




Speech By  
**Sandy Bolton**

**MEMBER FOR NOOSA**

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

 **Ms BOLTON** (Noosa—Ind) (12.23 pm): The most significant changes to defamation law over the past decades and into the future will arise from the impact of electronic publication. These publications are not only instantaneous; they are continuous in nature and can result in a new cause of action each time the publication is accessed or downloaded, with recurring impacts. As more people rely on the easy accessibility of online news publications and the digital sharing of material, laws must be enacted to ensure people's right to protect themselves while still being able to contribute to widely designated information. That is why defamation law is so important to get right. At its heart, it allows people to take action against those who say or publish false and malicious comments, including on social media.

The Defamation (Model Provisions) and Other Legislation Amendment Bill 2021 amends the Defamation Act 2005 and the Limitation of Actions Act 1974 to implement the model defamation amendment provisions as agreed to at the Meeting of Attorneys-General on 31 March 2021 to provide a large degree of uniformity across Australia. I also acknowledge the bill amends the Heavy Vehicle National Law and Other Legislation Amendment Act 2019. It is to the defamation issues that I wish to speak.

The enactment of the legislation in 2006 and the model defamation laws to date aim to eliminate discrepancies between the states and territories and bring increased, but not complete, uniformity to defamation law in Australia. Australia's defamation laws were not originally written with social media in mind, and the ramifications of this will be assessed during the stage 2 review as it is these platforms that make it all too easy for damaging and misleading comments to be published. I am sure the wider community will be keen to see this review progressed and implemented as part of reducing the angst that results from often malicious content.

This bill proposes amendments that introduce a single publication rule for multiple publications by the same publisher or an associate of the publisher, which is a sensible inclusion. Equally, for the same defamatory matter, the start date is from the first publication, when it is uploaded electronically for access or sent to the recipient, rather than when it is downloaded or received. The amendments introduce a serious harm element for an action for defamation, coupled with the abolition of the defence of triviality, as we have heard and have noted. Defamation laws must protect reputations from serious harm whilst encouraging responsible free speech and ensuring access to accurate and true information. The bill provides that the 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.

Defamation, like privacy, is an important and complex issue. It is not reasonable to expect editors, producers and journalists to know and apply eight separate defamation laws in publishing newspapers and magazines circulating throughout Australia and in selecting material for transmission on national broadcasting and television programs. Equally, it is important for these same publications and indeed

all publications to put in place mechanisms that allow for the fact checking of information before publication to prevent harm to people and their reputations. I want to do a call-out to our local media that do this and are fantastic.

Submitters to the committee—submitters such as the Queensland Law Society—acknowledged the changes are significant and want them to proceed to achieve consistency across Australia, but with the proviso that the effects of the changes, once implemented, are monitored and unintended consequences are addressed. I acknowledge the late submission to our committee by a group of New South Wales legal professionals, many with expertise in defamation law, who provided an insight into the New South Wales legislation. They drew attention to the act's well-intentioned amendments but suggested it would benefit from some modernisation, particularly around the ability of the proposed changes to provide a disincentive to small or trivial defamation claims and a consideration of the significant issue of the awarding of costs.

While I support this bill, I question if this legislation will achieve the desired consistency and consider the issue raised by some submitters regarding whether a future process should be done through the Commonwealth to ensure uniform and appropriate defamation laws throughout Australia. Queensland's amendments propose to encourage the early resolution, which is really good, of defamation claims and discourage and prevent expensive litigation for minor or insignificant claims. I note the suggestion that amendments to defamation acts in other jurisdictions will not lead to an appreciable reduction in the amount of defamation litigation or disputes and may increase legal time and costs. Therefore, caution should be exercised and continuous review of its impacts should be supported.

In closing, I thank my fellow committee members on the Legal Affairs and Safety Committee, our secretariat, submitters and attendees at public hearings for their examination of this bill. I commend the bill to the House.