

## DEFAMATION LAW

### REVIEW BY WILLIAM SIGANTO

*Defamation Law* David Rolph: Thomson Reuters (Professional) Australia, 2015, ISBN 9780455228570, 424pp, soft-cover or eBook, A\$195.

The complexity, technicality and obscurity of defamation law has led to the cause of action attracting an unfavourable reputation in Australia. Former NSW Court of Appeal Justice David Ipp has likened defamation to the “Galapagos Islands Division of the law of torts.” Within that context, authoring an effective summary of this area of the law would undoubtedly be a steep prospect for any legal academic. It is therefore commendable that Associate Professor David Rolph of the University of Sydney has succeeded in producing such a comprehensive and thought-provoking exploration of defamation in his recent book, *Defamation Law*.

In this first edition of the text, Rolph combines both academic and practical approaches in his attempt to “demystify” defamation law. The opening chapters introduce the competing interests in the cause of action, namely that of protection of reputation versus freedom of speech. The author sheds light on the historical development of defamation before navigating the reader through the required elements, range of available defences, and remedies which may be awarded in relation to the cause of action. The overlap which defamation action has with criminal defamation and other tortious causes of action is also considered across the 18 chapter text.

Rolph contextualises his analysis by observing that the “substance” of defamation law in Australia favours plaintiffs by privileging the protection of reputation over freedom of speech. As suggested by High Court Justice Susan Kiefel in the book’s Foreword, this favouritism towards protection of reputation may oppose the “robust and laid-back” self-image so endeared by Australians.

It is apparent that Rolph’s examination is underpinned by a view that defamation law is in need of fundamental reform in Australia. The author contends that the introduction of national, uniform defamation laws in 2006 failed to bring about any systemic or substantial development. Rolph highlights defamation law’s “fixation” on pleadings and its overly-particular approach to language as key criticisms. Ambiguities surrounding the defence of “qualified privilege” and legislative failure to empower courts to grant a greater range of remedies are further frustrations acknowledged by the author.

Rolph gives particular attention to the shortcomings of Australian defamation law regarding issues involving the internet. The author points to the liability of web-based intermediaries in the publishing of defamatory content as an issue which has continually “perplexed” Australian courts. Rolph suggests that issues surrounding internet liability invite “renewed consideration of the basic principles of defamation law relating to what constitutes publication and who is a publisher.”

As a comprehensive text on the subject, *Defamation Law* is an ideal reference source for both lawyers and students. Of paramount value however, David Rolph’s discussion has made a substantial contribution to the debate surrounding defamation law reform by effectively and delicately weaving the many criticisms of the cause of action into his analysis.

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