudden, it had gone from 2 people I didn't know to someone I was – knew of... and he was using exactly the same means." and "... it was an absolute attack on me." and "You can see the reference to Chris Calcino, who is a well-known journalist for the Cairns Post, as well as other journalists there... Lyn O'Connor gets mentioned and... the Queensland Local Government Reform Alliance. So he's putting his imprimatur on the attacks that O'Connor and Kennedy were making and spreading it much wider." and "It changed everything." and "... it goes from someone out there in the community having a crack to a member of Parliament, someone with standing... the Pyne family has a great reputation in this part of the world – to be directly attacking me."</i>
4 th Lyn O'Connor publication	<i>"So I was being accused outright of an attack on an innocent, honest man, of which I had had no involvement, no knowledge until I read it in the paper the next day." and "In my entire life, that's the worst thing that's ever been said about me, that I would attack an innocent man for political purposes. It was extraordinary, it was outrageous, it was just incomprehensible."</i>
5 th Lyn O'Connor publication	<i>"I abhor drugs... It had broadened it out. I've gone from someone who bribes politicians to having people bashed up to being a major drug dealer." and his feelings about it were, he felt "ill. Physically ill."</i>
2 nd Rob Pyne publication	<i>"Hurt. Anxiety. This was just getting away, way out of hand. The list of people that was being circulated to, including mainstream media, and this continued to attack regarding corruption and corrupt behaviour."</i>
3 rd Rob Pyne publication	<i>"It was a matter of great concern. It had gone from social media to mainstream media."</i>
4 th Rob Pyne publication	<i>The publication "was political strategy" which the plaintiff "believed (he) was a victim of..." and "It (had) become cumulative I just couldn't see where it was going to end!!" and "I was in the process of getting more and more concerned, feeling that I was in a washing machine. Feeling that this was orchestrated and that it had a political as well as... a mainstream media as well as a social media element and that it was becoming a very large issue (though) it was still patently untrue and not</i>

Publication	Reaction
	<i>supported by fact.</i> ”; The plaintiff, somewhat obliquely, attempts to defend himself against the defamatory publications he had been enduring at this time in Ex 49.
6 th Lyn O’Connor publication	<p><i>“I was pretty buggered, I think, by that stage. I was starting to suffer... not sleeping. Irritable, angry.”</i> and <i>“It slowed me down at work. It meant I was more withdrawn from social activity and just went to work, did my job and came home”</i>; at this point, in the barrage of defamatory publications, The plaintiff attended the annual conference of the LGAQ where the <i>“... common theme of the various people who spoke to (him) was that they thought the personal attacks on him were gutless and that they felt sorry for him in that (he) was doing (his) job defending them as (he was) required and that he had their full support; however, these well-meaning words just made him angry. It just drove home to me – this wasn’t an exercise between me and Mr Pyne or Ms O’Connor. This was a major issue affecting local government... It didn’t do much for (his) mental state...”</i> (he) <i>“was very cross and had a major argument”</i> with his partner, Ms Lee; he was just not coping with the <i>“reality of it, being confronted by faces and people...”</i> and he thought he was failing in his responsibility to protect the people involved in local government.</p>
7 th Lyn O’Connor publication	<p><i>“To my angst it was...”</i> another accusation of criminality such that the plaintiff worried absolutely about his future <i>“it ... was just cumulative... It just kept coming and there was more of it. It was broadening all the time. It was going to wider and wider circles.”</i></p>
Respectively, the 8 th , 9 th , and 10 th Lyn O’Connor publications	<p><i>“High level of anger. High level of frustration, powerlessness, inability to deal with complete and utter falsehoods.”</i> The reference to churches moving offenders from parish to parish affected how the plaintiff, a devout Roman Catholic, reacted to this post, as he found a concept of doing something similar to the paedophilia in the church as <i>“just simply beyond the pale”, “It just did (his) head in.”</i></p>
11 th Lyn O’Connor publication	<p>By this time the plaintiff was getting little or no sleep and made appointments with his general Practitioner about his diverticulitis and his mental health; he decided to speak to his general practitioner at this point about his mental health because he had deteriorated to the extent that he was not able to function properly and people that looked after him and loved him and worked with him knew he needed to get some help; at the time he saw Dr Mainstone</p>

Publication	Reaction
	on 12 October 2017, he told her he was suffering from anxiety and anger.
11 th Elizabeth Kennedy publication	<i>“I was just bloody annoyed because we had made – I had personally made huge efforts to assist Mr Loft.”</i>
12 th Elizabeth Kennedy publication	<i>“Angry... You know, one of things the LGAQ does is fight for its members... We all defend members to the best of our ability within the constraints of the law... It was a further reference to the Pisasale situation where reference was made to the AFP, their sniffer dogs, that they should be let loose on the LGAQ headquarters. In other words, they would find drugs and money at our place of work 24 Evelyn Street, Newstead... I was buggered... It's just hard to describe... it's just another attack on me and the LGAQ, re-raising the whole issue of criminality, money laundering and all the things that were repeated again and again.”</i>
13 th Elizabeth Kennedy publication	The plaintiff's emotional reaction to this post was by that stage <i>“ongoing despair.”</i>
12 th Lyn O'Connor publication	The plaintiff's reaction to the post was, it was <i>“Just outrageous. We were at a meeting to discuss disaster recovery arrangements. The reason that we were the first group to see the Premier was to discuss those very matters, to make sure things hadn't slipped during the caretaker period, and that all the appropriate reconstruction efforts were happening.”</i>
13 th Lyn O'Connor publication	<i>“It was part of a continuum. I was frustrated, angry. I just had a complete sense of powerlessness in the whole matter. It was very particular.”</i>
14 th Lyn O'Connor publication	<i>“It a slight. My family are one of the most historic racing families in Queensland, and the fact that I was linked to owning horses with the ex-CEO of Ipswich and people from the audit office, was just totally untrue.... There was just no limit to the untruth... You can go straight to Racing Queensland and to the National Racing Authority and have those things checked.”</i>
15 th Lyn O'Connor publication	<i>“I guess you'd get to a point beyond exasperation... It's just snide, it's having a go, a dig, any opportunity.”</i>
16 th Lyn O'Connor publication	<i>“... Her attempt to say there was no accusation was totally disingenuous, that the LGAQ was corrupt and that I was corrupt was just a repeat of what had been said many times, and that there should be some sort of</i>

Publication	Reaction
	<i>parliamentary select committee to investigate these matters and me, even though they weren't true."</i>
17 th Lyn O'Connor publication	<i>"I'm proudly a member of a well-regarded racing families [sic] in Queensland. We've never had any issues. And I was repeatedly being accused of owning racehorses with criminals, which is an automatic disbar from racing horses in this country." And that "absolutely" upset him.</i>
18 th Lyn O'Connor publication	<i>"It was just open slather. It just kept coming. It kept getting worse, and there was no end to the level of her – in her mind, of the criminality I was involved in."</i>
19 th Lyn O'Connor publication	<i>"Some of it was vicious, out of control. It was trying to take me down, to try and do as much damage as they humanly could."</i> <i>Of the opening remark in Ms O'Connor's post - "Uses defamation to silence critics", the plaintiff remarked: "I certainly don't use defamation to silence anyone. It's to protect my rights."</i>
20 th Lyn O'Connor publication	<i>"At that stage... I had deep depression, and it just kept adding to my anxiety and my sense of hopelessness."</i>
21 st Lyn O'Connor publication	<i>"Just sick in the guts... There's a common theme in all of this and it's around sex and money and gambling and violence and that's just simply not who I am."</i>
22 nd Lyn O'Connor publication	<i>"By this stage of the proceeding, I was just numb. I was just surviving day-to-day with a lot of medication and seeing my psychiatrist once a month."</i>
23 rd Lyn O'Connor publication	<i>"I was buggered. I mean... I was in a bad way, and it was just unrelentless and this was a week before Christmas."</i>

- [101] The plaintiff placed greater weight on the defamatory posts of the first and fourth defendants than on other associated and surrounding comments by other Facebook users, which the plaintiff regarded as inconsequential.
- [102] He described how these experiences impacted his personal life. This included, during a holiday in Ireland, he became emotionally overwhelmed while reading a legal document related to the case and broke down in tears in a public garden.
- [103] He made claims of significant weight gain and increased alcohol consumption, although these are difficult to gauge against a background of his pre-existing obesity and drinking habits. He testified frankly, even confessing, after being challenged in cross-examination, that he had understated his alcohol consumption to his psychiatrist.

- [104] Colleagues, including Ms Hughes, the Human Resources Manager at LGAQ, noticed significant changes in the plaintiff's demeanour and personality, leading to concerns about his mental well-being. This ongoing stress affected his work performance, leading to periods of sick leave and a notable episode where he experienced a severe adverse reaction to medication, causing him to slur his words and struggle to form coherent thoughts during a staff meeting. In late 2017, Ms. Hughes, the LGAQ's Human Resources Manager, noticed a significant decline in the plaintiff's mental health due to online harassment. This led to frequent sick leave and, by September/October 2017, a diagnosis of Major Depression with Anxious Distress. His symptoms included insomnia, agitation, irritability, and severe nightmares, which his partner, Ms. Lee, corroborated. The LGAQ's chairman, Mr. Jamieson, noticed the impact of the defamatory publications on his mental health and insisted that he take time off work on two occasions. In January 2020, a likely medication-induced episode occurred during the staff meeting. In early 2020, during a holiday in Ireland, the plaintiff had an emotional breakdown while reading legal documents, highlighting the ongoing toll on his mental health.
- [105] The plaintiff himself perceived a severe decline in his own mental health, believing that he had symptoms of post-traumatic stress disorder. He was the subject of psychiatric diagnosis and treatment for Major Depression with Anxious Distress. His symptoms included insomnia, agitation, anger, irritability, and distressing nightmares, which were so severe that his partner had to sleep in a separate room.
- [106] It seems to me that the magnitude of harm, in the sense of personal distress and hurt caused by the publication, may include psychiatric impacts.⁶¹ In that regard, as with other torts, the plaintiff relies upon the 'eggshell skull' principle applies such that a defendant is responsible for the full extent of the harm caused by the defamatory statement, regardless of whether the plaintiff was particularly susceptible to harm due to their specific circumstances or sensitivities, provided they are not too remote.⁶² Furthermore, an award of damages in defamation, similar to other torts, is made "*once and for all*," encompassing both the loss and damage occurring before the assessment and those likely to occur after the assessment.⁶³
- [107] I heard evidence from Dr Greaves regarding the plaintiff's psychiatric health.
- [108] The plaintiff saw Dr Greaves, a psychiatrist, on 13 November 2017 after a referral by his General Practitioner doctor. Dr Greaves had previously treated the plaintiff. Following this further referral, the plaintiff had 37 further consultations with Dr. Greaves until the trial commenced. Dr Greaves prescribed medication for his psychiatric condition, which I accept the plaintiff generally followed faithfully with only occasional forgetfulness. The plaintiff affirmed Dr Greaves' notes, including his record of a "crusade about 'council'" as referable to a broader campaign involving councils, the LGAQ, and himself. However, during the trial, the plaintiff

⁶¹ *Mirror Newspapers v Jools* (1985) 5 FCR 507 at 510, *Rigby v Associated Newspapers* (1963) 64 SR(NSW) 34 PER at 36-57 Manning J.

⁶² Cf. *Mount Isa Mines Ltd v Pusey* (1971) 125 CLR 383 at 389 and 390 per Barwick CJ, at 391 and 392 per McTiernan J, J at 393 per Menzies, at 402, 404 and 405 per Windeyer J and at 414 per Walsh J, *Tame v New South Wales* (2002) 211 CLR 317 at 193 per Gummow and Kirby JJ and at [44] per Gaudron J agreeing; *Chester v Waverley Corporation* (1939) 62 CLR 1 at [26] per Evatt J; *Neall v Watson* (1960) 34 ALJR 364 at 367L per Dixon CJ, McTiernan, Kito, Menzies and Windeyer JJ, *Commonwealth v McLean* (1996) 41 NSWLR 389 at 406D to E per Handley JA and Beazley JA (Santow A-JA agreeing).

⁶³ *Coyne v Citizen Finance Ltd* (1991) 172 CLR 211 at 234 per Toohey J (Dawson and McHugh JJ agreeing).

acknowledged that while he had been generally truthful with Dr. Greaves, he had underreported his alcohol consumption out of embarrassment. He conceded that he was drinking a bottle of red wine a night, not three or four glasses or two or three glasses, daily. There is no direct evidence that the plaintiff's under reporting of alcohol consumption to Dr Greaves significantly impacted the psychiatric condition or treatment. Dr Baboolal's recognition of "alcohol excess" as a symptom supports this.

- [109] Having regard to Dr Greaves' evidence, and that of the plaintiff and other observers, the plaintiff's psychiatric condition and mood has fluctuated since 2017, with the commencement of legal proceedings initially giving him hope, but later leading to further distress. In September-October 2017, Dr Greaves diagnosed that the plaintiff began suffering from Major Depression with Anxious Distress, a condition he continues to endure. His prominent symptoms include preoccupation with events, depression, anxiety, agitation, insomnia, and distressing nightmares. Dr Greaves' view is that the plaintiff's depression and psychiatric treatment likely perpetuated his obesity, though she did not suggest that his psychiatric condition caused his obesity. Instead, Dr Greaves opined that the publications contributed to a cycle of obesity and depression. Dr Greaves suggested that the plaintiff's obesity, worsened by depression, may have made biliary colic and cholecystitis more likely, but her opinion was tentative. She linked obesity and poor diet, exacerbated by depression, to the condition and noted that the plaintiff believed desvenlafaxine worsened his diverticulitis, which she considered likely due to the drug's effects on bowel motility. This condition has significantly impacted his daily well-being and enjoyment of life. The plaintiff's physical health has also been affected, with his psychiatric condition and its treatment contributing to issues such as weight management difficulties, exacerbation of sleep apnoea, diverticular disease, high blood pressure, gastroesophageal reflux disease, and leg pain. Additionally, the plaintiff experienced side effects from medication, including nausea, hangover effects, and slurred speech. Dr Greaves spoke of the plaintiff's prior illness, progress of recovery, vulnerability and recurrence. She testified how he recovered well and was discharged from treatment for the second episode on 24 March 2014, which was also followed by a stable recovery as at 23 June 2016. However, due to his history, Dr Greaves considered him vulnerable to a recurrence of his condition, noting that individuals predisposed to depression, likely due to genetic factors, often experience relapses under external stress. Dr Greaves, having treated the two episodes of major depression, attributed the recurrence of the plaintiff's condition to the stress induced by the defamatory publications.
- [110] An independent psychiatric review by Dr Garg confirmed Dr Greaves' findings. He agreed that harsh words and false accusations could cause psychiatric illness, particularly when spread through social media literature linking negative comments to anxiety, and how studies show an exacerbation of a victim's sense of powerlessness and helplessness experienced by the plaintiff.
- [111] Physician Dr Baboolal also provided a report, acknowledging that the plaintiff's depression likely perpetuated his obesity and impaired his sleep. However, he differed from Dr Greaves on the extent to which depression influenced other conditions, such as gallbladder disease and hernia. I prefer Dr Baboolal's opinions over Dr Greaves, where they are inconsistent since Dr Baboolal was better qualified about physical disorders secondary to the plaintiff's psychiatric state and medication.

- [112] Dr Baboolal opined that while the plaintiff's obesity preceded the depressive episode linked to the publications in question, he opined that the depression likely contributed to maintaining excess weight through unhealthy lifestyle choices. Without depression, the plaintiff would have likely made more concerted efforts to lose weight, possibly reducing by 3-4 kilograms, Dr Baboolal opined. Further, regarding obstructive sleep apnoea, Dr Baboolal did not believe the recent diagnosis of depression directly or indirectly caused the condition, as the plaintiff was first diagnosed in 2012. On disturbed sleep, Dr Baboolal opined that depression likely contributed to the plaintiff's impaired sleep, which is consistent with other evidence of the plaintiff's nightmares and psychotic dreams. Regarding diverticular disease, Dr Baboolal did not believe depression contributed to the plaintiff's acute diverticulitis episode. Regarding gallbladder disease, Dr Baboolal did not believe depression contributed to it. Similarly, Dr Baboolal opined that the plaintiff's paraumbilical hernia was unrelated to depression, however, as to the plaintiff's leg pain Dr Baboolal deferred to Dr Greaves expertise on the side effects of psychiatric medications, who opined that Quetiapine likely caused the plaintiff's leg pain.
- [113] I also had the advantage of hearing from those who could describe the observations of the plaintiff 'before and after' the publication which is generally consistent with the medical evidence. Before mid-2017, the plaintiff was widely regarded as a highly motivated, energetic, and engaged leader. However, after the onset of defamatory social media posts in mid-2017, those close to the plaintiff showed discernible changes in his behaviour and demeanour.
- [114] The LGAQ president Mark Jamieson described that the plaintiff was incredibly active and engaged in his role. But, after July 2017, he noticed that the plaintiff became preoccupied with social media attacks, leading to weight gain, decreased focus, and mental health struggles, eventually requiring him to take time off work.
- [115] Sharon Lee, his partner, described him as confident, outgoing, and happy-go-lucky, someone who enjoyed work, social activities, and time with their dog. She witnessed the plaintiff at home, and described how the once outgoing and confident man became increasingly introverted, short-tempered, and focused solely on social media posts after the middle of 2017. He started having severe nightmares and began drinking excessively, and his verbal aggression, which had never been directed at her before, became a new and troubling issue. The ongoing litigation further deepened his observable helplessness and frustration, adding to his already emotional and psychological tension at home. Indeed, by the ninth day of the trial, I saw that the plaintiff appeared exhausted and testified that he experienced dreams the previous night, leading him to take extra medication.
- [116] Cara Hughes, who worked with the plaintiff at LGAQ as a Human Resources Officer, described him as an innovative leader with an open-door policy, showing care and compassion toward his staff. In about late 2017, she noticed a decline in the plaintiff's enthusiasm and energy, linking it directly to online harassment. The plaintiff became quieter, more serious, and easily frustrated, eventually stopping his lunchtime exercise routine.
- [117] Similarly, Bronwyn Browning, his executive assistant, remembered him as a fun and passionate character who thrived on stress and maintained a personable demeanour with his team. After the Facebook posts commenced to appear Ms Browning described an "*absolutely different man*". She saw that the plaintiff became frazzled,

angry, and obsessed with his iPad, spending more time alone in his office and interacting less with staff. She attributed this change to the personal attacks he was facing.

- [118] Alan Morton, a longtime friend, recalled that the plaintiff was intellectually astute, energetic, and physically active. After July 2017, he noticed that the plaintiff became less socially engaged, gained weight, and seemed stressed, which concerned him greatly.
- [119] A failure to apologise is also relevant in assessing injured feelings or personal hurt and distress for ordinary compensatory damages,⁶⁴ and such harm is more likely the longer an apology is delayed, if at all by the end of trial.⁶⁵ By s 20 of the Act, an apology does not affect liability. Compensatory damages consider the perpetuation of defamation during litigation and trial publicity. Failure to apologise before judgment also affects damages.⁶⁶
- [120] Except for the 14th Lyn O'Connor Publication, the first defendant has not apologised for the defamatory publications for which she was found liable in late 2020. The first defendant claims she always intended to apologise, but this was not conveyed through her lawyers. She explains that, as a self-represented party, she became overwhelmed by the proceedings and needed to focus on managing her mental health. During her testimony, she expressed regret but more so for her own predicament rather than true contrition acknowledging the impact of her publications on the plaintiff, whom she views as driven by anger and retribution rather than experiencing genuine personal hurt and distress. While I accept that the first defendant genuinely intended to apologise but for the hindrance of legal deadlines or personal health, those personal barriers are not to the point since they do not change the harm sustained by the plaintiff because he was unaware of her internal struggles until her testimony. Instead, I think the plaintiff's distress is likely worsened by the first defendant's failure to apologise, prolonging his suffering. This is also relevant to aggravated damages.
- [121] The fourth defendant has never apologised to the plaintiff. He expresses regret about having to come to court despite removing all his publications under his control shortly after being served with the initiating proceedings. And, even though he initially proffered an apology, he asserted in cross-examination that he was no longer willing to do so. The fourth defendant did his best to manage the proceeding attended by his full-time carers attending to his needs as a wheelchair-bound quadriplegic. He conducted his case during the hearing with a disciplined and narrow focus on his pleaded defence, which has achieved partial success. Although these defences do not preclude an increase in compensatory damages due to the failure to apologise, I do not accept the plaintiff's assertions the first defendant has acted objectively, improperly, unjustifiably and lacking in bona fides. It seems to me that the plaintiff's distress has been worsened by the lack of apology, prolonging his suffering. This is also relevant to aggravated damages.

⁶⁴ *Clark v Ainsworth* (1996) 40 NSWLR 463 at 472A – 475C.

⁶⁵ *Ali v Nationwide News Pty Ltd* [2008] NSWCA 183 at [82] per Tobias and McColl JJA.

⁶⁶ *Amalgamated Television Services Pty Ltd v Marsden* [2002] NSWCA 419 at [1414] to [1419] per Beazley, Giles and Santow JJA.

- [122] The plaintiff also relies upon the anxiety and uncertainty experienced during litigation,⁶⁷ including media coverage of proceedings.⁶⁸ The case received significant media attention due to the defamatory “Jabba the Hutt” meme, with articles in various mainstream media like *Courier Mail*, *Brisbane Times*, and *Cairns Post*, which fuelled and amplified the defamatory slurs. This publicity exacerbated the plaintiff’s distress by making the defamatory content more widely known and publicising his personal issues, including incorrect accusations of ulterior motives. The pre-trial phase of case management lasted over 3.5 years, including a delay in interlocutory judgments of 8 months before the 30-day trial, which spanned over 12 months, and this judgment took over two years. All of this is longer and more fragmented than typical defamation cases. It was apparent that the delay and extended process increased the plaintiff’s stress and uncertainty, especially observable over the broken eight days that the plaintiff testified all while on his prescribed psychiatric medication. Various factors contributed to this length, including unnecessary cross-examinations and witness testimonies, as well as an eight-month delay in a critical judgment. I accept that the prolonged proceedings have added to the plaintiff’s distress, warranting increased compensatory damages.
- [123] In my view, the plaintiff’s psychiatric condition was materially caused by the defamatory publications. The resultant diagnosis of Major Depression with Anxious Distress (Recurrent) was manifested by psychotic dreams, nightmares, and thoughts of death or suicide. This psychiatric harm is not too remote. While his pre-existing vulnerability contributed to the recurrence of his condition, the evidence shows he had fully recovered from previous episodes before these publications triggered its return in about September or October 2017, and it is unlikely to abate until he receives a judgment that vindicates his reputation. Under the eggshell skull rule, the defendants are liable for the damages caused, regardless of the plaintiff’s prior susceptibility. Additionally, the plaintiffs also suffered other physical health deficits for at least five years and eight months, for which the defendants are responsible.
- [124] Additionally, the plaintiff’s prolonged hurt and distress must be evaluated in the context of several factors. These include the lack of a genuine apology from the first defendant, with the inadequate exception of one instance, and the absence of any apology from the fourth defendant. The defamatory imputations, which were false, serious, numerous, and persistent, compounded the plaintiff’s distress. The anxiety and uncertainty caused by the lengthy litigation, the substantial media attention, and the plaintiff’s concerns about the wide-reaching effects of the defamatory publications all aggravated his suffering.

Reparation for damage to, and vindication of, reputation

- [125] Damages for reputational injury serve as both public vindication and personal consolation, not as restitution for tangible harm.⁶⁹ Defamation damages serve three

⁶⁷ *Broome v Cassell & Co*, (1972) AC 1027 at 1071 per Lord Hailsham; *John Fairfax & Sons Ltd v Kelly* (1987) 8 NSWLR 131 at 136; *Baffsky v John Fairfax & Sons Pty Ltd* (1991) 106 FCR 21 at 55; *Humphries v TWT Ltd* (1993) 113 FLR 402 per Miles CJ at 418; *Wagner v Nine Network* [2019] QSC 284 per Applegarth J at [1].

⁶⁸ *Cerrutti v Crestside Pty Ltd* (2016) 1 Qd.R 89 at [35] per Applegarth J (McMurdo P and Gotheson JA agreeing).

⁶⁹ *Andrews v John Fairfax & Sons Ltd* (1980) 2 NSWLR 254F to 255D

overlapping purposes: consolation for distress, reparation for harm to reputation, and vindication, which should be considered in awarding damages.⁷⁰

- [126] Reputation refers to an individual's standing in the community.⁷¹
- [127] The plaintiff is presumed to have a good reputation,⁷² and defamatory statements are presumed false unless the defendant pleads justification.⁷³ Here, there is no such plea. Nevertheless, the plaintiff may still adduce evidence of his good reputation through witnesses,⁷⁴ but this is not essential, recognising that such evidence is notoriously difficult to gather.⁷⁵ The court can infer reputational damage from the circumstances in this case, without direct witness evidence.⁷⁶ When determining the appropriate damages for harm to reputation, the primary consideration is the severity of the defamation; the closer it affects the plaintiff's personal integrity, professional reputation, honour, courage, loyalty, and the core aspects of their character, the more serious the damage is likely to be.⁷⁷ I accept that the plaintiff's psychiatric prognosis has some relationship to the outcome of the trial. If he feels vindicated, he may experience improvement, but if not, his symptoms may worsen. Continued defamatory publications would hinder his ability to recover at least to his pre-publication well-being.
- [128] The work of the plaintiff and the extent of publication are also important in this case. In *Moit v Bristow*,⁷⁸ McColl JA (Beazley JA and Campbell AJA agreeing) highlighted the importance of reputation, particularly for those whose work depends on honesty, integrity, and judgment, and noted that damages must clearly vindicate the plaintiff's reputation having regard to the 'grapevine' effect, saying:

"120 In *John Fairfax Publications Pty Ltd v O'Shane* (No 2) (at [3]), Giles JA referred with approval to Mahoney ACJ's statement in *Crampton v Nugawela* [1996] NSWSC 651; (1996) 41 NSWLR 176 at 195 that 'the law should place a high value upon reputation, and in particular upon the reputation of those whose work and life depend upon their honesty, integrity and judgment'. He observed that '[t]he damages must also be a sufficient amount to make clear the vindication of [the plaintiff's] reputation' referring to *Carson v John Fairfax & Sons Ltd* [1993] HCA 31; (1993) 178 CLR 44 at 61 and *Crampton v Nugawela* at 195.

"121 In *Broome v Cassell and Co* [1972] AC at 1071, Lord Hailsham of St Marylebone LC said that the damages awarded for defamation must be such that 'in case the libel, driven underground,

⁷⁰ *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44 at p. 60 per Mason CJ, Deane, Dawson and Gaudron JJ.

⁷¹ *Amalgamated Television Services v Marsden* [2002] NSWCA 419 at [1371].

⁷² *Allsopp v Incorporated Newsagencies Co. Pty Ltd* (1975) 26 FLR 238 at 248 per Blackburn J.

⁷³ *A. v IPEC & Crew* (1973) VR 39 at [47] per Menhennit J.

⁷⁴ *Bickel v John Fairfax & Sons Ltd* (1981) 2 NSWLR 474 per Hunt J at 483.

⁷⁵ *Holland v O'Connell* (1984) A def R 40,149 at 40,155 per Southwell J.

⁷⁶ *Cerutti v Crestside Pty Ltd* (2014) QCA 33 at [29] per Applegarth J (McMurdo P and Gotterson JA agreeing).

⁷⁷ *John v MGN Ltd* [1997] Q.B. 586 (CA) at 607 per Bingham LJ. Cf. *Greville v Wiseman* (1967) NCLR 795 at 795, 800-801.

⁷⁸ *Moit v Bristow* [2005] NSWCA 322, which passage was, again, cited with approval in *Channel 7 Sydney Pty Ltd v Mahomed* [2010] NSWCA 335 at [68].

emerges from its lurking place at some future date, [the plaintiff] must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge'. Mahoney ACJ referred to that statement with approval in *Crampton v Nugawela* (at 193), a case decided after s 46A came into force, and held (at 194 – 195) that '[t]he award must be sufficient to ensure that, the defamation having spread along the "grapevine"... and being apt to emerge "from its lurking place at some future date", it was "sufficient to convince a bystander of the baselessness of the charge"'."

- [129] The gravity of the allegations against the plaintiff lies in the imputations themselves,⁷⁹ rather than in the broader context or specific features of the publication. In this case, the imputations attribute serious wrongdoing, misconduct and corruption, with both explicit and implicit suggestions that the plaintiff is unfit to hold the office as CEO of the LGAQ from which he earns his livelihood. This makes the defamatory meanings particularly severe, more so than what might typically be conveyed by a publication.⁸⁰
- [130] It seems to me that the first defendant's defamatory imputations are highly damaging, portraying the plaintiff as a corrupt crime boss who used his position as CEO of the LGAQ to create a cartel and criminal empire. The imputations accuse the plaintiff of manipulating public officials, covering up systemic corruption, and undermining local government integrity. Further, the allegations suggest that the plaintiff's actions were driven by self-interest, greed, and an abuse of power, tarnishing his professional and personal reputation. They also link the plaintiff to serious criminal activities, including influencing investigations and associating with corrupt individuals, ultimately calling for investigations by law enforcement and anti-corruption bodies. These imputations gravely attack the plaintiff's character, integrity, and leadership. The 1st to 13th Elizabeth Kennedy publications and the 1st to 13th Lyn O'Connor publications are seriously defamatory. These imputations portray the plaintiff, in his role as dishonest, immoral, and even corrupt, such that he should be investigated for criminal conduct. They also question his care for Queenslanders, local government staff and ratepayers, attacking his courage by calling him "gutless" and his competence by labelling him "an idiot". These defamatory statements strike at the plaintiff's personal integrity, professional reputation, and honour, affecting the core attributes of his personality and his career-long dedication to local government. The defamatory imputations in the 14th to 23rd Lyn O'Connor publications are less strident than the earlier publications. They imply suspicion about the plaintiff's alleged association with local government officers involved in corruption through shared racehorse ownership; thereby impacting his enjoyment in the racing industry. These publications suggest he should be investigated by law enforcement and a parliamentary committee. The publications do not qualify the accusations, but such loose talk of suspicion erodes their sustainability, which I do not think is affected by the first defendant's wavering apology. The cumulative effect and repetition suggest a sustainable suspicion of the plaintiff's corruption, especially since readers likely saw earlier defamatory publications. Although the 18th Lyn O'Connor publication clarifies that the plaintiff himself is not corrupt, it still implies that the LGAQ

⁷⁹ *Banks v Cadwalladr* [2022] EWHC 1417, at [50](viii).

⁸⁰ Cf. *Radio 2UE Sydney Pty Ltd v Chesterton* (2009) 238 CLR 460 at [36]; and *O'Hara v Sims* [2009] QCA 186 at [33].

contributed to corruption in the local government. This leaves the ordinary reasonable reader with the impression that the plaintiff permitted the LGAQ's contribution despite the more cautious wording.

- [131] Collectively, the imputations found against the fourth defendant add little when compared to the gravity of the first defendant's publications. However, they are especially damaging as they come from a state parliamentarian, lending them increased authority and public impact. They accuse the plaintiff of corrupt behaviour, misuse of power, and obstructing proper scrutiny in the stewardship of the LGAQ. The allegations suggest that the plaintiff, as its head, contributed to widespread corruption and victimised decent people in government. These claims imply that the plaintiff, along with others, is deeply entrenched in unethical practices and should face accountability and government action for contributing to systemic corruption. The force of these accusations is amplified by the public call for accountability, reinforcing their commitment and severity of the misconduct.
- [132] The falsity of serious defamatory imputations, when known to a plaintiff, amplifies the plaintiff's hurt feelings and distress, and the defendants' respective lack of an adequate public apology or retraction also increases the need for vindication damages to denounce the defamatory statements publicly.⁸¹
- [133] The extent of a publication is significant because a defamatory statement has a greater potential to cause harm when it reaches a larger or repeated audience. The extent of the first defendant's publications on Facebook depends on the nature and extent of the readership for each specific group or page. However, serious harm can still occur even when the publication is limited to a smaller group, depending on the recipients' identity, circumstances, and relationship with the plaintiff.⁸²
- [134] The plaintiff relies on the expert evidence of Dr Satchell to contend for a combined readership of the initial publications within a closed group and a greater passive readership via designated public platforms of public and open groups and public and open pages.
- [135] On the contrary, the first defendant argues, exemplified by comment comprising the 17th Lyn O'Connor Publication, that the plaintiff's estimates of publication are erroneous, baseless and overstated despite the evidence available on the face of the publications at the time of the claim and/or deletion screenshots in evidence. The defendants dispute this scope of readership in reliance on expert evidence of Mr Khaliserad. Mr Khaliserad is a "cybercrime expert", who at the time of his evidence, held a diploma in Project Management, was an undergraduate with a Bachelor of Laws and demonstrated 25 years of experience in the technology industry. However, I think his credibility is fatally impacted by his connections to the 'ICAC Now' anti-corruption campaign and his personal social media interactions supporting the defendants' causes and apparent aversion to the plaintiff and the LGAQ. I got the strong impression that he acted more like an advocate for the defendants than an objective, independent, reliable expert witness. Despite assurances of separating these personal matters, they appear to have influenced his

⁸¹ *Wagner v Nine Network* [2019] QSC 284 at [173], [174], [219]-[226] per Applegarth J, not disturbed on appeal on this point, *Wagner v Nine Network* [2020] QCA 221.

⁸² *Banks v Cadwalladr* [2022] EWHC 1417, at [50](xii).

reasoning, leading to speculative conclusions without a solid factual basis and undermining his opinions' reliability.

- [136] Dr Satchell's background in human-computer interaction, evidenced by her PhD from RMIT University, made her a credentialed expert on Facebook technology and user interactions. Her reports show a careful and measured approach, appropriate for an independent expert. I accept Dr Satchell as an honest and reliable expert witness and prefer her evidence over that of Mr Khaliserad where their opinions differ. However, I have some reservations of aspects of the report which are less factually founded, by the nature of the subject, and too speculative.
- [137] Facebook is a social media platform that connects users online, allowing them to interact individually, in public or in a group. Unlike traditional newspapers, which are printed and distributed physically, Facebook is digital and accessible from anywhere with an internet connection. Traditional newspapers provide curated news and articles on various topics, usually published daily or weekly, while Facebook allows users to interact dynamically, see updates as they happen, and engage with a wide range of content from friends, family, and public figures.
- [138] An entire thread comprising the original post, comments, and replies, might not always fit within the scrolling frame. To view additional comments and see the full interaction history, readers must click the "View More Comments" button as they scroll. The rate at which users scroll and their tendency to pause for specific content, including images, can vary. According to Dr Satchell, Facebook users, on average, scroll through a piece of content every 1.7 seconds. The algorithm tracks where users pause and adjust the content shown based on their interests. By default, Facebook's "View Most Relevant" setting displays selected comments and replies that are considered most interesting and relevant to the user. If only part of a longer post or comment is visible, users need to click the "See More" button to read the entire text.
- [139] Relevant here, whilst the Council Watcher's Queensland group (or CWQ group) is a closed Facebook group with 235 members as of 27 October 2017, the disputed publications were variously published on the following platform accessible to any internet user.

Publications		Type	Facebook Site	Type	Membership/ Likes/Followers
Elizabeth Kennedy Publications	1 st	Comment	No Longer Mystified	Public/open Group	293 – 587
	2 nd	Comment	Council Watcher’s Queensland	Closed Group	234 – 293
			#Political News Group	Open Page	Unknown
	3 rd	Post	Council Watcher’s Queensland	Closed Group	234 – 293
			#Political News Group	Open Pages	Unknown
	4 th	Comment	Council Watcher’s Queensland	Closed Group	234 – 293
	5 th	Comment	Council Watcher’s Queensland	Closed Group	234 – 293
	6 th	Comment	Council Watcher’s Queensland	Closed Group	234 – 293
	7 th	Comment	No Longer Mystified	Public/open Group	293 – 587
	8 th	Comment	No Longer Mystified	Public/open Group	293 – 587
	9 th	Reply to Comment	No Longer Mystified	Public/open Group	293 – 587
	10 th	Post	Council Watcher’s Queensland	Closed Group	234 – 293
	11 th	Comment	Cairns Open Political Forum	Open Page	343
	12 th	Comment	No Longer Mystified	Public/open Group	293 – 587
13 th	Comment	No Longer Mystified	Public/open Group	293 – 587	

Publications		Type	Facebook Site	Type	Membership/ Likes/Followers
Lyn O’ Connor Publications	1 st	Comment	The FC Journal	Open Page	368 – 411
	2 nd	Comment	No Longer Mystified	Public/open Group	293 – 587
	3 rd	Post	Council Watcher’s Queensland	Closed Group	234 – 293
	4 th	Comment	No Longer Mystified	Public/open Group	293 – 587
	5 th	Comment	Council Watcher’s Queensland	Closed Group	234 – 293
	6 th	Comment	No Longer Mystified	Public/open Group	293 – 587
	7 th	Comment	No Longer Mystified	Public/open Group	293 – 587
	8 th	Comment	No Longer Mystified	Public/open Group	293 – 587
	9 th	Comment	No Longer Mystified	Public/open Group	293 – 587
	10 th	Reply to Comment	No Longer Mystified	Public/open Group	293 – 587
	11 th	Reply to Comment	Cairns Citizen Council	Public/open Group	43
	12 th	Reply to Comment	No Longer Mystified	Public/open Group	293 – 587
	13 th	Comment	The FC Journal	Open Page	368 – 411
	14 th	Comment	No Longer Mystified	Public/open Group	293 – 587
	15 th	Reply to Comment	Gary Duffy – Ipswich Mayor Candidate 2020	Open Page	2956 – 3296
	16 th	Comment	Ms Larner’s Deliberations	Public/open Group	Unknown
	17 th	Reply to Comment	Gympie Regional Forum	Public/open Group	2261 – 3435
	18 th	Comment	Privaatei	Open Page	2113 – 2295
	19 th	Comment	No Longer Mystified	Public/open Group	293 – 587
	20 th	Comment	People Against Corruption	Open Page	173-180
	21 st	Comment	No Longer Mystified	Public/open Group	293 – 587
	22 nd	Comment	No Longer Mystified	Public/open Group	293 – 587
	23 rd	Comment	OLGRA	Open Page	172 – 722

Publications		Type	Facebook Site	Type	Membership/ Likes/Followers
Rob Pyne Publications	1 st	Post	Rob Pyne: Putting Cairns First Rob Pyne: Cryptocurrency Guru	Open Page	8370 – 10470
	2 nd	Post	Rob Pyne: Putting Cairns First Rob Pyne: Cryptocurrency Guru	Open Page	8370 – 10470
	3 rd	(No liability found for this publication)			
	4 th	Post	Rob Pyne: Putting Cairns First Rob Pyne: Cryptocurrency Guru	Open Page	8370 – 10470
	5 th	Post	Rob Pyne: Putting Cairns First Rob Pyne: Cryptocurrency Guru	Open Page	8370 – 10470

[140] For groups and pages, “public” and “private” refer to the visibility of the group or page, while “open” and “closed” refer to membership requirements for interacting with content. Pages are always public and open. Posts and comments on public Facebook pages or groups are accessible to anyone with an internet connection, even without a Facebook account. However, public Facebook groups generally require a Facebook profile for access. A closed Facebook group can be found through searches, and its name and membership list may be visible unless it's private. However, its content is only accessible to members, who must be approved or invited to join. Members of closed groups can share posts and comments outside the group, on other Facebook pages or elsewhere on the internet.

[141] Facebook posts remain accessible until deleted, allowing for ongoing viewership. These posts can be seen by anyone with a Facebook account, even if they are not members of the group or page, as public Facebook pages are accessible to all. This

means that the readership of these pages could be significantly higher than just the number of members, as readers do not need to interact with the post for it to be counted. I accept that unverified sensational and scandalous material spreads more quickly and widely than verified information.

[142] Dr Satchell used metadata (the data about data) about the publications to show the users' interactions with each post and comment to quantify the publication's minimum extent. The key metadata metrics that show actual user interaction with a post or comment are:

- (a) "Comments" shows that users engaged with the content by reading and contributing to the conversation.
- (b) "Shares" indicates that users helped spread the content by sharing it with others, either privately or publicly, beyond the original network.
- (c) "Likes" reflects users' approval of the content.
- (d) "Tagging" alerts third parties to the post, associates them with the content, and links it to other individuals.

[143] While the metadata provides insights into the number of users who interacted with a post or comment, it is limited in its quantity and quality. Facebook has a proprietary interest in its own metadata, which renders it unavailable for other, except the metadata that Facebook auto-generates to show user engagement with each Post and Comment. Only three meta data streams can be accessed, searched, viewed and downloaded by a user, namely the personal profile activity log (or Facebook activity log), the individual Facebook page activity log, and the Group page activity log. Even so, deleting a post or comment makes it difficult or impossible for external access to metadata. In this case, there has been the deletion of posts or comments and reach or seen by metadata has only been secured for three posts. Reach refers to the estimated number of people who have seen a post or comment. A post or comment can be read without requiring a click, like, or share. Therefore, using click-based metrics to measure views can understate the actual number of people who have seen a post or comment.

[144] Dr Satchell collated the number of other readers (excluding the first defendant's own self-comments) who saw the first defendant's publications as follows:

Publications	Publication Type	Likes	Direct Comments	Comments on Thread	Seen By /Reach/Tag	Publication Minimum
Elizabeth Kennedy Publications	1 st Comment	-	-	-	Unknown	1 inferred
	2 nd Post	9	3	3	100	100
	3 rd Post	9	4	4	118	118
	4 th Comment	2	1	3	Unknown	2
	5 th Comment	2	1	2	Unknown	2
	6 th Comment	2	9	-	Unknown	9
	7 th Comment	3	3	7	Unknown	3
	8 th Comment	1	5	-	Unknown	1
	9 th Reply to Comment	1	1	5	Unknown	1
	10 th Post	11	2	6	Unknown	10
	11 th Comment	2	2	2	Next Post Seen By 120	2
	12 th Comment	1	-	-	Unknown	1
	13 th Comment	5	1	3	Unknown	5

Publications		Publication Type	Likes	Direct Comments	Comments on Thread	Seen By /Reach/Tag	Publication Minimum
Lyn O' Connor Publications	1 st	Comment	1	-	-	Unknown	1
	2 nd	Comment	1	1	4	Unknown	4
	3 rd	Post	24	3	3	107	107
	4 th	Comment	Unknown	-	-	Unknown	1 inferred
	5 th	Comment	5	1	2	Next Post Seen By 144	5
	6 th	Comment	3	3	-	Unknown	3
	7 th	Comment	3	2	-	Next Post 8 Likes	3
	8 th	Comment	2	1	-	Next Post 7 Likes	2
	9 th	Comment	4	1	6	Unknown	4
	10 th	Reply to Comment	3	3	5	Unknown	3
	11 th	Reply to Comment	1	1	-	Next Post Seen by 55	1
	12 th	Reply to Comment	2 & 3	1 & 2	7	Unknown	3
	13 th	Comment	1	-	-	Next Post 12 Likes/reactions	1
	14 th	Comment	1	-	-	Next Post 5 Likes/reactions	1
	15 th	Reply to Comment	1	1	-	Next Post 18 Likes/reactions	1
	16 th	Comment	1	-	-	Next Post Seen by 97	1
	17 th	Reply to Comment	1	-	-	Next Post 5 Likes/reactions	1
	18 th	Comment	2	1 or 2	5	Next Post 21 Likes/reactions	2
	19 th	Comment	4	1	1	Next Post 8 Likes/reactions	4
	20 th	Comment	-	-	3	Unknown	3
	21 st	Comment	4	-	-	Unknown	4
	22 nd	Comment	2	1	5	Next Post 10 Likes/reactions	2
	23 rd	Comment	1	-	3	5	1

Publications		Publication Type	Likes	Direct Comments	Comments on Thread	Seen By /Reach/Tag	Publication Minimum
Rob Pyne Publications	1 st	Post	61	9	9	Reach 5643	“around” 5643
	2 nd	Post	135	23	23	Unknown	135
	3 rd	(No liability found for this publication)					
	4 th	Post	228	25	25	Unknown	228
	5 th	Post	117	11	11	Unknown	228

[145] As to the 1st Elizabeth Kennedy Publication and the 4th Lyn O'Connor Publication, which were comments on the No Longer Mystified public open group, Dr Satchell conceded that the evidence provided does not conclusively show that these comments were more widely published on Facebook. However, Dr Satchell opined that it was reasonably likely that these comments were seen by at least one other person regarding Facebook's scrolling feature, the public nature of that group, the group's membership size, the sharing of related posts, and the likes those posts received. It seems to me that the expert is engaging in mere speculation as to the reach of those publications, except that the fact of publication *per se* is determined by the early judgments.

[146] I am also cautious that content in the disputed publications were probably seen by readers who deliberately didn't react to that post but instead liked or reacted to the

next or later content. Much depends on whether an earlier disputed publication was likely read so the reader could react to the later content. In any event, Dr Satchell seems to place little weight on these later reactions, and to reach the minimum publication for the disputed publications.

- [147] Dr Satchell emphasised that the metadata often underestimates true readership on social media, by capturing only user-active interactions, but not passive readers, multiple people sharing a single screen and readers who want to remain anonymous. She also emphasised that replies to posts, whether immediate or delayed, indicate active engagement with the original content and preceding comments, and tagging someone after a post's publication extends its reach, drawing new participants into the conversation. Dr Satchell also pointed to research showing that people are more likely to speak up on social media if they believe others agree, which was fuelled by the first defendant's self-consensus.
- [148] I agree with the plaintiff's contention that the readership of the closed group, Council Watcher's Queensland Facebook page must be assessed differently from public groups and pages, as its content is only accessible to its members. It is argued that individuals who join such groups are likely regular readers, akin to regular newspaper subscribers, with the added convenience of mobile alerts. As of 27 October 2017, Council Watcher's Queensland group had 235 members. However, specific posts had varied "seen by" figures, ranging from 100 to 144, indicating different levels of engagement. Dr. Satchell suggested these figures represent the minimum extent of publication, acknowledging that metadata may underestimate passive readership. Therefore, the plaintiff submits that the readership of CWQ posts should be estimated between the "seen by" figures and total membership, with an average readership of 130 persons per post considered fair to both parties. I agree.
- [149] In any event, the plaintiff submits that the readership of an open Facebook group is likely to exceed its membership numbers significantly. It is argued that posts and comments can be read without interaction, meaning that traditional data analytics focused on "clicks" do not accurately represent actual readership. It is contended that passive reading is more common than active participation, especially in controversial or political groups. Consequently, the plaintiff asks the court to draw the inference that in open groups, the number of mere readers may be ten times greater than the group's membership. In support of this 'conservative' extrapolation, the plaintiff points to Dr Satchell's collation of metadata for the 3rd Rob Pyne Publication which shows a disparity of 8063 viewing (by clicking) the 3rd Rob Pyne Publication compared to a mere 409 active interactions comprising the 257 Likes, 30 Responses, 30 later Comments on the thread, 85 later Likes on the thread, no Shares, and 3 tags.
- [150] Using the 10-fold rationale, the plaintiff submits for the following readership figures for various Facebook groups and pages where the first defendant's publications appeared:
- (a) No Longer Mystified: An average membership of 250 over the relevant period, leading to an estimated readership of 2,750 people.
 - (b) #Political News Group: Although membership numbers are unknown, the plaintiff estimates a readership of at least 250 people based on interactions.
 - (c) Cairns Open Political Forum: With a notional membership of 300, the estimated total readership is 3,300.

- (d) Cairns Citizens Council: Based on metadata, the readership is estimated to be 55 people.
- (e) FC Journal: The readership for the first defendant's publications is estimated to be an average of 1,750 readers each.
- (f) Ms Lerner's Deliberations: Based on available data, the readership for the relevant publication is estimated at 90 people.
- (g) Gympie Regional Forum: The largest group, with an estimated total readership of 37,400.
- (h) Privaatei: The estimated readership for the relevant publication is 2,500 people.
- (i) People Against Corruption: The estimated readership is 170 people.
- (j) QLGRA – Queensland Local Government Reform Alliance: The estimated readership for the relevant publication is 650 people.
- (k) Council Watcher's Queensland: The estimated readership for each publication is around 130 people, based on a rough average of the "seen by" figures and the membership.

[151] The first defendant submits that the plaintiff's methodology to determine the publications' reach is misleading, erroneous and unsupported by evidence. She asserts that the plaintiff misdescribes posts and comments and fails to appreciate the treatment posts with comments that are further down in the thread. Furthermore, the first defendant contends that the plaintiff's estimate of the publication's reach is erroneous, exaggerated and unsupported by evidence, as exemplified by the estimated reach of 37,400 attributed to the Gympie Regional Forum. She argues that while the group may be public and discoverable, participation requires membership approval, and the publication in question is a comment, not a post. Comments, unlike posts, are not automatically visible to an ordinary reader unless they specifically choose to view all comments within a thread. The first defendant submits that only one person likely saw such a comment, and therefore, the estimate of its reach should be closer to two views at most, but definitely in the single digits, rather than the 37,400 claimed by the plaintiff.

[152] I do not accept the rationale and analogy used for the first defendant's publications or even the fourth defendant's publications. It seems to me that the plaintiff's contention that the overall readership is likely to be of 10 times greater than the group membership is an overreach and not representative of the likely readership of the open groups because of the political and idiosyncratic nature of those other pages and groups associated with the first defendant's publications. Further, I think 3rd Rob Pyne's publication on the fourth defendant's page is not a useful guide or analogy for the other groups. The fourth defendant's role as a member of the Queensland parliament provides for dedicated political popularism on his page, but even this can be contrasted with the much lower figures for the 2nd, 4th and 5th Rob Pyne Publications. Likewise, there are variable levels of interaction and popularism of the other groups associated with the first defendant's publications. It is apparent that even the like-minded group members, likers or followers do not actively engage with all posts, and the metadata shows a real and significant disinterest in the publications compared to the membership base.

- [153] The true extent to which a publication is seen, including any deliberate interactions, is impossible to quantify with any tolerable degree of certainty. There are many variables and uncertainties at play for each separate publication and platform due to the nature, viewability and longevity of the publication, attraction of sensationalist content and memes, nature of the group or page and whether it is public/open or closed, membership of a particular group, notifications and feeds to members, scroll speed, individual user notification settings, the level of actual interaction relative to that membership, allowing for inactive members and passive and casual readership and likely overlap of readership across all publications. And the list can go on.
- [154] It seems that extrapolating the metadata with generalised user behaviour to estimate a broader passive readership across various and disparate groups is fraught with guesswork, impermissibly speculative, and not sufficiently supported by Ms Satchell's expert knowledge, which has a limited factual foundation.
- [155] Therefore, for the extent of the first defendant's publications on the Council Watcher's Queensland closed group, I will allow the "seen by" numbers for the disputed publication or a related next or later publication. But for public groups and pages the exercise is far more uncertain. However, I think the known human behaviour within a focused and dedicated closed group also provides useful insight into the active and passive readership in open public pages and groups. It seems to me it is unlikely that more than 50% of the mean of the membership of those other public and open groups and pages saw the first defendant's publications.
- [156] Therefore, the highest extent of the original publication can be represented as follows:

Publications		Type	Facebook Site	Type	Extent of original publication
Elizabeth Kennedy Publications	1 st	Comment	No Longer Mystified	Public/open Group	440
	2 nd	Comment	Council Watcher’s Queensland	Closed Group	130
			#Political News Group	Open Page	1
	3 rd	Post	Council Watcher’s Queensland	Closed Group	130
			#Political News Group	Open Pages	1
	4 th	Comment	Council Watcher’s Queensland	Closed Group	130
	5 th	Comment	Council Watcher’s Queensland	Closed Group	130
	6 th	Comment	Council Watcher’s Queensland	Closed Group	130
	7 th	Comment	No Longer Mystified	Public/open Group	440
	8 th	Comment	No Longer Mystified	Public/open Group	440
	9 th	Reply to Comment	No Longer Mystified	Public/open Group	440
	10 th	Post	Council Watcher’s Queensland	Closed Group	130
	11 th	Comment	Cairns Open Political Forum	Open Page	172
	12 th	Comment	No Longer Mystified	Public/open Group	440
	13 th	Comment	No Longer Mystified	Public/open Group	440

Publications		Type	Facebook Site	Type	Extent of original publication
Lyn O' Connor Publications	1 st	Comment	The FC Journal	Open Page	390
	2 nd	Comment	No Longer Mystified	Public/open Group	440
	3 rd	Post	Council Watcher's Queensland	Closed Group	130
	4 th	Comment	No Longer Mystified	Public/open Group	440
	5 th	Comment	Council Watcher's Queensland	Closed Group	130
	6 th	Comment	No Longer Mystified	Public/open Group	440
	7 th	Comment	No Longer Mystified	Public/open Group	440

	8 th	Comment	No Longer Mystified	Public/open Group	440
	9 th	Comment	No Longer Mystified	Public/open Group	440
	10 th	Reply to Comment	No Longer Mystified	Public/open Group	440
	11 th	Reply to Comment	Cairns Citizen Council	Public/open Group	22
	12 th	Reply to Comment	No Longer Mystified	Public/open Group	440
	13 th	Comment	The FC Journal	Open Page	390
	14 th	Comment	No Longer Mystified	Public/open Group	440
	15 th	Reply to Comment	Gary Duffy – Ipswich Mayor Candidate 2020	Open Page	3126
	16 th	Comment	Ms Larner’s Deliberations	Public/open Group	90
	17 th	Reply to Comment	Gympie Regional Forum	Public/open Group	2848
	18 th	Comment	Privaatei	Open Page	2204
	19 th	Comment	No Longer Mystified	Public/open Group	440
	20 th	Comment	People Against Corruption	Open Page	263
	21 st	Comment	No Longer Mystified	Public/open Group	440
	22 nd	Comment	No Longer Mystified	Public/open Group	440
	23 rd	Comment	QLGRA – Queensland Local Government Reform Association	Open Page	447

[157] Turning to the fourth defendant, I see significant interactions, but the high interactions of the 1st Rob Pyne Publication stand in stark contrast to the much lower figures for the 2nd, 4th, and 5th Rob Pyne Publications.

[158] Other features have enhanced the likely readership. Dr Satchell noted that the 1st, 2nd, 4th and 5th Rob Pyne Publication used Facebook’s tagging and hashtag features to increase visibility. The 1st, 2nd, 4th and 5th publications utilised the tagging function to notify specific individuals, encouraging both the tagged persons and others to view the post. Additionally, the 3rd Rob Pyne Publication has three tags within the comments, likely prompting readers to explore the original post for better context. The use of hashtags also expanded the reach of the posts. The 4th and 5th Rob Pyne Publication, as well as comments on the 2nd and 5th Rob Pyne Publication, also had hashtags that were likely to attract third parties interested in the content. I accept the evidence and find that these tools likely prompted engagement and extended the reach for those posts and comments. This is consistent with a polarised readership of constituents and political followers of the fourth defendant as a member of the Queensland parliament and therefore, a relatively confined readership despite being a public and open page.

[159] It seems to me it is unlikely that more than the mean of the followers of the page, and that the highest extent of the publication can be represented as follows:

Publications	Type	Facebook Site	Type	Extent of original publication
Rob Pyne Publications	1 st	Post	Rob Pyne: Putting Cairns First Rob Pyne: Cryptocurrency Guru	Open Page 9420
	2 nd	Post	Rob Pyne: Putting Cairns First Rob Pyne: Cryptocurrency Guru	Open Page 9420
	3 rd	Post	No liability found	
	4 th	Post	Rob Pyne: Putting Cairns First Rob Pyne: Cryptocurrency Guru	Open Page 9420

	5 th	Post	Rob Pyne: Putting Cairns First Rob Pyne: Cryptocurrency Guru	Open Page	9420
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- [160] The plaintiff also seeks a substantial allowance be made in the assessment of damages for the “grapevine effect”.
- [161] The “grapevine effect” merely acknowledges that defamatory material often spreads beyond the original audience;⁸³ but it is not a legal doctrine.⁸⁴ The plaintiff has adduced evidence that further dissemination is a natural and probable result of the original publication,⁸⁵ and relies upon direct witness testimony and inferences from the nature and context of the defamatory statement. The use of the social media platform of Facebook amplifies this effect, making defamatory content more portable and widely disseminated than traditional forms.⁸⁶
- [162] Dr. Satchell identifies several key features of Facebook that amplify the grapevine effect. She explains that Facebook collapses barriers of time and space, enabling instant content sharing and consumption, especially through mobile devices. This continuous accessibility enhances the rapid spread of information. She highlights the platform's simple, intuitive interface, where users can easily share posts and tag others, creating an ideal environment for accelerating content dissemination. Dr. Satchell also emphasises the concept of social proof, where users feel compelled to share posts they believe serve a common good, even if the information is unverified. This psychological effect further drives rapid sharing. Additionally, she notes Facebook's reinforcement algorithm, which promotes content that receives interactions, reinforcing the original message and encouraging further sharing, often creating an echo chamber effect. Anonymous sharing also plays a role, allowing users to distribute content without direct attribution, extending its reach across multiple platforms. Finally, Dr. Satchell observes that Facebook content often extends beyond the platform, persisting online even after deletion, which allows information to resurface and continue circulating. These features make Facebook a potent tool for accelerating the grapevine effect.
- [163] It seems to me that the natural and probable result in the circumstances of this case is a significant grapevine, which is spread by sharing and media coverage and continues due to this proceeding.
- [164] The original publications occurred in a public context, making it highly likely that the defamatory content would spread widely, unlike in private or confidential situations where the grapevine effect is less probable. All publications took place on Facebook, a platform that inherently enhances the grapevine effect through its design, allowing users to share content easily, especially on open groups and public pages. Although sharing is restricted in closed groups like Council Watcher's Queensland (here with no sharing button), members can still spread content to other platforms, often anonymously through screen captures.

⁸³ *Belbin & Ors v Lower Murray Urban and Rural Water Corporation* [2012] VSC 535 at [217] per Kaye J.

⁸⁴ *Palmer Bruyn & Parker v Parsons* (2001) 208 CLR 388 at [88] and [89] per Gummow J.

⁸⁵ *Palmer Bruyn & Parker v Parsons* (2001) 208 CLR 388 at [89] per Gummow J.

⁸⁶ Cf. *Higgins v Sinclair* [2011] NSWSC 163 at [216] to [218]; *Cantwell v Sinclair* [2011] NSWSC 1244 at [168] to [169]; *Polias v Ryall* [2014] NSWSC 1692 at [95] to [97] and *Hallam v Ross* [2012] QSC at [39].

[165] While there is no evidence of direct sharing of the first defendant's posts, her comments under shared posts became visible to a broader audience, which I think are indicative of:

- (a) 1st Elizabeth Kennedy publication – 5 shares
- (b) 6th Elizabeth Kennedy publication – 2 shares
- (c) 7th Elizabeth Kennedy publication – 1 share
- (d) 8th Elizabeth Kennedy publication – 1 share
- (e) 9th Elizabeth Kennedy publication – 1 share
- (f) 12th Elizabeth Kennedy publication – 7 shares
- (g) 13th Elizabeth Kennedy publication – 5 shares
- (h) 4th Lyn O'Connor publication – 1 share
- (i) 12th Lyn O'Connor publication – 5 shares
- (j) 13th Lyn O'Connor publication – 2 shares
- (k) 17th Lyn O'Connor publication – 5 shares
- (l) 18th Lyn O'Connor publication – 9 shares
- (m) 19th Lyn O'Connor publication – 5 shares
- (n) 20th Lyn O'Connor publication – 2 shares
- (o) 21st Lyn O'Connor publication – 3 shares
- (p) 22nd Lyn O'Connor publication – 1 share
- (q) 23rd Lyn O'Connor publication – 2 shares

[166] Several instances of sharing are more directly evident in respect of the fourth defendant's publications:

- (a) 1st Rob Pyne publication – 14 shares
- (b) 2nd Rob Pyne publication – 40 shares
- (c) 4th Rob Pyne publication – 57 shares
- (d) 5th Rob Pyne publication – 25 shares

[167] Once shared, posts and comments can be re-shared instantly, further amplifying their reach. Sensational headlining and memes, like the Jabba the Hutt caricatures, also contributed to the spread of defamatory content. I accept that deleted posts can also resurface online, allowing the content to continue circulating. The public standing of both the fourth defendant (much more so than the first defendant), consistently with the evident interaction, likely increased the grapevine effect of his publications, making them more influential and likely to be repeated. The sharing activity is minor in the context of the overall likely readership of those publications.

- [168] In the circumstances of this case, I think the natural and probable result is a relatively minor grapevine effect for the publications, and I do not agree with the plaintiff's contention that it is substantial.
- [169] I conclude that the plaintiff had a good, settled reputation established throughout his life, both in public and personal spheres. There are cases where a plaintiff's reputation can be considered as the essence of their life, and this is one of those cases. The plaintiff's reputation for integrity and competence, especially in advancing the interests of local government, was built over many decades. This is reflected in Mr Jamieson's testimony, where he noted that the plaintiff saw his reputation as paramount, emphasizing the trust he had earned from 77 councils, mayors, and other officials over nearly 30 years. This highlights the value the plaintiff placed on his reputation for fairness, equity, and doing the right thing in the context of local government.
- [170] The law rightly places a high value on reputation, particularly for those whose work and life depend on their honesty, integrity, and judgment. This observation applies to the plaintiff. A reputation of this calibre, because of its brightness, is more vulnerable to being tarnished. For someone who has worked hard to build such a reputation, any damage to it can cause greater personal hurt and distress, as it leads to constant worries about what others think of him, regardless of whether those thoughts are outwardly expressed.
- [171] The gravity of the defamatory imputations in the first defendant's publications (the 1st through 13th Lyn O'Connor publications and the 1st through 13th Elizabeth Kennedy publications) was not at the extreme level of depravity. However, collectively, they were still very serious. These false accusations struck at the core of the plaintiff's persona, which he had legitimately built through his hard work. Similarly, if the defamatory imputations against the fourth defendant are established, they are equally grave and highly damaging to the plaintiff.
- [172] As for the 14th to 23rd Lyn O'Connor publications, while the defamatory imputations for which the first defendant has been found liable are not as severe as in her earlier publications, they are still significant. The exception might be the imputations in the 18th Lyn O'Connor publication, which, due to a qualifying statement, should be seen as only moderately serious—indicating incompetence rather than unforgivable corruption.
- [173] In the case of the first defendant, the extent of publication, with the exception of the 17th Lyn O'Connor publication, should be considered significant rather than substantial. However, collectively, the common themes across her publications, along with the clever use of memes, increased the reach of the defamatory content, even among the original audience. In contrast, the fourth defendant's publications should be considered to have been substantial, though not overly large, in their reach.
- [174] The "grapevine effect" of these publications, given their mode and manner, should be recognised as having amplified the damage to the plaintiff's reputation, spreading the defamatory content beyond its original audience.

Aggravated damages

- [175] I also accept that an additional allowance ought to be awarded as aggravated damages.

- [176] Generally, damages are not separated into pure compensatory and aggravated compensatory components.⁸⁷ Aggravated damages, although compensatory in nature, rather than punishment, are intended to address specific circumstances that have exacerbated the harm inflicted on the plaintiff.⁸⁸
- [177] The principles are well settled and need not be repeated here.⁸⁹ Suffice it to say that aggravated damages may be awarded if the defendant's conduct is objectively improper, unjustifiable, or lacks in *bona fides*⁹⁰ and if the plaintiff's awareness of this conduct increases his personal hurt and distress or increases his reputational damage. This includes high-handed, malicious, insulting, or oppressive behaviour, which can justify a higher compensatory award. A defendant's conduct is relevant for compensatory damages if it exacerbates or ameliorates the plaintiff's injury or feelings. Improper, unjustifiable, or bad faith conduct by a defendant can warrant aggravated damages without needing to prove malice, but this conduct must increase the harm to the plaintiff's feelings or reputation. Malice alone does not warrant aggravated damages unless the plaintiff knows the defendant's state of mind, which aggravates the plaintiff's hurt feelings, warranting increased damages for proper compensation. Improper conduct by a defendant can increase the plaintiff's sense of hurt, which can be presumed from all evidence. Failure to publish a retraction or apology may also justify aggravated damages if it continues the defamatory assertions. The aggravating conduct can occur before, during, or after publication and at any stage of the legal proceedings.⁹¹
- [178] The plaintiff contends for an award of aggravated damages based on the first defendant's conduct as exacerbating the harm inflicted on the plaintiff as:
- (a) She failed to make inquiries of the plaintiff before publishing defamatory material.
 - (b) The publications were malicious, high-handed, oppressive, insulting and offensive, extravagant and sensationalist, and part of an orchestrated attack to harm the plaintiff's reputation.
 - (c) She used a false identity of Elizabeth Kennedy which was improper, unjustifiable and lacking in *bona fides*.
 - (d) She improperly pleaded and later abandoned defences of justification and contextual truth, triviality, and later gave resistance to abandoning the defence of honest opinion, which required a strike out application.

⁸⁷ Cf. *Wagner v Nine Network* [2019] QSC 284 at [185]-[195], and where a separate award was required by appeal in *Wagner v Nine Network* [2020] QCA 221 at [65]-[70] per Jackson J (Morrison and Mullins JJA agreeing).

⁸⁸ *Cerutti v Crestside Pty Ltd* [2016] 1 Qd R 89 at [37]; citing *Costello v Random House Pty Ltd* (1999) 137 ACTR 1, at 46

⁸⁹ *Triggell v Pheeney* (1951) 82 CLR 497 at 514; *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44 at 71, 72; *Cerutti v Crestside Pty Ltd* [2016] 1 Qd R 89 at [40]; *Hockey v Fairfax Media Publications Pty Ltd* (2015) 237 FCR 33 at 114; *Wilson v Bauer Media Pty Ltd* [2017] VSC 521 at [59(h)] citing *Lower Murray Urban and Rural Water Corporation v Di Masi* (2014) 43 VR 348 at [116] applied in *Wagner v Harbour Radio Pty Ltd* [2018] QSC 201 at [739]-[745] (not disturbed on appeal *Harbour Radio Pty Ltd v Wagner Harbour Radio Pty Ltd v Wagner* (2019) 2 QdR 468).

⁹⁰ *Triggell v Pheeney* [1951] 82 CLR 497 at 514

⁹¹ *Praet v Graham* [1889] 24 QBD 53 at 55; *Broome v Cassell & Co Ltd* [1972] AC 1027 at 1071 per Lord Hailsham.

- (e) Her apology was insincere, proximate to the further defamatory 14th through 23rd Lyn O'Connor publications, which were improper, unjustifiable, if not lacking in bona fides.
- (f) She mocked, scorned and ridiculed the plaintiff in further Facebook posts and comments.
- (g) She repeatedly failed to comply with court orders for disclosure and filing pleadings, and thereby prolonging the litigation albeit with an early determination of liability.
- (h) She engaged in improper conduct during the trial, including putting propositions to the plaintiff in cross-examination that he was using the proceedings for the improper and malicious purpose of retribution for the use of parliamentary privilege, that he was a mere puppet for LGAQ, and deliberate dishonesty with his treating doctors.

[179] Pursuant to s. 36 of the *Act*, the court must “*disregard the malice or other state of mind of the defendant at the time of publication of the defamatory matter ... or at any other time except to the extent that the malice or other state of mind affects the harm sustained by the plaintiff*”. It is in the latter sense that the plaintiff claims that each defendant’s conduct has been improper and unjustifiable.⁹² Even so, it is only to the extent that a plaintiff apprehends a defendant’s malice or other state of mind and his awareness that aggravates the sense of hurt for him.⁹³

[180] The first defendant’s testimony, while in my view honest, may be unreliable due to her mental health and fatigue throughout the trial. The first defendant voluntarily assists the fourth defendant as a member of the State Parliament in circumstances of his independent candidacy, disability, limited funding and staff. Her conduct, including using a pseudonym online and making derogatory comments, poorly reflected her strong and misguided belief in her anti-corruption cause generally, not merely focused on the plaintiff, and her sense of rectitude influenced her perception and presentation of events. While there was obvious orchestration, it was more so focused on broader local government misconduct and establishing an anti-corruption body, rather than a focus on the plaintiff. Nevertheless, he was the human embodiment of the LGAQ as its head and oversaw its perceived role in local government administration.

[181] The first defendant failed to make inquiries of the plaintiff before publishing defamatory material, which is accurately characterised as malicious, high-handed, oppressive, insulting, and offensive. They were extravagant and sensationalist, forming part of an orchestrated attack aimed at broader unethical and improper conduct within the local government sector, which necessarily included the plaintiff as the chief executive officer and public face of the LGAQ. Furthermore, the defendant’s use of a false identity, under the name Elizabeth Kennedy, was improper, unjustifiable, and lacking in good faith. In addition to these actions, the defendant improperly pleaded several defences, including justification, contextual truth, triviality, honest opinion, which defences were later abandoned but not before resistance and latterly a strike-out application. The defendant’s apology was

⁹² *Cerutti v Crestside Pty Ltd* 2016] 1 Qd R 89 at [37]; *Triggell v Pheaney* (1951) 82 CLR 497 at 514.

⁹³ *Cerutti v Crestside Pty Ltd* 2016] 1 Qd R 89 at [39]; citing *Uren v John Fairfax & Sons Pty Ltd* (1966) 117 CLR 118 at 151.

insincere and occurred close in time to further defamatory publications, specifically the 14th through 23rd Lyn O'Connor publications, which were also improper and unjustifiable, if not lacking in good faith. The defendant continued to mock, scorn, and ridicule the plaintiff in additional Facebook posts and comments.

- [182] The first defendant repeatedly failed to comply with court orders regarding disclosure and filing pleadings, but rather than prolonging the litigation process, her conduct was catalytic to the early determination of liability. This ironically resolved liability in favour of the plaintiff in accordance with his pleading, reduced the triable issues and shortened the scope of the trial.
- [183] I do not accept that during the trial the first defendant engaged in improper conduct. Whilst she cross-examined the plaintiff about using the proceedings for an improper and malicious purpose, such as retribution for the use of parliamentary privilege, acting as a mere puppet for the LGAQ, and being deliberately dishonest with his treating doctors, she was merely doing her incompetent best to comply with her obligations under the rules in *Browne v Dunn*.⁹⁴ Since these matters were rejected by the plaintiff, they fell away with no impact on the case.
- [184] The plaintiff contends for an award of aggravated damages based on the fourth defendant's conduct as exacerbating the harm inflicted on the plaintiff, in that:
- (a) He failed to make any inquiries with the plaintiff before publishing, despite knowing the potential damage and their personal connection.
 - (b) The publishing of the publications was high-handed, oppressive, insulting, and offensive, insinuating that the plaintiff was corrupt without explicitly naming him.
 - (c) He was trying to stop or defund the plaintiff's legal proceedings by sending letters to the plaintiff and a public official, which were seen as self-serving and manipulative, adding to the plaintiff's distress.
 - (d) He was mocking the plaintiff through social media posts, and raising concerns that the continued publications could distract the jury from rendering an impartial verdict.
 - (e) It was necessary to issue an injunction against him, but he still continued to breach the court's orders by publishing defamatory material, showing a disregard for the legal process, and publishing during the trial.
 - (f) He falsely attributed dishonest and ulterior motives to the plaintiff for bringing the legal proceedings.
- [185] The evidence demonstrated that the fourth defendant views and responds to the world through the lens of his strongly held political beliefs, which are influenced by his background in politics, personal tragedy, disability and struggle, strong sense of purpose and representation, and perceived right of free speech. Consistently with my assessment of the first defendant, I do not accept that the defendants' obvious orchestration targeted the plaintiff. Instead, it was focused on broader local government misconduct and establishing an anti-corruption body. The fourth

⁹⁴ *Browne v Dunn* (1893) 6 R 67

defendant's evidence was responsive and candid, including his ignorance of the "Jabba the Hutt" character and his motivations towards the plaintiff as a former family friend and head of the LGAQ, which formed part of a broader local government spectrum.

- [186] Like the first defendant, the fourth defendant also failed to make any inquiries with the plaintiff before publishing defamatory material, despite being aware of the potential damage and their personal connection. The publications were high-handed, oppressive, insulting, and offensive, insinuating that the plaintiff was within a class of corruption without explicitly naming him. The defendant further tried to halt or defund the plaintiff's legal proceedings by sending self-serving and manipulative letters to both the plaintiff and a public official. In addition, the defendant mocked the plaintiff through social media posts, which sounded in an interim injunction being made against the fourth defendant. Whilst there was potential for the conduct to impact jury selection, it was, nevertheless, a matter for the plaintiff to elect a trial with or without a jury. However, he continued to breach the court's orders by publishing defamatory material, demonstrating a deliberate disregard for the legal process. The fourth defendant also attributed other motives to the plaintiff for bringing the legal proceedings, which I do not think was improper, but in an effort to comply with the rule in *Browne v Dunn* to give the opportunity to the plaintiff to respond to the allegations, which were rejected.
- [187] While it might be inferred that some or all the aggravating conduct of the first and/or fourth defendant exacerbated the harm inflicted on the plaintiff, it is difficult to discern any increase in his personal hurt and distress or his reputational damage due to his awareness. It seems to me that their respective actions likely worsened his distress by continually intensifying their resistance to any acknowledgment or apology of their folly. In the case of the first defendant, her aggravating conduct formed a continuous stream, leaving the plaintiff with no respite from his psychiatric condition and ongoing hurt. The fourth defendant compounded the hostility and likely impacted the plaintiff by the social media campaign from May 2021.
- [188] I will apportion aggravated damage at 20% of the non-economic loss in respect of each defendant.

Special damages

- [189] Damages are assessed "once and for all," allowing plaintiffs to receive the present value of anticipated pecuniary losses.⁹⁵ Past and anticipated medical and pharmaceutical expenses caused by defamatory publication, if not too remote, are separately compensable in defamation.
- [190] I accept the plaintiff's submission that the special damages must be considered in two distinct periods.
- [191] The first period spans from 7 October 2017 to 30 August 2021, the latter date being when the plaintiff completed his evidence-in-chief. The special damages for this period amount to \$6,652.99, which has been calculated based on the total out-of-pocket medical and medication expenses as detailed in evidence. The second period covers 30 August 2021 until the judgment, during which the plaintiff's psychiatric

⁹⁵ *McCarey v Associated Newspapers Ltd (No 2)* [1965] 2 QB 86 at 104 per Pearson LJ.

condition is unlikely to improve until he receives judgment as a form of vindication. For this period, I will allow \$5,500 for the second period of 3.17 years by prorating \$6,652.99 over 3.83 years in the first period.

- [192] Statutory interest on these amounts will be awarded at a rate of 3% per annum.

Comparable Cases

- [193] Circumstances of individual defamation cases widely vary, however, some careful guidance for awards can still be gleaned from closely comparable cases.⁹⁶
- [194] *O'Reilly v Edgar* [2019] QSC 024 involved 10 Facebook posts between January 2016 and September 2018, in which the defendant severely criticised the CEO of a karting organisation. The plaintiff, with a good but niche reputation in sports administration, particularly motor sports, was deeply affected emotionally by the posts, especially as a cancer survivor. Despite no recognised psychiatric condition being diagnosed, the plaintiff required several months of psychiatric care. The defendant, self-represented at trial, was aggressive and callous in his conduct. The Court recognised significant publication within the karting community and the grapevine effect, awarding the plaintiff \$250,000 for ordinary and aggravated compensatory damages. Bradley J discussed other relevant cases where social media publications led to damages ranging from \$150,000 to \$480,000, depending on the severity of the defamatory imputations and the extent of publication.
- [195] In *Oskouie v Maddox* [2019] NSWSC 428 the defendant described the plaintiff as an "Islamic hacker" and "international criminal" through emails and website publications, reaching approximately 75,000 people. The grapevine effect was significant, and the plaintiff lost his job as a legal practitioner due to the defamation. The Court awarded \$425,000 in ordinary and aggravated damages and \$450,000 for economic loss.
- [196] In *Webster v Brewer (No. 3)* [2020] FCA 622, Dr Anne Webster and her husband, Dr Phillip Webster, were defamed in a series of Facebook posts and videos accusing them of heinous criminality. Although many might dismiss the posts as lacking credibility, they were still considered damaging to certain members of the Mildura community. Both plaintiffs suffered intensely, with Dr Phillip Webster experiencing physical symptoms of anxiety. The Court awarded Dr Anne Webster \$350,000 and Dr Phillip Webster \$225,000 in ordinary and aggravated compensatory damages.
- [197] In *Nettle v Cruse* [2021] FCA 935, a plastic and reconstructive surgeon was defamed on multiple websites, including a false site created in his own name. The defamatory statements accused him of being a fraud, liar, and incompetent doctor. Although no recognised psychiatric condition was diagnosed, the emotional toll on the plaintiff was extreme, warranting an award of \$450,000 in damages.
- [198] In *Colagrande v Kim* [2022] FCA 409, a cosmetic doctor practising on the Gold Coast was awarded damages for non-economic loss, including aggravated damages for \$420,000.00. The applicant suffered post-traumatic stress disorder, paranoia, increased anxiety and feelings of defencelessness, vulnerability, despair and isolation from other doctors upon learning that a false review posted on a medical rating

⁹⁶ *Cerutti v Crestside Pty Ltd* [2016] 1 Qd R 89 at [47]- [49] per Applegarth (McMurdo P and Gotterson JA agreeing).

website was not of a disgruntled patient but instead from a competitor doctor. The publication carried defamatory imputations that the applicant had sexually assaulted his patient and should not be practising medicine following the sexual assault of his patient. Whilst the applicant had been convicted of such an offence, he maintained innocence and the conviction was later quashed on appeal. The rating website boasted 100,000 visits per day. Analytical data revealed that between December 2020 and June 2021, the plaintiff's profile had 70,000 to 180,000-page reviews per month. An order restraining the respondents from publishing the defamatory matter or any matter or imputations to the same effect as the defamatory matter

- [199] These cases involve a serious level of hurt and distress suffered by the plaintiff, which all except *Nettle v Cruse*, led to a recognised psychiatric condition, and all involved a significant duration of suffering. It seems to me that the circumstances, in this case, suggest a global award in the order of \$400,000 for damages for non-economic loss, including aggravated damages. There is persistent conduct by the first defendant but not so by the fourth defendant; the gravity of the imputations is significant, and there is considerable media attention on the political discourse, which was much broader than the disputed publications. And the publications had a relatively limited reach with an undefinable amplification by the grapevine effect to some degree.
- [200] The plaintiff conceded that this case is less serious than *Barilaro v Google LLC* [2022] FCA 650 where the plaintiff, a former Deputy Premier of New South Wales, was awarded \$675,000 for ordinary and aggravated compensatory damages. He was defamed in two YouTube videos produced by an individual and published by Google, who failed to remove the videos despite being notified of their defamatory content. These videos contained severe defamatory accusations, including corruption, perjury, blackmail, and theft. The relentless and abusive nature of the campaign left the plaintiff emotionally broken, leading to his resignation from Parliament. Despite the severe impact, the judgment does not note any medical evidence of a recognised psychiatric condition resulting from the defamation. The period between the first video and the judgment was nearly one year and nine months. While this case involves extensive publication and serious imputations, it is argued that the damages awarded in this case should not exceed the \$675,000 awarded in *Barilaro v Google LLC* for ordinary and aggravated compensatory damages. This case provides no useful comparative value.
- [201] Likewise, the first defendant contrasted the circumstances of this case with that of *Bauer Media Pty Ltd v Wilson (No 2)* [2018] 56 VR 674, where damages were reduced and released on appeal to \$600,000 for non-economic loss. This case also has no comparative value.

What damages ought to be awarded to the plaintiff against the first defendant?

- [202] I assess damages against the first defendant for \$283,355.00, comprising non-economic loss damages of \$275,000.00 (including \$55,000.00 for aggravated damages) and special damages of \$8,355.00.
- [203] By s 58 of the *Civil Proceedings Act 2011* (Qld), the plaintiff is entitled to interest on past loss up to judgment. The plaintiff contends for a modified interest rate of 3% per annum over the whole period from the commencement of the publication to the date of judgment. I agree.

- [204] I will award judgment accordingly, together with interest pursuant to s 58 of the *Civil Proceedings Act 2011* (Qld), at the rate of 3% per annum to the date of judgment from 10 June 2017 for general damages being \$61,004.79 and from 7 October 2017 for special damages being \$1,771.72.

What damages ought to be awarded to the plaintiff against the fourth defendant?

- [205] The case against the fourth defendant involved liability regarding five alleged defamatory publications and the assessment of any damages. I have found the defendant liable for four publications of and concerning the plaintiff.
- [206] Accordingly, I assess damages against the fourth defendant for \$128,798.50, comprising non-economic loss of \$125,000.00 (including \$25,000.00 for aggravated damages) and special damages of \$3,798.00.
- [207] I will award judgment accordingly, together with interest pursuant to s 58 of the *Civil Proceedings Act 2011* (Qld), at the rate of 3% per annum to the date of judgment from 21 June 2017 for general damages being \$27,657.53 and from 7 October 2017 for special damages being \$805.38.

INJUNCTION

Should a permanent injunction be made against the first defendant?

- [208] The plaintiff also seeks a permanent injunction against the first defendant in the exercise of discretion under s 69(1) of the *District Court of Queensland Act 1967* (Qld).
- [209] The court's decision is discretionary and does not solely depend on proving the imminence of the material acts on the balance of probabilities. While proof on the balance of probabilities that the complained acts will occur is generally sufficient for specific relief, the fundamental enquiry is the extent of hardship caused by leaving the plaintiff to seek damages or reapply if the threat increases. This consideration depends not only on the probability of the acts occurring but also on their gravity and the degree of damage or inconvenience they would cause.⁹⁷
- [210] Relevant considerations may include:⁹⁸ the absence of an existing infringement is not irrelevant and may complicate proving sufficient risk; if the likelihood of injury is not high, relief will be refused, leaving the applicant to other remedies; the applicant must show a substantial risk, beyond an insignificant or illusory risk; greater potential prejudice or inconvenience increases the Court's willingness to intervene despite uncertainties; the Court must be convinced of sufficient risk to justify an injunction; the decision is discretionary, weighing the probability and gravity of the acts, potential damage, respondent's hardship, and any inequitable conduct by the applicant; evidence of intention to commit the acts is valuable but not decisive; other evidence may also be significant; previous breaches or stated intentions can help establish risk, but their weight depends on the case; the first defendant's right to free

⁹⁷ Spry ICF "The Principles of Equitable Remedies: Specific Performance, Injunctions, Rectification and Equitable Damages"

⁹⁸ *Apotex v Servier (No. 2)* (2012) 293 ALR 272 at [30], [32]-[43], [52], [69] & [90]; *Phillips v Robab Pty Ltd* [2014] NSWSC 1520 per Rothman J at [182].

speech within limits; the ease of internet republication of defamatory material; avoiding multiple litigations by restraining repeat unlawful conduct; the burden imposed on the plaintiff by s 23 of the Act; the lack of the first defendant's undertaking not to republish defamatory imputations.

- [211] There is a risk that the first defendant will publish similar defamatory material in the future. This risk is evidenced by 38 separate publications, some of which occurred after the proceedings began, and the fact that nine of these publications remain undeleted. This ongoing infringement indicates a likelihood of continued defamation. Additionally, the first defendant has not adequately apologised for the actions, nor has there been an undertaking not to republish defamatory content. The first defendant continued to assert that the plaintiff has engaged in malicious misconduct by bringing this proceeding, suggesting an ongoing risk of defamatory behaviour. The future intentions and capacity to continue using Facebook are also uncertain. The first defendant has expressed a desire to reconfigure the social media presence, but a headstrong nature makes it prone to repeating defamatory actions. The first defendant's mental health issues have further compromised her ability to delete defamatory matters in a timely way. The presence of a permanent injunction could assist in resisting the temptation to defame the plaintiff in the future, even if mental health deteriorates. It is significant that continued defamatory publications would impede the plaintiff's mental health recovery. Without an injunction, the plaintiff would face the burden of pursuing further legal action, which may be unfruitful given the likelihood of future publications and the potential difficulty in obtaining damages.
- [212] On the other hand, the first defendant has taken significant steps to change behaviour. Many of the defamatory posts have been deleted amidst complexities, and there has not been any publication related to the plaintiff since late 2019, demonstrating a consistent change in behaviour over the past four years. These proceedings have also been a significant source of strain and restraint. The first defendant misguided herself in her unrepresented capacity but seemed to act on legal advice when available and has made efforts to delete the complained posts. I accept that her continued publications from late 2019 was made under duress and during a period of mental health decline. The first defendant accepts a need to focus on health and personal well-being, about which she has shown genuine commitment during this proceeding, albeit also a period of mental health decline. The first defendant has apologised for the 14th Lyn O'Connor publication and expresses an intent to delete any remaining defamatory material when her health permits. The evidence and conduct since 2019 show a commitment to living a different life, free from the defamatory behaviour that led to the current proceedings.
- [213] Weighing up these matters, it seems to me that the risk and gravity of the potential harm to the plaintiff justifies the imposition of an injunction, which would not impose an unfair burden on the first defendant but rather prevent the commission of wrongful acts on their part.
- [214] Accordingly, I will allow the plaintiff's claim for a permanent injunction to prohibit future defamatory publication of and concerning the plaintiff.

COSTS

- [215] I will hear the parties on the terms of final orders, including the calculation of interest and the disposition of costs, which ought to follow the event unless either party seeks a different order within 14 days of this judgment.

ORDERS

- [216] For these reasons, I will give judgment to the plaintiff against the first and fourth defendants and make the following orders:
1. Judgment for the plaintiff against the first defendant in the amount of \$346,131.51 including interest pursuant to s 58 of the *Civil Proceedings Act 2011* (Qld) at the rate of 3% per annum to the date of judgment from 10 June 2017 on general damages of \$61,004.79 and special damages from 7 October 2017 of \$1771.72.
 2. The first defendant is permanently restrained from directly or indirectly publishing or causing to be published any of the matters, or substantially to the same effect as those matters, subject of her publications in this proceeding.
 3. Judgment for the plaintiff against the fourth defendant in the amount of \$157,261.41 including interest pursuant to s 58 of the *Civil Proceedings Act 2011* (Qld) at the rate of 3% per annum to the date of judgment on general damages from 21 June 2017 of \$27,657.53 and on special damages from 7 October 2017 of \$805.38.
 4. Unless either party applies for a different costs order within 14 days of this judgment, I will also order that the first defendant and fourth defendant will pay the plaintiff's costs of the proceeding (including reserved costs) to be assessed on the standard basis of the proceedings against each of them, respectively.
 5. I will hear the parties as to costs.



Judge DP Morzone KC