

# Win or lose, Foley's defamation suit would bring no vindication

Australia's idiotic defamation laws will be put to work once again, but what is really left to be gained here?

[MICHAEL BRADLEY](#)

NOV 09, 2018



A steaming mug of déjà vu for us all today, as another powerful man is brought to ground by his own alleged actions. We tend to forget that bit of detail, as the spotlight flicks on and penetrates the woman's privacy, agency and control of her own body and story. As she is publicly atomised, as we obsessively analyse why she would speak up, or not, the alleged act is largely ignored.

So let's go back.

## **A contest of human rights?**

ABC journalist Ashleigh Raper says that New South Wales opposition leader Luke Foley stuck his hand down the back of her dress and into her underpants, groping her buttocks at a Christmas party in 2016. That could be more than sexual harassment (a civil wrong): if Foley did as she describes, then there are potentially elements of the crime of indecent assault here.

Since Raper went public yesterday, all of the conversation has been about the contest of human rights: her right to privacy; her right to tell her story; the media's right to expose explosive allegations of misconduct by a public figure; Foley's right to defend his reputation and not be unfairly maligned; the right of parliamentary privilege, exploited by Liberal MPs to use Raper's story as fodder in a political attack on Foley without her consent.

The balancing between these competing rights is delicate, for sure, and Foley's case is a perfect platform for their exposition. But there's another human right, largely unmentioned, which trumps them all: the fundamental right to possession, control and determination of our own bodies.

We all possess this right. It is frequently undermined, and many of the most vexed legal controversies relate to state interference with it: abortion, drug laws, euthanasia, even the hot issue of bicycle helmets. The criminal law starts with recognition of this right, and the crimes it takes most seriously are those that invade our right to not be touched or physically harmed.

For Raper, based on her claims, that right was lost two years ago. She chose to not pursue her options for legal redress; that was her right too. She chose privacy instead. That, too, has been taken away from her. Now, having been driven into a corner by a combination of men who decided that their rights override hers, she has stood up and retaken such remnants of the control and agency of her own self that are still available.

Raper's statement, released and backed by the ABC yesterday, is a manifesto of everything the Me Too movement desperately wishes to achieve: "I want it to stop," she says, of both the invasion of women's bodies — which just never ends — and the misuse of their experiences, which is so casually done in the aftermath. As a battle cry, it won't be bettered.

Foley has chosen to lay his own marker down too. Resigning from his position as NSW Labor leader yesterday, he doubled down on his public denials, effectively calling Raper a liar and claiming that he will be suing for defamation. Presumably the ABC will be his target, but he may decide to go for Raper personally as well.

### **How is this going to play out?**

The ABC has the standard risk that media must bear under our idiotic defamation laws: if Foley follows through on his threat to sue, they will have to prove that what Raper said is true, or they will lose the case. Raper says she has a witness. She is absolutely unequivocal in her recollection of what Foley did, and she alleges he recently approached her admitting wrongdoing and describing himself as not a groper, but a "drunken idiot". She says he promised to resign, but then reneged, which is what forced her to finally go public. It's not much of a wild guess to predict that the ABC legalised all this to the nth degree and that they believe they've got the evidence to back up Raper's story against Foley's denials. For Foley, he may feel he has no choice but to sue. Defamation plaintiffs pretty much always think that, at least at the start. They don't so often still think it a year down the track, as the practical reality of defamation litigation begins to dawn: it's hellishly expensive, it's slow, it's a mess. Win or lose, the one thing it will never deliver is vindication.