




Speech By
Dr Christian Rowan

MEMBER FOR MOGGILL

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**DEFAMATION (MODEL PROVISIONS) AND OTHER LEGISLATION
AMENDMENT BILL**

 **Dr ROWAN** (Moggill—LNP) (12.37 pm): I rise to make a contribution to the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021. At the outset, I acknowledge the LNP's shadow Attorney-General, the member for Clayfield, for his well-articulated, erudite and very professional contribution to this debate. We are very fortunate to have the member for Clayfield in the House.

On 20 April this year, the Queensland Labor Attorney-General and Minister for Justice introduced the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021 to the Queensland parliament. This legislation was subsequently referred to the Legal Affairs and Safety Committee for further consideration. On 4 June 2021, the Legal Affairs and Safety Committee tabled its report in the Queensland parliament with the sole recommendation that the bill be passed. The principal objective of this legislation is to amend the Defamation Act and the Limitation of Actions Act 1974 in order to support the enacting and implementation of the Model Defamation Amendment Provisions 2020.

By way of brief background, as per the legislation's explanatory notes, over the course of two years the Council of Attorneys-General facilitated a review of the Model Defamation Provisions, led by New South Wales. In July 2020 it was agreed that certain amendments would be enacted in order to update the unified approach to defamation law across jurisdictions in Australia. As the Department of Justice and Attorney-General articulated to the Legal Affairs and Safety Committee, ensuring and maintaining uniformity of defamation law in Australia is important 'based on the fact that it is commonplace for the same matter to be published in more than one Australian jurisdiction and it is important for potential plaintiffs and publishers to know their rights and limitations under defamation law, without having to consider differing state and territory laws'.

In brief, the amendments that are proposed in this legislation are expressly designed to: firstly, discourage and prevent expensive litigation for minor or insignificant claims; secondly, encourage the early resolution of defamation claims; thirdly, ensure the law of defamation does not place unreasonable limits on freedom of expression; and finally, modernise provisions to apply more appropriately to digital publications. To achieve these outcomes significant reforms will be enacted, including the introduction of a single publication rule for multiple publications of the same publisher or an associate of the publisher.

Further, this legislation will also introduce a serious harm element for an action for defamation alongside the abolition of the defence of triviality so that, as stated in the explanatory notes—

... a statement will not be defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the plaintiff, with the onus on the plaintiff to establish serious harm and, if the plaintiff is a corporation, that serious financial loss has been caused or is likely to be caused by the publication ... a judicial officer is generally to determine whether the serious harm element is established as soon as practicable before the trial ...

In addition, other amendments will be enacted with respect to the clarification of defences, damages and costs as well as for the providing of documents and other consequential or related amendments.

I note that, given the importance of ensuring a national approach to defamation law, considerable community and stakeholder consultation has been undertaken prior to the introduction of this bill, including stakeholder roundtables and the use of an expert panel consisting of judges, academics, defamation practitioners and the New South Wales Solicitor-General. I also note that the heads of jurisdiction and legal stakeholders in Queensland were similarly consulted during the two-year process.

With respect to the stakeholders who contributed to the Queensland parliament's Legal Affairs and Safety Committee's consideration, I note in the committee's report that submitters were generally supportive of the proposed amendments. I would, however, like to stress the contribution provided by the Queensland Law Society that, whilst recommending the importance of maintaining a nationally consistent approach, advised the committee that the significant reforms that will be implemented 'should be monitored to ensure that any unintended consequences that arise can be identified and addressed'. This is certainly a sensible contribution, and I encourage the Palaszczuk state Labor government to ensure that such monitoring takes place and actions are taken where appropriate to rectify any such consequences.

It is important that unified national reform is implemented with respect to our defamation laws, particularly in view of the ever-evolving landscape of digital technology and digital publication. To that end, I welcome the Attorney-General's recent update via this bill's introductory speech that attorneys-general across Australia have approved the release of a discussion paper focusing on the responsibilities and liability of digital platforms for defamatory content which is published online. It is vitally important that Commonwealth, state and territory jurisdictions seize this opportunity to implement comprehensive policy reform, particularly with respect to the severe damage that can be caused by—and indeed, enabled through—cyberbullying via social media and online channels.

As the Liberal National Party's shadow minister for education, and as a parent myself, I am all too aware of the vicious behaviour that is cyberbullying and the devastating consequences that are seen through constant trolling and harmful comments delivered through online means and what this can mean for students, young children and even teenagers. However, such insidious behaviour is not confined to children. It is an unfortunate reality that all too often it is grown adults, the keyboard warriors, who dedicate significant portions of their time hiding behind the anonymity that social media and other online platforms provide simply to get their toxic, offensive and often defamatory views across. I am sure that every elected representative in the Queensland parliament has had to endure at times—or even continues to endure—persistent online trolling and defamatory conduct.

In my electorate of Moggill there are social media pages that are solely administered by—and with contributions from—fixated individuals who are more interested in pursuing their own bias and poisonous political agendas at the expense of facts, decency and open debate. There are regular contributions to pages such as the 4070 not the LNP Facebook page, the Ryan federal election 2021 Facebook page—which was previously the Moggill state election 2020 Facebook page—that agencies such as the federal government's eSafety Commissioner, the Australian Federal Police and other statutory agencies, as well as the Queensland Fixated Threat Assessment Centre of the Queensland Police Service, should be reviewing, assessing and evaluating given the harm that such conduct and content by some individuals can cause amongst the broader community. I also have serious concerns that some contributors are in need of psychiatric assessment and treatment. I take this opportunity to thank e-safety organisations and law enforcement agencies as well as health services for their work locally and across Queensland and Australia in looking into these matters.

What is important and frequently forgotten in online contributions to these pages are facts, decency, courtesy and open debate. Online platforms and social media organisations have enabled these four pillars of society—facts, decency, courtesy and open debate—to be significantly reduced, curtailed or even eliminated. Instead, these online and social media platforms merely rely on the goodwill of users to regulate their own behaviour. If the defamatory, discriminatory, deceptive and quite frankly dangerous behaviour of contributors online was replicated publicly in a town square, on television or radio, or even in print, there rightly would be severe legal consequences and even punishment. The online space should be no different, and that is why I champion reform in this area and acknowledge the important release of stage 2 of the attorneys-general discussion paper by the New South Wales Department of Communities and Justice. I very much look forward to seeing how this legislative reform progresses.

As part of examining this legislation I have noted the heavy vehicle amendments contained in the legislation, and these are supported by the Liberal National Party. In closing, I thank all members of the 57th Parliament's Legal Affairs and Safety Committee, including the Liberal National Party members, the deputy chair and member for Currumbin, the member for Glass House, as well as the assistance and support provided by the committee secretariat. Finally, I thank all stakeholders for their contribution to the consideration of this bill.