

Media & Arts Law Review (MALR)

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(editorial, articles, case note, media law updates and media and arts law event included in this part are linked to the LexisNexis platform)

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Why has Australia been called 'the defamation capital of the world' over the past two decades? Despite the introduction of uniform defamation legislation in 2005, the number of defamation proceedings in Australia continues to rise, and to remain disproportionately higher than the number of actions commenced in other common law jurisdictions. This article uses a data-based 'snapshot' analysis of defamation judgments over a set period of time (95 judgments for the four-month period from 1 May to 31 August 2018) to ascertain who is suing whom, and why. Particular trends of note are the increase in social media actions, the decrease in claims against the media, the number of litigants in person, the shift in interlocutory arguments to disputes about the defence of justification and the increasing level of aggression apparent from the number of applications for parties to be dealt with for contempt of court.

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The law of defamation has long provided protection to artistic and literary critics expressing their opinions on works of literature and art. Historically, it was the fair comment defence that performed this function. Formally, the applicability of the defence focused on the defendant's conduct and state of mind. However, a detailed historical study of four leading Australian defamation cases from the first half of the 20th century reveals that, in practice, the reputation of the plaintiff may well have been an important factor in determining whether the defence was successfully invoked. Doctrinal uncertainty combined with jury trial to give the operation of the defence in artistic and literary criticism cases more subtlety that has previously been recognised.

The artistic speech exemption in Australian racial discrimination regulation

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This article considers the exemption in s 18D of the Australian Racial Discrimination Act 1975 (Cth) in the context of artistic speech. Section 18D exempts racially motivated and offensive speech which would otherwise contravene s 18C of that Act as prohibited racist speech. Artistic expression therefore occupies a privileged place in Australian racist speech regulation. This article is the first to explore the rationale for the artistic exemption, and to comprehensively consider its meaning, scope and contours. These issues are examined with reference to a number of cases. While the discussion is limited to the Australian Racial Discrimination Act, the observations will have relevance in many other jurisdictions containing similar exemptions.

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