

Defamation law fails the test

LOTS of people are worried about defamation. Some are threatened with legal action.

"I put a comment on an online discussion group and then I received a letter of demand from a lawyer. What should I do?"

Is defamation law the answer or the problem?

For years people have been contacting me with questions about defamation.

I'm not a lawyer. The reason is because I'm involved in Whistleblowers Australia, a voluntary group that encourages self-help and mutual help among people who speak out in the public interest.

Many of our members have been threatened with defamation actions as a way to shut them up. So I wrote a leaflet called Defamation Law and Free Speech to explain the basics. It receives more hits than anything else on my website.

I found out that defamation issues frighten many people - not just whistleblowers.

They search the web for information, find the leaflet and then contact me with their stories and their concerns.

‘ It doesn't protect reputations and is regularly used to squelch open discussion. ’

Brian Martin



Media organisations are quite familiar with the intricacies of defamation law.

They have lawyers on tap to check contentious material as well as strategies to deal with legal actions.

But the resources wielded by a large organisation are unavailable, indeed unknown, to most individuals.

Defamation law is supposed to protect reputations, but in practice it often serves to suppress free speech.

Whatever its virtues and vices of the law for the media, it is an absolute disaster for ordinary individuals.

It doesn't protect reputations and is regularly used to squelch open discussion.

A man running his own web site received a demand that he remove certain material. Should he acquiesce or refuse to budge?

Some concerned citizens wanted to expose corruption in a major corporation by writing to politicians, but were afraid of being sued. What could happen if they write letters?

A woman was worried about being sued by a government body. Could she lose her house? Could she go to jail?

I responded that, in all cases, being sued was unlikely, because most threats were bluffs and the worst consequences were very unlikely indeed.

A few cases do go to court,

with enormous impacts on those who are sued. Hiring legal advocates is expensive and there's lots of effort required in preparing the case. Matters can drag on for years.

In some ways the worst part of the process is the fear of an adverse judgement and a big pay-out, though very few cases against ordinary citizens end up this way.

Anyone confronted with a defamation threat or a writ needs to examine the options, including making an apology, keeping quiet henceforth, standing one's ground or reaffirming one's views.

The best protection is to prevent defamation actions by being careful when making statements and having evidence to back them up.

There are also people who contact me because they've been defamed. That's another story.

I always say not to sue.

For most people, defamation law is not the answer - it's the problem.

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