

Lies, truth and the law: is the legal system any help when tackling a powerful dissembler?

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I do tend to think that the [#ScottyFromMarketing](#) joke, while brilliant, lets the prime minister off a bit lightly. It evokes an amoral dissembler, a shonky used car salesman, but not quite a bare-faced liar.

But wait, can I say that?

The Australian media has struggled to come to terms with a political leader whose main role model for media relations appears to be Donald Trump.

Like the master, Scott Morrison has learned a technique that rides straight over the top of the media's polite conventions. It has two tenets: never back down; and, when in trouble, keep doubling down. Truth is irrelevant to the routine.

So far, the media has played it straight, trying to get Morrison to answer its questions and, increasingly, calling him out on his lies. What it hasn't done is call him a liar. That is partly because this is uncharted water, but also because of the perceived legal risk. It's not like Australian politicians don't sue for defamation — [they do, all the time](#).

What the law says

Is it defamatory to call a person a liar? Yes, unquestionably. A statement is defamatory if, in context, it causes reasonable people to think less of you. "Liar" is up towards the top of the list of slurs that will inevitably harm a reputation.

When Rebel Wilson sued the publisher of *Woman's Day* and *Women's Weekly* alleging that they had labelled her a "serial liar" who had lied about her age, name, family history and plenty else, the publisher didn't bother arguing that the "liar" tag wasn't defamatory. They just tried to prove ([unsuccessfully](#)) that it was true.

If a media outlet does call "liar liar" and gets sued, it may still have a possible defence. There are two viable possibilities under current Australian defamation law: truth, or honest opinion. They could try qualified privilege, as they always do, but it would fail, as it always does.

Truth is a complete defence and honest opinion requires a foundation of facts, but both defences hinge on being on the right side of a crucial distinction. It's one thing to prove that what Morrison said was untrue, incorrect, exaggerated, misleading or unequivocal bullshit. But there are several possible explanations for that, only one of which is that he deliberately lied.

The problem of intention

The liar label connotes not just untruth, but *intentional dishonesty*.

For example: on the first day of May, a Saturday, the government via Health Minister Greg Hunt announced the ban on anyone, including Australian citizens, returning to Australia if they have been in India in the previous 14 days. Hunt's press release explicitly referenced the criminal penalties attaching to anyone breaching the ban.

The following Thursday, under media pressure, Morrison blamed the media for highlighting the criminal sanctions and said that neither he nor Hunt had done so when they announced the ban. Morrison's assertion was, self-evidently, 100% untrue.

That didn't make Morrison a liar; if he believed that what he was saying was accurate, then he wasn't lying (he was just wrong). If he was reckless with the truth (he didn't care either way, which is realistically the most likely explanation), then it would be arguable that he met the technical, legal definition of a liar. But that doesn't necessarily mean an audience of reasonable and fair-minded non-lawyers would think so.

The hard part is to nail the intention. Politicians spout inanity as easily as they breathe. Like the Red Queen, they can believe six impossible things before breakfast. Imputing their internal motivation for any particular untruth they're delivering is a guessing game.

So, the fact that the prime minister has said something demonstrably false isn't enough, in law, to say he lied. He'll never admit it — he wouldn't even admit that he instructed his office to lie to the media about his Hawaiian holiday, when that was as obvious as his tan line. And since it's not possible to see inside his brain, the proof will never exist.

That's where the media (or their lawyers) tend to stop short. With the run-of-the-mill, occasionally deceitful politician, fair enough. But Morrison is in a different class, of a type that Australian politics really hasn't previously experienced — at least, not in the Lodge.

A body of work

Is it possible to take not a single falsehood but an entire pattern of behaviour with the hallmarks of consistency across many months and years as the foundation for saying a person is a liar?

It is often said that Donald Trump is a pathological liar, incapable of speaking the truth even if it would be in his interest to do so. The evidence for that is overwhelming. It could not be seriously argued that he isn't a fabulist and serial liar.

Say a body of evidence could be established to show that, with disturbing frequency and regularity, Scott Morrison says things that are untrue — compounded by evidence that, when challenged on his untruths, he consistently digs deeper. Hypothetically, that would provide the foundation for calling him a liar, as a statement of either fact or opinion.

There would still be legal risk. The way our defamation courts work is anything but certain. The media may consequently continue to shy away from going there. However, assuming Morrison remains in office and doesn't change his ways, the problem will persist: how to bring any level of public accountability to a leader who simply refuses to give a straight answer to any question he doesn't like, and knows he'll get away with it?

As it happens, the only media player which has had success in pricking Morrison's bubble of self-conceit is [The Betoota Advocate](#) in its coining of the #ScottyFromMarketing tag. Understatement or not, maybe there's a lesson in that.

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