



The Law of Defamation in Australia and New Zealand

Michael Gillooly,
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The most poignant chapter in Michael Gillooly's new book appears in the optimistically titled section "The Future" and deals with law reform.

Given the increasing fragmentation of defamation law through piecemeal attempts at law reform, the textbook writer is set the thankless task of taking readers through an annoyingly inconsistent body of state based laws. The appearance of this book at the end of a year which saw the Commonwealth and States effectively give up on uniform defamation laws is another reminder of how absurd it is for a small nation to regulate speech on a regional basis.

Defamation Law in Australia and New Zealand is the first Australian textbook devoted to the topic and on that basis alone is long awaited. The authoritative English text, *Gatley on Libel and Slander* is years out of date and while looseleaf services such as Butterworths' *Defamation Law and Practice* provide excellent timely coverage for practitioners, they are less accessible to students.

Gillooly's book takes a fairly straight academic approach to the topic, working its way through each of the elements of the cause of action, the defences and remedies, before concluding with a brief summary of the vexed topic of reform. Most chapters end with a short analysis of the practical and procedural aspects of the topic.

The inclusion of New Zealand law

in the scope of the book is useful and interesting from a comparative point of view. The last few years have seen some notable divergence in the approach of trans Tasman courts. A striking example was the redefinition of qualified privilege for political discussion in two cases involving New Zealand ex-Prime Minister David Lange. While the Australian High Court qualified the media's use of the qualified privilege defence with a requirement of "reasonableness", this approach was specifically rejected by the New Zealand Court of Appeal. This has left New Zealand (and its media) with a broader protection for political discussions. The impact of New Zealand's Bill of Rights is an interesting point for Australian law reformers to consider.

Gillooly's work is diligent, scholarly and reasonably comprehensive. It is well written and readable and suitable for both lawyers and students.

However, some areas would benefit from more depth. For example, an early section on "defamatory matter" runs through the legal formulations but does not comprehensively list the types of statements which have been found to be defamatory (or not), a question at the heart of defamation law. The ever changing applications of a legal test judged from the viewpoint of the "ordinary reasonable reader" have led to some fascinating issues - examples include recent consideration of whether calling someone "homosexual" was capable of being defamatory and the curious jury finding in *Howlett v Saggars* that calling someone "bankrupt" was not defamatory, along with questions of sexual morality raised in the recent *Abbott and Costello* case. It would have been good for this book to have included an Australian update on, say, the comprehensive review of this issue in *Gatley*.

An interesting side of the book is its geographic source and perspective. The Perth-based writer says in his preface that the book is "generally based on the materials available to me in Perth in May 1998" with some later references. The author's distance from the "defamation capital" (of the universe?) probably adds to the tone of the book by keeping it from being Sydney-centric and reinforcing it as a broader Australian and New Zealand analysis. At the risk of sounding parochial, the downside is that the book sometimes seems technical and lacking in colour.

Despite these reservations, it is a good book and a valuable resource.

Now back to tricky reform issues. On January 5, 1999, ACT Attorney-General Gary Humphrey informed media that the ACT will proceed with substantial defamation reforms during 1999, blaming "too many vested interests" for the inability to reach national consensus. His grab bag of proposals, while admirable in their intention to make defamation more streamlined, will only contribute, along with NSW proposals, to making the prospect of uniformity more hopeless.

Gillooly's book calls for the enactment of Commonwealth defamation legislation, an option first raised in the 1979 Australian Law Reform Commission report, which would draw upon constitutional interstate trade and commerce and communications powers for its (partial) coverage.

Without a crystal ball, you have to wonder whether the picture will be any different by the time this book goes into its second edition. <

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