Federal Court of Australia

Webster v Brewer (No 3) [2020] FCA 1343

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| File number: |  |
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| Judgment of: | **GLEESON J** |
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| Date of judgment: | 22 September 2020 |
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| Catchwords: | **DAMAGES** – defamation – where default judgment ordered against respondent – principles concerning assessment of non-economic loss – where aggravated damages appropriate  |
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| Legislation: | *Federal Court Rules 2011* r 5.23(d)*Defamation Act 2005* (Vic) ss 34, 35, 36  |
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| Cases cited: | *Australian Broadcasting Corporation v Comalco Ltd* [1986] FCA 300; (1986) 12 FCR 510 *Bauer Media Pty Ltd & Anor v Wilson (No 2)* [2018] VSCA 154; (2018) 56 VR 674*Belbin v Lower Murray Urban and Rural Water Corporation* [2012] VSC 535 *Carson v John Fairfax & Sons Ltd* [1993] HCA 31; (1993) 178 CLR 44 *Channel Seven Sydney Pty Ltd v Mahommed* [2010] NSWCA 335 *Cripps v Vakras* [2014] VSC 279*Culla Park Ltd v Richards* [2007] EWHC 1850 (QB)*French v Fraser (No 3)* [2015] NSWSC 1807*Hayson v The Age Company Pty Ltd (No 2)* [2020] FCA 361*Lewis v Daily Telegraph Ltd* [1964] AC 234 *Nationwide News Pty Ltd v Rush* [2020] FCAFC 115 *Pettiona v Nationwide News Pty Ltd* [2019] FCA 1690*Rush v Nationwide News Pty Ltd (No 7)* [2019] FCA 496*Theophanous v Herald & Weekly Times Ltd* [1994] HCA 46; (1994) 182 CLR 104*Triggell v Pheeney* [1951] HCA 23; (1951) 82 CLR 497*Wagner v Nine Network Australia* [2019] QSC 284 |
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| Date of hearing: | 31 August 2020  |
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| Counsel for the Applicants: | J Hooper |
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| Solicitor for the Applicants: | Norton Rose Fulbright Australia |
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| Counsel for the Respondent: | The respondent did not appear |

ORDERS

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|  | VID 293 of 2020 |
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| BETWEEN: | ANNE WEBSTERFirst ApplicantPHILIP WEBSTERSecond ApplicantZOE SUPPORT AUSTRALIA (ABN 76161029705)Third Applicant |
| AND: | KAREN BREWERRespondent |

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| order made by: | GLEESON J |
| DATE OF ORDER: | 22 September 2020 |

THE COURT ORDERS THAT:

1. The respondent pay the first applicant general damages, including aggravated damages assessed in the sum of $350,000.00.
2. The respondent pay the second applicant general damages, including aggravated damages assessed in the sum of $225,000.00.
3. The respondent pay the third applicant general damages, including aggravated damages assessed in the sum of $300,000.00.
4. The respondent pay the applicants’ costs of the proceeding.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

GLEESON J:

1. On 18 June 2020, I made an order pursuant to r 5.23(2)(d) of the *Federal Court Rules 2011* giving judgment for the applicants against the respondent (**Ms Brewer**) for damages to be assessed by the Court in respect of seven defamatory publications. Those damages are to be assessed under the *Defamation Act 2005* (Vic) (**Act**).
2. In the absence of any defence, I also made an order in terms of the interlocutory injunction made on 19 May 2020 (*Webster v Brewer (No 2)* [2020] FCA 727) permanently restraining Ms Brewer from publishing or causing to be published in any form, or maintaining online for downloading, or uploading so as to make available for publication online the seven matters complained of and any other matter to the same purport or effect as any of the seven matters complained of to the extent that such other matters identify the applicants, whether expressly or by implication.
3. On 31 August 2020, I heard evidence and submissions on the assessment of damages. Ms Brewer did not appear at the hearing and did not seek to participate in the proceeding at any stage.

# Applicants

1. The first applicant **(Dr Anne Webster**) is a member of the House of Representatives for the Division of Mallee in Victoria. She moved to Mildura over 40 years ago and has lived there with her husband, the second applicant **(Dr Philip Webster**), since then.
2. Together, Dr Anne and Dr Philip Webster have three adult children and six grandchildren, all of whom reside in the Mildura area.
3. After raising her family, Dr Anne Webster completed a Bachelor of Arts (majoring in Sociology) concurrently with a Bachelor of Social Work (with Honours), and became a social worker in Mildura. In 2018, she completed a PhD in Sociology. She has a long history of community service in Mildura. An example is Dr Anne Webster’s previous membership of the board of Mallee Accommodation Support, a program focused on finding accommodation for socially disadvantaged members of the Mildura community.
4. In 2019, Dr Anne Webster received the Mildura Rural City Council Citizen of the Year Award, in recognition of her outstanding contribution to the Mildura community particularly through her tireless efforts with the third applicant (**Zoe Support**), a not-for-profit organisation founded by Dr Anne Webster in 2011.
5. Dr Philip Webster is a general practitioner who has practised in Mildura since 1980, that is, for 40 years. He has been a non-procedural visiting medical officer at both Mildura Base Hospital and Mildura Private Hospital since 1980. Dr Philip Webster is a director and the board chair of Zoe Support.
6. Dr Philip Webster’s other community participation has included the following roles:
7. part-time academic tutor at the Monash Rural Clinical School (2008-current);
8. member of the Community Advisory Board of Mildura Base Hospital (2016-2019);
9. director of the Mallee Division of General Practice (1999-2015), including as chair from 2002-2009;
10. director of the Rural Workforce Agency of Victoria (2005-2017), including as chair from 2007-2014;
11. councillor of Mildura Senior College (2001-2016), including as chair from 2003-2004; and
12. Medical Advisor to the North West Region, Murray Primary Health Network (2016- current).
13. While I have no doubt as to the great hurt inflicted upon the Websters by Ms Brewer’s defamatory publications, perhaps the most harmful aspect of her conduct concerns Zoe Support. Zoe Support is a not-for-profit organisation operating within Mildura and surrounding districts, established to provide benevolent relief from social isolation, poverty, ill health, destitution and distress for pregnant women and new mothers who lack support and resources. The organisation provides community-based support to disadvantaged young mothers and their children, access to transportation, education, accommodation, counselling and healthcare and seeks to create trans-generational change that has positive implications for these young families and the community. Particular aspects of this support include providing homes and amenities, and assisting young women to re-engage with education.
14. Zoe Support assists disadvantaged and welfare-dependent young mothers (aged 13-25), providing pathways to education, training and employment as they embark on their parenting journey. Its services are based on individual integrated intervention including:
15. intensive casework by a team of qualified case managers, including a housing case worker;
16. in-venue day care provided by qualified early years educators onsite while parents attend school or programs;
17. study hubs at each venue;
18. life skills programs, such as positive parenting, birthing classes and antenatal consultations provided by Sunraysia Community Health, Maternal and Child Health onsite visits to encourage breast feeding and early years development;
19. Learn Local pre-accredited training programs including ‘Bibs and Blankies’ sewing program, ‘Bridging Numeracy and Literacy’ program, ‘Introduction to Allied Health’, ‘Financial Literacy’, ‘Contemporary Cakes and Small Business’ and the ‘Earth to Table’ cooking program;
20. tutoring support provided by qualified teachers;
21. advocacy and referrals with valued partners in health, education, welfare and employment;
22. social enterprises;
23. transport assistance with two vans transporting mothers and babies to and from education, medical, and other appointments;
24. peer mentoring; and
25. supported playgroups.
26. Zoe Support currently operates four centres with 24 multidisciplinary staff including voluntary workers, and two buses transporting over 150 mothers and children each week to and from the centres, education facilities and medical appointments.
27. Outcomes from longitudinal data collected at Zoe Support in the 2018-2019 financial year show that:
28. while 39% of Zoe Support young mothers experienced involvement with Child Protection growing up, after engagement this number is reduced to 8%;
29. 48% of clients experienced family violence as a child and this has reduced to 21% of clients;
30. 43% of clients acknowledge past substance misuse and 14% report current use; and
31. 77% of clients report homelessness or risk of homelessness on initial assessment and now 52% of clients lease private rentals.
32. Zoe Support has assisted more than 200 young women in the Mildura area with essential support services.
33. There can be no serious doubt about the value of an organisation like Zoe Support in a rural community like Mildura. Ms Brewer’s defamatory publications are designed to undermine the charitable objects of Zoe Support, to the potential detriment of some of the most disadvantaged people within its community.

## Evidence of applicants’ reputations

1. Christopher Crewther is the Patron of the Tourette Syndrome Association of Australia and a member of the Commonwealth Government’s Modern Slavery Expert Advisory Group. He is a former member of the House of Representatives, former chief executive officer of the Mildura Development Corporation and was admitted as a legal practitioner in the ACT Supreme Court in 2006. Mr Crewther was a non-executive director of Zoe Support from 2014 to 2018.
2. Mr Crewther has known Dr Anne Webster and Dr Philip Webster for several years. He considers them both to be fine upstanding members of the Mildura community who have dedicated themselves to working for the benefit of others and for the betterment of society as a whole. Mr Crewther noted the significant hours worked by Dr Anne Webster and Dr Philip Webster to make a difference to the lives of young women through Zoe Support who would otherwise have likely faced circumstances of relative social and educational disadvantage.
3. Mr Crewther stated that, in his role at Zoe Support, he developed “complete trust” in Dr Anne Webster. He described his experience of the Websters in the following way:

She is open, honest, wears her heart on her sleeve and has exceptional emotional and general intelligence. Equally, Philip’s meticulous focus on governance, reliability and his trustworthiness as chair of Zoe Support perfectly complements Anne’s skills, enabling her to focus on the grassroots work of Zoe Support. They are a dedicated, loving, Christian couple; dedicated to their children, grandchildren, family, church and the community. I believe they are always willing to work for and on behalf of the community and…as I know from my interactions with civic leaders and ordinary citizens alike, they are each highly regarded and respected by other members of the community at both a personal and professional level.

1. Hannah Ryan, a client of Zoe Support from 2013 to 2019, gave the following touching evidence:

I am especially grateful to Zoe Support in supporting me and encouraging me to pursue and eventually attain my Certificate 4 in Community Services. They also helped me find housing, by acting as a ‘housing advocate’ and accompanying me to my housing appointment interviews so that I would not be alone. If I had any trouble with Centrelink, a member of the Zoe Support staff would speak to Centrelink on my behalf. Cooking classes were also provided by the staff, which taught me how to prepare healthy meals for my family.

I credit Zoe Support for creating a strong friendship group between the young mothers. Being able to speak to other women in similar circumstances and forge strong bonds with each other was invaluable and provided a strong support structure that we often lacked from our family and friends. For many of us young mothers with Zoe Support, our families did not provide the required support, but the staff welcomed us and made us feel a part of the Zoe family. I suffered from post-natal depression after the birth of my first child, and the staff helped me get the help and support I needed to combat my depression.

Zoe Support did not just provide us with support during the time we were clients, rather they provided us with the tools to be independent, gain employment and take care of our children and families once we left Zoe Support.

1. Other witnesses attested to the integrity, decency and community spirit of the Websters.
2. Simon Clemence is the Mayor of the Mildura Rural City Council, chief executive officer of the Australian Aviation Alliance (a commercial pilot training school) and chair of the Local Drug Action Team. Mayor Clemence served with the Victoria Police for 39 years before his retirement in 2015.
3. Mayor Clemence first met Dr Anne Webster in 2016, in her capacity as founder and executive director of Zoe Support. Mayor Clemence gave evidence of Dr Anne Webster’s dedication and passion for supporting the socially disadvantaged members of the Mildura community. Mayor Clemence also gave evidence that he has worked with Dr Anne Webster on issues directed to improving social and economic outcomes for Mildura. In the course of that work, Mayor Clemence has found Dr Anne Webster to be intelligent, diligent, motivated and very community focussed. Mayor Clemence regards Dr Anne Webster as a great asset to the Mildura community.
4. Mayor Clemence also knows Dr Philip Webster to be a well-respected medical doctor in Mildura.
5. Alison Cupper, member of the Victorian Legislative Assembly for the electorate of Mildura, gave evidence that she has only ever heard Zoe Support mentioned or supported in positive terms. Ms Cupper has worked with the Victorian Department of Health and Human Services (**DHHS**) as a senior child protection practitioner and as a solicitor in the child protection department. Ms Cupper was a director of Zoe Support from 2011 to 2013 and 2016 to 2017. Ms Cupper evidence was based on interactions with members of the local community and people within the DHHS and Integrated Family Services. Comments heard by Ms Cupper have included that Zoe Support performs incredibly important work in the community and fills a vital gap in the local service sector for vulnerable young women and their children.
6. Ms Cupper first met Dr Anne Webster in 2011 in Ms Cupper’s capacity as a social worker and former State election candidate, with a particular policy interest in children and families. Ms Cupper recalled being immediately impressed by Dr Anne Webster’s wisdom, intelligence, professionalism and kindness.
7. Ms Cupper expressed the view that Zoe Support’s positive reputation is largely the result of the dedication of Dr Anne Webster, and her clear vision and genuine passion for the cause of helping young mothers and their children break cycles of intergenerational poverty and supporting them in reaching their potential.
8. Merryl Whyte has been the coordinator of the Mildura Place-Based Suicide Prevention Trial since 2017. She is also the founder and past president of the Sunraysia Perinatal Depression Support Network, and a council member for Mildura Senior College. Prior to commencing her current role, she was the Coordinator of the North West Advisory Council with the Murray Primary Health Network and a producer with the Australian Broadcasting Corporation for the region of Mildura and Swan Hill.
9. Ms Whyte first met Dr Philip Webster during her time as a producer at the Australian Broadcasting Corporation. In 2015, she often organised phone interviews with him to obtain and broadcast his responses to health issues in the community, in his role as Medical Adviser for the North West region of the Murray Primary Health Network. Ms Whyte gave evidence that she was aware of Dr Philip Webster’s service on the Mildura Senior College School Council, and of the liaison role played by Dr Philip Webster between the School Council and Zoe Support.
10. Ms Whyte described Dr Philip Webster as a competent, caring and knowledgeable medical practitioner, who regularly visits nursing homes and puts patient care at the forefront of his decision-making. Ms Whyte understands Dr Philip Webster to be a medical practitioner who will work after hours, attend professional development sessions and routinely work with other parts of the health sector to improve the health system.
11. Ms Whyte stated that Dr Philip Webster, along with a colleague, led the initial health sector meetings to discuss and plan local responses to the COVID-19 pandemic in March 2020, and he was one of the few senior medical practitioners who volunteered to be on the roster to establish a COVID-19 testing clinic in Mildura. Ms Whyte also said that Dr Philip Webster is a mentor for younger medical practitioners in his private practice and is a valued peer in the wider network of medical advisors within the Murray Primary Health Network region. He is motivated by a genuine desire to help both individuals and the wider community.
12. Dr John Buckley, a general practitioner in Mildura, gave evidence that he has known Dr Philip Webster for almost 40 years through their participation in local medical boards and training and teaching medical students. Dr Buckley states that Dr Philip Webster’s opinion is often sought, and always listened to. Dr Buckley considers that anyone who has met Dr Philip Webster would be offended by such inflammatory and clearly false accusations.

# Defamatory publications

1. The conduct of Ms Brewer in defaming the applicants in the seven relevant publications is both disgraceful and inexplicable. The Websters had not heard of Ms Brewer prior to the first matter complained of, published on 26 April 2020.
2. In text and video posts uploaded over approximately two weeks, Ms Brewer branded the Websters and Zoe Support as participants in a secretive criminal network (**criminal network**) involved in the sexual abuse of children. She also made a range of defamatory utterances about Dr Anne Webster. It would be counter-productive to record Ms Brewer’s statements in any more detail than necessary to explain my reasons for this assessment of damages.
3. Dr Anne Webster sues on the following seven publications, each published on Ms Brewer’s Facebook page:
4. a written post uploaded on 26 April 2020 at 6:21 am;
5. a video uploaded on 26 April 2020 at 2:01 pm;
6. a written post uploaded on 27 April 2020 at 5:14 am;
7. a video uploaded on 30 April 2020 at 6:13 pm;
8. a written post uploaded on 8 May 2020 at 5:42 am;
9. a video uploaded on 8 May 2020 at 6:00 am; and
10. a video uploaded on 8 May 2020 at 7:44 am.
11. Dr Philip Webster sues on the second, third and fourth matters complained of.
12. Zoe Support sues on all matters complained of except the first matter complained of.
13. Each of the defamatory imputations sued on by the applicants is false and untrue.
14. None of the publications identify any sensible basis for what she has written and said in those publications. Ms Brewer has not made any attempt to justify or explain her defamatory statements to the Court. Neither has she retracted her publications, nor apologised for the harm that she has caused. It should have been obvious to Ms Brewer, at all relevant times and if she were capable of rational consideration on the subject, that her defamatory statements were wholly indefensible.
15. Fortunately for the Websters, their long lives of decency and good deeds, coupled with the incoherence of much of Ms Brewer’s messages, make it reasonably unlikely that any but the most suggestible individuals would think the less of them as a result of Ms Brewer’s publications. However, social media has provided Ms Brewer with a platform by which she is able to reach suggestible individuals who may believe her claims. As the applicants observed, not all community members know the Websters personally or by their positive reputation. Ms Webster’s Facebook page has several thousands of followers. Consistent with her stated aim, Ms Brewer’s defamatory publications have spread along the grapevine into the Mildura community.
16. Also consistent with her evident goal, Ms Brewer’s defamatory publications will probably have been believed by a small but not insignificant segment of the Mildura community, thereby harming the good reputations of the Websters. Cruelly, Ms Brewer’s publications have cast doubt on the transformational role that Zoe Support plays and hopes to play in the lives of some of the most stigmatised, traumatised and vulnerable members of the community in Mildura and surrounding areas. Ms Robertson gave evidence that Zoe Support’s monthly referrals have been lower than usual since the publication of the third matter complained of on 27 April 2020. If that change is attributable to Ms Brewer’s publications, then she has given vulnerable young mothers false cause to distrust Zoe Support, and may cause them to be deprived of support from which they may otherwise have benefited. As Ms Ryan observed, reaching out for help from relative strangers is hard when you feel scared and have learned not to expect help.
17. Having given default judgment in favour of the applicants, it is appropriate to assess damages by reference to the defamatory imputations specified by the applicants in the statement of claim.

# Principles relevant to assessment of damages

1. In *French v Fraser (No 3)* [2015] NSWSC 1807 (***French***) at [9] to [13], McCallum J set out the relevant principles in a case that also involved the internet as a medium for defamatory publications. Although her Honour referred to the relevant New South Wales legislation, the principles are relevantly similar:

[9] The principles for assessing damages for defamation are well settled. Section 34 of the *Defamation Act 2005* (NSW) requires the court, in determining the amount of damages to be awarded, to ensure that there is an appropriate and rational relationship between the harm sustained by the plaintiff and the amount of damages awarded. That is not to require a precise or mathematical relationship between particular defamation cases and personal injury cases but to ensure that damages for defamation “take their proper place in the administration of justice” and “stand in a proper relationship with awards for the non-economic consequences of personal injury”: *Rogers v Nationwide News Pty Ltd* [2003] HCA 52; 216 CLR 327 at [74] per Hayne J; approved in *Channel Seven Sydney Pty Ltd v Mahommed* [2010] NSWCA 335; 278 ALR 232 at [270] per McColl JA (with whom Spigelman CJ and Beazley JA (as her Honour then was) relevantly agreed).

…

 [11] The purpose of an award of damages in defamation is to provide consolation for hurt to feelings, recompense for damage to reputation and vindication of the plaintiff’s reputation: *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44 at 60 per Mason CJ, Deane, Dawson and Gaudron JJ.

[12] Of particular importance in the present case is the principle 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: *Crampton v Nugawela* (1996) 41 NSWLR 176 at 195.

[13] An award of damages should be sufficient “to convince a bystander of the baselessness of the charge”: *Cassell & Co Ltd v Broome* [1972] AC 1027 per Lord Hailsham NC at 1071. It appears to be accepted that the requirement of s 34 of the Act (to ensure that there is an appropriate and rational relationship between the harm sustained and the amount of damages awarded) does not derogate from that principle: *Moit v Bristow* [2005] NSWCA 322 at [121] per McColl JA, Beazley JA and Campbell AJA agreeing.

1. Injury to feelings may constitute a significant part of the harm sustained by an applicant and for which they are to be compensated by damages: *Belbin v Lower Murray Urban and Rural Water Corporation* [2012] VSC 535 at [242] (***Belbin***). Injured feelings include the hurt, anxiety, loss of self-esteem, sense of indignity and the sense of outrage felt by the applicant: *Carson v John Fairfax & Sons Ltd* [1993] HCA 31; (1993) 178 CLR 44 (***Carson***)at 71.
2. The extent of the publication and the seriousness of the defamatory sting are relevant considerations in assessing damages: *Bauer Media Pty Ltd & Anor v Wilson (No 2)* [2018] VSCA 154; 56 VR 674 (***Wilson***) at [165]. Allowance should be made for the “grapevine effect” (which recognises that the dissemination of defamatory material is rarely confined to those to whom the matter is immediately published); the tendency of the poison in the defamatory publications to percolate through underground passages and contaminate hidden springs or to be driven underground only later to emerge from their lurking place: *Rush v Nationwide News Pty Ltd (No 7)* [2019] FCA 496 (***Rush***) at [786].
3. While individuals may seek compensatory damages for subjective personal distress and hurt, damages of this type are not available to litigants who are not individuals: “A company cannot be injured in its feelings, it can only be injured in its pocket”: *Lewis v Daily Telegraph Ltd* [1964] AC 234 at 262; *Australian Broadcasting Corporation v Comalco Ltd* [1986] FCA 300; (1986) 12 FCR 510 at 586 and 599.
4. Dr Anne Webster’s right to sue and recover damages in defamation is not affected by her status as a public figure: cf. *Theophanous v Herald & Weekly Times Ltd* [1994] HCA 46; (1994) 182 CLR 104 at 192.
5. In *Culla Park Ltd v Richards* [2007] EWHC 1850 (QB) at [26], Eady J considered that the distress of observing family members who were distressed themselves by defamatory publications was relevant to the assessment of general damages but noted that caution was required to guard against double recovery. In this case, each of the Websters has been particularly distressed to observe the impact of the defamatory publications upon the other, and each has been distressed by the defamation of Zoe Support.

## Statutory cap

1. Section 34 of that Act states:

In determining the amount of damages to be awarded in any defamation proceedings, the court is to ensure that there is an appropriate and rational relationship between the harm sustained by the plaintiff and the amount of damages awarded.

1. By s 35(1), the maximum amount of damages for non-economic loss that may be awarded in defamation proceedings is limited unless the court orders otherwise under s 35(2). The amount is revised each year. Currently, the maximum award is $421,000.
2. Section 35(2) of the Actprovides that the Court may award damages exceeding the amount of the cap if, and only if, the court is satisfied that the circumstances of the publication of the defamatory matter to which the proceedings relate are such as to warrant an award of aggravated damages.
3. There is an issue as to whether s 35(1) operates to as a cap upon the combined damages that may be awarded in favour of multiple plaintiffs. In *Pettiona v Nationwide News Pty Ltd* [2019] FCA 1690 at [8]-[17], Lee J addressed the proper construction of s 35(1) and concluded that the statutory cap applies severally to each applicant, following *Cripps v Vakras* [2014] VSC 279 at [590]-[594]. I see no reason to consider that his Honour’s decision is plainly wrong and accordingly, I propose to follow it.

## Aggravated damages

1. Aggravated damages may be awarded to compensate for injury resulting from the circumstances and manner of a publisher’s wrongdoing: *Nationwide News Pty Ltd v Rush* [2020] FCAFC 115 (***Rush Full Court***) at [430].
2. A publisher’s conduct after publication may be taken into account, both as evidence of malice at the time of publication, and as improperly aggravating the injury done to the person defamed. Relevant conduct includes a failure to make any or any sufficient apology and withdrawal and a repetition of the libel: *Rush Full Court* at [431].
3. An award of aggravated damages may be made if a respondent has acted in a manner that demonstrates a lack of *bona fides* or that her conduct is otherwise improper or unjustifiable: *Rush Full Court* at [432]; *Triggell v Pheeney* [1951] HCA 23; (1951) 82 CLR 497 at 514; *Carson* at 65.
4. When a court is satisfied that an award of aggravated damages is appropriate, the court is entitled to make an order for damages for non-economic loss that exceeds the statutory cap in respect of both pure compensatory damages and aggravated compensatory damages. That is, when an award of aggravated damages is warranted, the statutory cap is inapplicable: *Wilson* at [249]. See also *Rush Full Court* at [459]-[466]. Section 34 of the Actcontinues to apply and provides an “ever-present guide to ensure that remedies are fair and effective in the context of achieving the objects of the Act with the aim of ensuring consistency of awards in defamation proceedings across jurisdictions and to correct any imbalance with awards of damages for personal injuries”: *Wilson* at [244].
5. However, by s 36 of the Act, the Court must disregard the malice or other state of mind of the respondent, except to the extent that the malice or other state of mind affects the harm sustained by the applicant.

# Consideration

## Seriousness of defamatory imputations

1. Each of the applicants is in a position where their work depends upon their honesty and integrity. In the case of Dr Anne Webster, her elected role as a member of parliament requires maintenance of community confidence in her. In the case of Dr Philip Webster, his role as a medical practitioner is based upon the provision of services to individual patients who rely upon his discretion and his professionalism. In the case of all three applicants, their charitable works depend upon their integrity and decency to inspire the confidence without which persons in need are unlikely to seek support.
2. The majority of the imputations allege participation in deliberate and heinous criminality and moral depravity. Considered as a whole, they are the most serious kind of defamatory imputations that could be levelled at an individual or a charity.
3. However, it is significant that Ms Brewer’s publications are not reasoned or plausible. They would not have had the impact of an imputation published in a major newspaper by a respected journalist: cf. *French* at [90]. The video posts are in the nature of rants. In my view, reasonable people would dismiss them as deranged and lacking in credibility. However, I accept that suggestible members of the Mildura community may have considered them credible, particularly in the light of Ms Brewer’s claims to be acting in the interests of the Australian community.
4. I accept that the vile nature of the publications, considered as a whole, makes vindication of the applicants’ reputations of particular importance and calls for substantial awards of damages. While I consider that rational people would regard Ms Brewer’s publications as delusional, I accept that some people may find them persuasive. The applicants are entitled to substantial awards of damage to “nail the lie”, that is, to demonstrate the baselessness of Ms Brewer’s charges and to vindicate the good name of each of the applicants, which is of so much importance to them, while ensuring an appropriate and rational relationship between the harm sustained by the applicants and the amount of damages awarded: cf. *Hayson v The Age Company Pty Ltd (No 2)* [2020] FCA 361 at [169]; *Wagner v Nine Network Australia* [2019] QSC 284 (***Wagner***) at [223].

## Extent of publication

1. I accept that the extent of publication of the matters complained of was significant. Ultimately, each was removed by Facebook for breaches of that organisation’s Terms of Service and Community Standards.
2. However, the evidence was that, as at 7 May 2020:
3. the first matter complained of had received 120 reactions, 54 comments and 112 shares;
4. the second matter complained of had received 249 reaction, 315 comments, was viewed on 2,400 occasions and had been shared on 204 occasions;
5. the third matter complained of had received 157 reactions, 121 comments and 221 shares; and
6. the fourth matter complained of was viewed on 1,000 occasions, shared on 76 occasions, received 272 reactions and 350 comments.
7. The amended statement of claim (which was filed on 18 May 2020) states that:
8. the fifth matter complained of had received approximately 243 reactions, 34 comments and 988 shares;
9. the sixth matter complained of was viewed on approximately 491 occasions, shared on approximately 34 occasions and had received approximately 165 reactions and approximately 94 comments; and
10. the seventh matter complained of was viewed on approximately 716 occasions, shared on approximately 34 occasions and had received approximately 227 reactions and approximately 216 comments.
11. The first four matters were removed by Facebook on about 9 May 2020. The other matters complained of have been removed by Facebook, but precisely when is not clear on the evidence.
12. Ms Robertson gave evidence that she had performed a search of “Zoe Support Australia” on Facebook and the first result was the third matter complained of.
13. On 27 August 2020, Ms Robertson became aware that the second matter had been shared in “Mildura Bargains, Buy, Sell & Swap” Facebook page. She gave evidence that many members of the Mildura community access or use that page, including young mothers accessing (or who are considering accessing) Zoe Support’s services. On 29 August 2020, the “Mildura Bargains, Buy, Sell & Swap” Facebook page had 17,496 members. The third matter had been removed from this Facebook page by 29 August 2020.
14. According to the 2016 ABS Census data, the population of the local government area of Mildura was approximately 53,878.
15. On this evidence, the defamatory imputations have been widely published and are likely to have spread into the local community of Mildura to a significant extent. The most widely published appears to have been the second matter complained of which I consider to be the most defamatory publication, for each of the applicants (although it is especially malicious in its content concerning Dr Anne Webster). I also that Ms Brewer encouraged the spread of the imputations in the following publications:
16. In the second matter complained of: “All charities are a shield to launder money for the Freemasons, please know it and share the knowledge”.
17. In the third matter complained of: “please alert your fellow Australians About who and what the Webster’s are … share the knowledge Australia”.
18. In the sixth matter complained of: “please warn everyone down in umm Victoria in the area of Mallee to stay well aware of Zoe’s Support”.

## Impact of publications on applicants

1. I am satisfied that each of Dr Anne Webster and Dr Philip Wester have suffered intensely as a result of the publications. The applicants are prominent members of a regional community, entitled to be proud of their good names and the good works upon which their reputations are based: cf. *Wagner* at [314].

### Dr Anne Webster

1. Dr Anne Webster has been shocked, traumatised and extremely distressed by the publications.
2. Dr Anne Webster believes that Ms Brewer’s publications have caused damage to her professional reputation, both as a social worker and a politician. She intends to stand for re-election in 2022 and is concerned that the publications could be deployed to unfairly undermine her standing in the community in the lead up to the election. She is also concerned that the publications may have given young, vulnerable women false cause to distrust Zoe’s Support, and that the goodwill, time and devotion invested in establishing the organisation could be undermined because of blatant lies.
3. Dr Anne Webster was particularly mortified by Ms Brewer’s mocking deconstruction of her maiden speech to parliament. Dr Anne Webster stated that the speech covered “everything that’s dear to me” and said “…to have somebody discredit, mock – tear you apart limb from limb, including your values, and your beliefs, and your principles, and … call you a liar… (it’s) incredibly hurtful”. Dr Phillip Webster gave evidence that Dr Anne Webster was anxious that the publications would precipitate the end of her political career before the end of her first year in parliament.
4. Mayor Clemence observed that, in discussing the defamatory publications with Dr Anne Webster in May 2020, the material caused her great distress and significant emotional pain. Similarly, Mr Crewther stated that Ms Brewer’s false claims have shaken Dr Anne Webster and drawn her attention and energy away from her work as a member of Parliament.
5. Dr Anne Webster gave evidence that it was an affront and deeply upsetting to observe her husband’s name be tainted by Ms Brewer when he has “given his life to both charitable and community services”. Ms Cupper observed that Dr Anne Webster was very upset about the publications and particularly pained by seeing her husband’s name and reputation being attacked in such an aggressive and scandalous manner.

### Dr Philip Webster

1. Dr Philip Webster is apprehensive that persons known to him, including patients, and persons not known to him may be shocked by the defamatory publications in which he is named, and may believe that Ms Brewer’s claims have some credibility. Philip Webster gave evidence that he is experiencing physical symptoms of anxiety: he experiences sleeplessness, significantly more body aches, exhaustion and has developed a cardiac arrhythmia. He described feeling unworthy, corrupt and stained in a way “I can’t wash off” because of the false claims. Notably, he gave evidence that he and his wife have had installed security cameras at their home because he fears what may happen.
2. Dr Phillip Webster was dismayed by Ms Brewer’s comments about his medical practice, where he takes pride in providing diligent and dedicated medical care. He fears that some patients may choose to avoid him and his medical practice, and that he is unlikely to have an opportunity to reinstate his reputation in the eyes of such people.
3. Dr Philip Webster is concerned that members of his community will harbour doubts in relation to his capabilities and intentions. He notes that he and his wife have previously lived their life “in a very public way”, but he now feels anxious in public places like the supermarket and the street. While he was extensively involved in community, church and social organisations, the publications have made him feel he may now need to handover his responsibilities within these organisations. For instance, he offered to step aside as chair of Zoe Support and elected not to accept an offer to renew his contract as a part-time academic tutor at the Monash Rural Clinical School. Prior to the publications, he had anticipated “being engaged in this community in a working capacity for another decade”. He feels the false claims have sullied his contributions and tainted his dedication and commitment to community work.
4. Dr Philip Webster feels shock and anger that his wife was accused of such heinous matters when she has dedicated her working life to community service. He is also deeply upset about the allegations made about Zoe Support and concerned that the publications may undermine its work.
5. Ms Whyte observed that she has noticed a distinct difference in Dr Philip Webster in recent months and, particularly since he has spoken with her about the defamatory publications, he has appeared anxious and deflated.

### Zoe Support

1. The Zoe Support Facebook page posted a statement in response to Ms Brewer’s accusations. Ms Robertson observed several negative comments on the post (since removed), including one comment which read “Dickheads”.
2. Each of the Websters is distressed about the potential impact of Ms Brewer’s publications on Zoe Support. Ms Robertson also expressed concern that the defamatory publications may affect Zoe Support’s chances of benefitting from future philanthropic funding opportunities.

# Harm to reputation

1. There was a small amount of evidence that the applicants’ reputations have been harmed by Dr Brewer’s defamatory conduct.
2. On 24 August 2020, Dr Anne Webster received the following comment on a video that she had posted to her own Facebook page: “Release the suppression orders thanks. Disgusted in you.”
3. Evidence of harm to the reputation of Zoe Support is set out at [40] above.

# Aggravating conduct

1. This is an appropriate case for awards of aggravated damages for the following reasons:
2. Ms Brewer’s defamatory publications were unjustifiable. There is no evidence that Ms Brewer has ever had any basis for her defamatory publications.
3. The repetitive nature of Ms Brewer’s conduct is a significant feature aggravating the harm suffered by the applicants because it has created the impression that Ms Brewer is pursuing a vendetta against them. As Dr Anne Webster said: “I have no comfort that she can be stopped”.
4. Ms Brewer’s defiance in the face of this proceeding further reinforces the impression that she is pursuing a campaign against the applicants. For example, in the fifth matter complained of, Ms Brewer wrote:

Apparently cautioning people to stay away from Anne Webster MP for Mallee and her charity “Zoe’s Support” … goes against the community standards of Facebook.

Someone explain to me please …

Why should I obey the so called rules made by my parliament when my parliament covers up for pedophiles?

…

Why should I obey anything they have to say to me?

… I shall endeavour to do tonight’s live on MeWE.

1. Ms Brewer’s vicious, sneering and mocking tone in her video posts has caused distress to Dr Anne Webster and, to a lesser extent, Dr Philip Webster.
2. The applicants adduced evidence of a video posted by Ms Brewer on Facebook on 24 August 2020, in which Ms Brewer referred again to Dr Anne Webster and Zoe Support and suggested that Dr Anne Webster did not know that incest and pedophilia are wrong. On 23 August 2020, Ms Brewer published a post on Facebook in which she referred to Zoe Support as “Ann’s invented charity”. Ms Brewer subsequently republished this post four times over 24 and 25 August 2020.
3. This evidence tends to confirm that Ms Brewer is obsessive and defiant, and may not be deterred by this proceeding from further defamatory publications concerning the applicants.

# Conclusion

1. The applicants proposed that the Court compensate them by a single award of damages in each case, rather than making separate awards in respect of each publication. I accept that this approach is appropriate: cf. *Channel Seven Sydney Pty Ltd v Mahommed* [2010] NSWCA 335 at [274]. Having regard to the legal framework and the evidence set out above, I assess general damages including aggravated damages in favour of the applicants against Ms Brewer as follows:
2. For Dr Anne Webster, in relation to the seven matters complained of, $350,000.
3. For Dr Philip Webster, in relation to the second, third and fourth matters complained of, $225,000.
4. For Zoe Support, in relation to the second to seventh matters complained of, $300,000.
5. In each case, the need for vindication of reputation is the most substantial consideration in the damages assessed. The award of damages in favour of Zoe Support recognises that the entity may not be awarded damages for hurt feelings, but reflects my conclusion as to the sum required to convince a bystander of the baselessness of Ms Brewer’s terrible charges. For Dr Philip Webster, although he was the subject of only three of the matters complained of, the damages particularly reflect the need to vindicate his long standing reputation as a medical practitioner.
6. In each case, the award is also intended to provide recompense for damage to the applicant’s reputation.
7. In the cases of Dr Anne Webster and Dr Philip Webster, the damages assessed are also intended to provide consolation for the undoubted hurt inflicted by Ms Brewer’s defamatory conduct.
8. The higher award of damages to Dr Anne Webster principally reflects the number of publications making imputations against her, and the viciousness of Ms Brewer’s conduct directed towards her.
9. Costs should follow the event.

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| I certify that the preceding ninety-three (93) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Gleeson. |

Associate:

Dated: 22 September 2020