
Defamation Law

David Rolph

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In his introduction to this excellent text, Dr Rolph comments that defamation law has a reputation for being the most arcane area of private law and that its reputation in this regard is well deserved. Thankfully, he then proceeds to make this a more accessible and easily understood area of the law through a very well researched and readable text.

Prior to the introduction of the national uniform defamation law in 2006, most practitioners relied upon the established English text of *Gately on Libel and Slander* as their basic defamation research tool when advising on, and litigating, defamation actions. Since that time there has been a significant need for a comprehensive Australian text of the quality produced by Dr Rolph.

To provide appropriate context to his discussion of the current laws, Dr Rolph outlines the evolution of defamation law in Australia through to the commencement of the national uniform defamation laws in early 2006. Up until that time each state and territory had its own distinct legislation and its own rules of practice and procedure. He provides a useful discussion of issues such as the competing interests in defamation law, the value of reputation, the rationale for protecting free speech and the implied freedom of political communication.

In chapter 6, Dr Rolph deals with the sometimes vexed topic of defamatory meaning and capacity with a clarity that I found refreshing, so much so that I would be prepared to purchase this text for this chapter alone. Any practitioner venturing into defamation litigation would be well advised to read this chapter, if nothing else.

The issues of publication and who is a publisher are very knowledgeably dealt with by the author who discusses issues such as reputation, re-publication, jurisdiction and the choice of law in multi-state defamation. Dr Rolph also discusses the evolution of defamation via the internet since the High Court's decision in *Dow Jones & Co Inc v Gutnik*.

A number of chapters are devoted to the statutory defences of justification (or truth), absolute privilege, qualified privilege, protected report, fair comment and honest opinion. Chapter 14 deals with what the author refers to as miscellaneous defences some of which arise either under statute or at common law. He also discusses the unique Australian defence to defamation of triviality which is to be found in the *Defamation Act 2005* (Tas) s33.

Dr Rolph's treatment of the subject of damages for defamation is extremely comprehensive and particularly useful not only for the practitioner who is called upon to advise with respect to potential damages that might be awarded for a defamatory publication, but also for a practitioner who needs to obtain a basic understanding of the relevant principles. His treatment of aggravated damages is very useful, particularly as under the national uniform law exemplary damages for defamation are no longer available.

Last but not least, in a very practical chapter, Dr Rolph deals with the question of injunctions, and in particular, the effect of the High Court's decision in the *Australian Broadcasting Corporation v O'Neill*.

Overall, this is an excellent text on a difficult subject that is very well researched, carefully crafted and extremely readable. It is aimed equally at practitioners well versed in defamation law and those seeking to gain an understanding. It should be compulsory reading for any practitioner seeking to enter the undoubtedly treacherous waters of defamation litigation.