JUSTICE, INTEGRITY AND COMMUNITY SAFETY COMMITTEE

Members present:
Mr MA Hunt MP—Chair
Ms JM Bush MP
Mr RD Field MP
Ms ND Marr MP (via videoconference)
Ms MF McMahon MP
Mr PS Russo MP

Staff present:
Ms F Denny—Committee Secretary
Ms H Radunz—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE DEFAMATION AND OTHER LEGISLATION AMENDMENT BILL 2025

TRANSCRIPT OF PROCEEDINGS

Monday, 10 November 2025

Brisbane

MONDAY, 10 NOVEMBER 2025

The committee met at 10.30 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Defamation and Other Legislation Amendment Bill 2025. My name is Marty Hunt, member for Nicklin and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today. With me here today are: Peter Russo MP, the member for Toohey and deputy chair; Russell Field MP, member for Capalaba; Melissa McMahon MP, member for Macalister; Jonty Bush MP, member for Cooper, who is substituting for Michael Berkman MP, member for Maiwar; and Natalie Marr MP, member for Thuringowa, who is appearing from Thuringowa via videoconference.

This briefing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the briefing at the discretion of the committee. I remind committee members that departmental officers are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and the chair's discretion at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. Please turn your mobile phones off or to silent mode.

BOURKE, Mr Greg, Acting Assistant Director-General, Strategic Policy and Legislation, Department of Justice

EISEMANN, Ms Joanna, Principal Legal Officer, Department of Justice

KRAA, Mr Leighton, Director, Strategic Policy and Legislation, Department of Justice

CHAIR: I welcome representatives from the Department of Justice who have been invited to brief the committee on the bill. Please remember to press your microphones on before you start speaking and off when you are finished. I invite you to make an opening statement after which committee members will have some questions for you.

Mr Bourke: Good morning. Thank you for the opportunity to provide a briefing to the committee regarding the Defamation and Other Legislation Amendment Bill 2025. I would like to acknowledge the traditional custodians of the land on which we meet today and pay my respects to elders past, present and emerging. I note the department has provided a detailed written briefing to the committee on the amendments in the bill. We also provided a written response to the submissions received by the committee.

As parties to the Model Defamation Provisions Intergovernmental Agreement, each state and territory, including Queensland, has enacted model defamation laws to ensure national uniformity to the greatest extent possible. This prevents forum shopping and provides certainty for those involved in defamation proceedings, given publications often extend beyond state and territory borders. In Queensland, the model defamation provisions are enacted in the Defamation Act 2005. The bill will amend the Defamation Act 2005 to implement amendments resulting from the national Defamation Working Party's stage 2 review of those model defamation provisions.

On 22 September 2023, the Standing Council of Attorneys-General approved the recommended amendments resulting from this review and a majority of jurisdictions, including Queensland, agreed to implement the amendments. The purpose of the Defamation Working Party's stage 2 review and the intent of the amendments contained in the bill is to address two distinct areas. The first aspect of the bill—referred to as part A—addresses the responsibility and liability of digital intermediaries for defamatory content published online. A digital intermediary is the provider of an online service where

matter can be published but is not the creator or poster of that published matter. There can be multiple digital intermediaries for the same online content; for example, in relation to a social media platform, both the platform itself and the person who sets up and operates a forum or a count on the platform will be digital intermediaries.

The bill will exempt certain digital intermediaries from liability for defamation if they provide a caching, conduit or storage service and do not take an active role in publishing the defamatory digital matter. This is because providing a caching, conduit or storage service are passive online services. The exemption would apply, for example, to internet service providers or cloud storage providers. The bill will also exempt a search engine provider that provides an automated process for users to generate search results. If a search engine such as Google is used and results are generated, including a link to another website, then Google will be exempt from defamation for publishing the search results; however, if the search results are promoted or prioritised by the search engine provider they will not be exempt.

The bill will provide a new defence for digital intermediaries in relation to defamatory digital matter posted by a third party. To access the defence, the intermediary must provide an accessible complaints mechanism and take reasonable steps to remove or prevent access to digital matter within seven days of receiving a valid complaint. For example, if John posts a defamatory comment on the department's Facebook page about April and April makes a complaint about the post by sending a direct message to the department, if the department removes John's comment within seven days of receiving the complaint, the department will not be liable for defamation. This new defence is intended to make it clearer when a digital intermediary is liable for third party content and when a digital intermediary must take action after receiving a complaint about third party content.

In addition, the bill amends the criminal defamation offence so that its application is consistent with civil defamation law. This removes uncertainty about potential criminal liability. The bill addresses an issue with the current requirements for an offer to make amends which must include an offer to publish or join in publishing a reasonable correction or clarification about the matter. In the digital space this can be difficult to do without republishing the defamatory matter and making the situation worse for the person who is the subject of the matter. The bill allows an offer to make amends in relation to digital matter to include an offer to take access prevention steps such as blocking, disabling or otherwise preventing access to the matter. The bill will introduce a requirement that when making orders for preliminary discovery in defamation proceedings, courts must consider the objects of the Defamation Act as well as privacy, safety or other public interest matters. This will help protect individuals who would have their safety or privacy put at risk if a preliminary discovery order is made in relation to content published online.

The bill introduces a new power for courts to order a digital intermediary who is not a party to the court proceeding to remove or disable access to online defamatory matter. This allows a complainant who has obtained an order or judgement against a poster of digital defamatory matter to have the court's assistance in requiring a digital intermediary to remove the defamatory content if the poster does not comply or appears unlikely to comply with the court's order or judgement. The bill will allow a document or notice to be given under the act by any means of electronic communication to an address or location indicated by the recipient. Currently, the act only allows for electronic service by email, but the bill will allow other common forms of electronic communication such as a direct messaging or website platforms to be used.

The second aspect of the bill—referred to as part B—addresses the issue where the threat of potential defamation proceedings is creating a chilling effect which is deterring people from reporting to police. There is anecdotal evidence that because people are concerned about being sued for defamation they may refrain from making legitimate complaints to police. To address this, the bill extends the defence of absolute privilege to publications to officials of Australian police forces or services while they are acting in their official capacities.

I would also like to take this opportunity to address the committee on one of the key issues raised by stakeholders in their written submissions on the bill. I note that three of the submissions to the committee raised the issue of whether government will consider extending the defence of absolute privilege to publications to Queensland complaints handling bodies in addition to extending the defence to publications to police. When the bill was introduced into the Legislative Assembly the Attorney-General noted in her explanatory speech that Queensland has already extended the defence of absolute privilege to certain statutory bodies through provisions within their enabling legislation that are appropriately tailored to the body's specific circumstances. Therefore, the bill does not propose to prescribe any additional Queensland complaints handling bodies to have the benefit of the defence.

Chair, thank you again for the opportunity this morning to address the committee. We are happy to take any questions.

CHAIR: The Standing Council of Attorneys-General met in relation to this and agreed on these reforms. What was the timeline on that? When was the agreement made? What were the timelines in relation to the states' implementation? Are we within those timelines? Do you know how other states are going?

Mr Kraa: Following the review process by the Defamation Working Party and the report back to SCAG—the Standing Council of Attorneys-General—the SCAG members agreed to use their best endeavours to have the reforms enacted and implemented within their jurisdictions by 1 July 2024. It was noted as part of that commitment that normal approval processes would have to be gone through in each jurisdiction, but the commitment was to use best endeavours. In terms of how they have been implemented, all jurisdictions except Western Australia and Queensland have passed legislation to enact the model laws. It has commenced in all of those jurisdictions I mentioned other than in South Australia. That is how the implementation has rolled out.

CHAIR: South Australia was not part of the agreement; is that right?

Mr Kraa: The SCAG communiques that were issued referred to the model provisions as agreed by a majority of jurisdictions, and that did recognise that certain jurisdictions—South Australia in this case—did not agree to the full extent of the model provisions, so there were some aspects to part A that South Australia did not implement in their legislation.

CHAIR: Does that have any implications in terms of forum shopping in Queensland, for example, if they are not consistent?

Mr Kraa: The main driver behind uniformity of legislation across Australia is primarily to address the issue of forum shopping but also to give parties to proceedings certainty about what their responsibilities and liabilities are. When the Queensland approach to adopt the model laws is drafted, that would bring Queensland in line with the general position across Australia and so it would principally prevent issues of forum shopping in Queensland.

Ms McMAHON: There are a couple of things I want to go over. You touched briefly on the extended defence of absolute privilege for police services. We spoke about the part B reforms, but could you give us an example of how that would work in practice for the Queensland Police Service in terms of complaints made against the defamation provisions?

Mr Kraa: A good example would be a scenario the Defamation Working Party considered in developing the laws. For example, if someone were to make a complaint to police about sexual assault, then there is a scenario where the person whom that complaint is made against could choose to sue the person for defamation for having alleged that against them. There are existing defences that the person who made the complaint to police could try to rely on in giving the complaint to police. What the Defamation Working Party found through its review is that those existing defences do not particularly meet the job of people not being dissuaded from making a complaint to police because of a threat of defamation proceedings. That is sometimes referred to as the 'chilling effect' in some of the reports that have been issued in this space.

This bill does will extend the defence of absolute privilege to complaints that are made to police. That is a complete indemnity if you are making a complaint to police; it does not matter what the content or nature of the complaint is. If you are making a complaint to police, once this bill is enacted you will have an absolute privilege defence. The intent behind that measure is to address that chilling effect and to ensure that people are not dissuaded or discouraged from making what otherwise might be a valid complaint to police.

Ms McMAHON: You raised the Attorney-General's comments about organisations and complaints handling bodies that are already covered. Just reading between the lines, is the CCC covered under this legislation by absolute privilege, or is it under a separate piece of legislation or regulatory framework?

Mr Kraa: This was alluded to in the CCC's submission as well, which they acknowledged was under the Crime and Corruption Act 2001, which is effectively the enabling legislation for the Crime and Corruption Commission. There is an existing defence of absolute privilege for publications made to or by the commission in the performance of its functions. That is provided for under its own enabling legislation.

Ms McMAHON: Thank you for clarifying that. I will turn to the aspect of digital intermediaries. What we are all familiar with here at the table is dealing with community Facebook groups in our local areas, noting that they are often administered by community members. There is no technical

experience; there is no legal experience. With a view to explaining to our keyboard administrators, can you step us through what this means for them? If they are the admin on the community Facebook page, what are they now captured under and what are they now required to do in order to avoid falling foul of this piece of legislation?

Mr Kraa: One thing to mention at the outset is that this bill provides a new defence for digital intermediaries. It is not so much that there will be some new requirement or obligation they might fall foul of and have some adverse effect. It is more that there is a new defence here they can benefit from if they take certain steps, as you said, to access that defence. It is intended to be a positive step forward, not only for digital intermediaries but also those who would like to have a matter they consider is defamatory of them addressed. An example might be helpful in this space. I will build on the example Mr Bourke mentioned in his opening speech.

If Andy was to publish a comment on a Brisbane community association Facebook page saying that he considered a comment Bob made was defamatory of Andy, then what the Brisbane community association would need to do as the account holder of that Facebook page to access the new defence is to have an accessible complaints mechanism in place. That term has been drafted quite broadly to mean an easily accessible address or mechanism to make a complaint. The intent is to allow for quite a broad range of ways that someone could complain about a potentially defamatory matter. As long as that association has this accessible complaints mechanism in place, that is step 1 and they can take advantage of the new defence. If Bob was then to come along and make a complaint through that mechanism, the association would then need to assess that complaint and take reasonable prevention steps within seven days to continue to take advantage of the new defence. They may review the comment on their Facebook page, decide they are comfortable with leaving it and they would defend a defamation proceeding if it was brought against them. If they want to continue to access the defence, then they need to take those reasonable prevention steps within seven days.

Ms McMAHON: In your example you refer to an association which may or may not be an incorporated association, but for the average Facebook group, which has two or three administrators who occasionally still follow the page or they just created it and probably strangely walked away from it, what does their liability become if they are on the page as an administrator and they do not pay any attention to it anymore? I am assuming that the standard Facebook communication is the private message to an administrator. For the average community person who is not an association but who is an individual, where does their liability now sit?

Mr Kraa: Liability arises under defamation law if you are a publisher of the matter. This bill does not try to change what the term 'publisher' means, but it would likely be the case that currently that small community organisation that you mentioned would already be a publisher of those comments. The situation right now is that comments put on their Facebook page are things that they may be liable for in defamation, so that is the status quo I suppose, and what the bill is trying to do is to introduce a new defence that they can then access to address that scenario arising. If they would like to access the new defence, they will need to ensure that they have that complaints mechanism in place. They likely would because, as long as they can receive a direct message from someone which might be a direct message sent through Facebook using that example, that would be in place already, but what I suppose is critical is that they are monitoring that so that they can take action within that seven-day timeframe if they wish to avail themselves of that new defence.

Ms McMAHON: Thank you very much.

Mr FIELD: With regard to the part A and part B reforms, what consultation was conducted by the standing council please?

Mr Kraa: There was extensive consultation undertaken by the Defamation Working Party. Initially the working party commenced its review in 2021 and it comprised those two parts we mentioned earlier—the part A and the part B. In April 2021 there was a discussion paper released which covered both parts. That was released for public consultation and almost 50 written submissions were received in response to that process and it was also followed by four large stakeholder round tables to discuss issues that were raised in those written submissions. Following that, in August 2022 an exposure draft of the part A amendments and also an accompanying background paper were released for public consultation—and that was also followed by a stakeholder round table—and around 34 written submissions were made public as part of that process. Similarly, in August 2022 an exposure draft of the part B amendments was released with an accompanying consultation paper, also for public consultation, and around 19 written submissions were received. Those two public processes in August 2022 that I mentioned were also promoted in Queensland through the For Government consultation

website, so there was an extensive process in consulting and a wide range of stakeholders participated in that consultation, including technology sector stakeholders, legal peak bodies, legal practitioners, academics, media companies, advocacy groups and other individuals as well.

Mr RUSSO: In relation to the submission made by the CCC, the CCC have suggested in their submission that they be included in the defence of absolute privilege, and they do acknowledge in their submission that they are covered by their legislation, which you have already alluded to. The CCC is saying that it is their belief—my words—that that would further facilitate the reporting of wrongdoing in Queensland. Are you able to unpack that for the committee?

Mr Kraa: All I can say in response to that question is what was alluded to earlier around the Attorney-General noting in her explanatory speech that the defence of absolute privilege has already been extended to certain statutory bodies through the enabling legislation, so at this time that is the position that government has arrived at in terms of how the defence might be extended.

Mr RUSSO: Okay. I understand that the CCC were consulted in the first round of submissions but they were not consulted in relation to the bill in its current form. Are you able to explain why you did not go there?

Mr Kraa: The CCC, as I understand it, were consulted and did participate in those public consultation processes I referred to earlier that the Defamation Working Party operated. In terms of consultation or lack of consultation in Queensland following that process, it may be worthwhile noting that, as Mr Bourke alluded to in the opening statement, there is an intergovernmental agreement that underpins the model provisions and through that states and territories make a commitment to implement the model laws as they are developed, and the benefits of model laws, as we talked earlier, are around uniformity. Following the SCAG commitment and agreement to implement those model laws, the position taken was not to carry out further consultation specific to Queensland as the bill is effectively just implementing what those model laws are as they were agreed to by SCAG.

Mr RUSSO: In relation to the fact that the absolute privilege is not included in schedule 1, are you able to comment whether that is similar for other similar bodies in other jurisdictions where they just rely on their own legislation, or have those investigative bodies been included?

Mr Kraa: It is a mixed approach across other jurisdictions. Some jurisdictions such as New South Wales already had quite a range of entities prescribed in their schedule 1 prior to this stage 2 review being conducted. Some other jurisdictions, when they enacted these stage 2 reforms, did prescribe further entities in their schedule 1 while still other jurisdictions have not prescribed any entities in their schedule 1 at all. It is a mixed approach across jurisdictions in terms of how they have tackled that issue.

Ms MARR: Leighton, you were talking before about the definitions. How were definitions in the bill such as 'online services' and 'publisher' developed? Do Queensland's definitions follow other jurisdictions as well?

Mr Kraa: Maybe just going to the definition of 'publisher' first, the bill does not attempt to or does not intend to change the definition of 'publisher' as it is developed through the common law, and it has quite a broad meaning at the common law already. What I suppose the bill does in recognition of that broad definition of 'publisher' and who might be captured is it seeks to then introduce some measures for digital intermediaries given that they are often likely to be considered publishers at defamation law. In terms of 'online service', the bill does provide a definition of that and 'online service' is defined to mean a service provided, whether or not it is for fee or any other reward, to enable someone to use the internet, and that includes, without limitation, a whole range of services such as to access or connect to the internet, to send or receive content, or to store content, index content or share content over the internet.

Ms MARR: How were they developed? Was that through your consultation process for all jurisdictions so that we are similar to all other jurisdictions as well?

Mr Kraa: That is right. The definition of 'publisher' is developed through common law, so that has broad application. There are some key High Court cases in that space which have broad application across jurisdictions. The definition of 'online service' in the bill was developed by the Defamation Working Party as one of the model provisions. For those jurisdictions that have enacted these reforms, there will be a consistent definition of 'online service'.

Ms BUSH: Picking up on the member for Macalister's questions, the bill introduces a defence for digital intermediaries that provide a complaints mechanism and that act promptly to remove potentially defamatory comment. I have a couple of questions. I am curious about how this works from a victim perspective. How accessible are these complaint mechanisms? How effective are they in compelling people to take down notices? How does it work?

Mr Kraa: An accessible complaints mechanism was defined quite broadly. It simply means an easily accessible address, location or other mechanism that is available to complain to the digital intermediary. That could include an email address, a direct messaging service within the platform or even an online complaint form on a website, for example. The intent very much is to make it as easy as possible for a digital intermediary to provide this complaints mechanism.

The effectiveness of it though really relies on the digital intermediary and whether they would like to access the new defence and take advantage of it. The defence has been developed specifically with digital intermediaries in mind and to address this emerging issue at law. You would expect and be hopeful that digital intermediaries will be availing themselves of this defence and therefore putting these accessible complaint mechanisms in place and ensuring they have processes to act on complaints within seven days. Ultimately, it is at the discretion of each intermediary if they want to.

Ms BUSH: There is a seven-day period where we would expect that they would act. Obviously an email address is sufficient. If you are a big agency then that is something you would have set up, but if you a community Facebook you are probably not going to have those things. Is that the expectation that this bill will drive that kind of behaviour? To be frank, that is where I see a lot of the really vile things coming out. We could probably all think of cases where people have been named and then actually assaulted or seriously harmed or killed as a result of that. If that is the behaviour we are trying to clean up, what is this bill's function in changing that behaviour?

Mr Kraa: That is correct. Part of the reason for casting the definition of 'accessible complaints mechanism' quite broadly is to try to take advantage of the processes or complaint mechanisms that might already be out there. It is not necessary to create a dedicated email address and use that. If you are operating a social media platform, for example, and there is already a means for someone to send you a direct message through that platform, then that can be utilised as the complaints mechanism.

Ms BUSH: Just to round out the questions, if we are looking at curbing that behaviour, I understand the bill introduces additional powers for courts to identify potentially anonymous users and compel them to take down material. Is that right? Have I understood that part of the bill? I am only standing in on this committee, but I understand there are some additional powers for the court to help clean up some of that behaviour if the person does not willingly take the material down.

Mr Kraa: Yes. There is a new power for the court. Typically a court would only be able to make an order against those who are parties to the proceedings, but there is a new power for the court to make an order against a digital intermediary who is not a party to a particular defamation proceeding. The purpose behind that is that if, for example, someone has been successful in obtaining a judgement that some content is defamatory then there may be scenarios where reasonably the court might believe that that person is not going to take any action in terms of removing that content or dealing with that content. The court will then have the power to order a digital intermediary to take a reasonable access prevention step. The intermediary will be able to be heard by the court in relation to that kind of order, but it essentially gives another tool to ensure that defamatory content, once it is found to be defamatory, can be addressed and removed or taken down.

CHAIR: I want to clarify some of the things that the member was saying in terms of a complaint process. Is it sufficient just to publish an email address? You do not have to say, 'If you wish to complain about anything on my site ...' Is the fact that you have contact information there sufficient to have a complaint mechanism?

Mr Kraa: That type of scenario is probably going to turn on the particular circumstances where it appears in each individual case. An intermediary who is concerned may require some legal advice to ensure that they are sufficiently providing a complaints mechanism. Often it is the case with the context of different platforms that a contact address is provided or promoted in the usual place on that page. You might typically know that if you are using that platform that is how you would contact the person who administers or operates that platform or that account. I will probably say it turns on the circumstances but, as long as you are providing a mechanism for someone to make a complaint to you, that is going to qualify as an accessible complaints mechanism.

CHAIR: The example I am thinking of is that we all run Facebook pages as MPs. Some of them contain vile language at times that we have to mediate. Should we be putting on our page, 'If you have a complaint or you see anything on my website ...' or is it enough that I have obvious and easy contact details?

Mr Kraa: Simply writing 'contact me' may be sufficient but, again, it is going to depend on the circumstances of the case.

CHAIR: I will update my social media then. My question was around the amendments to section 365 (Criminal defamation) in part A reforms. Can you advise what the purpose of that is?

Mr Kraa: As Mr Bourke alluded to in the opening statement, this bill is also amending Queensland's Criminal Code, specifically the offence of criminal defamation. The amendment there will provide that, if one of the new civil exemptions, or new defence we have been speaking of, is available in the civil space, it will also be a defence for the criminal proceeding as well. That ensures some certainty for parties around what their liability might be because of the consistency.

Ms Eisemann: To clarify that, it will actually be a lawful excuse, not a defence.

Mr Kraa: Lawful excuse is how it has been phrased, yes.

Mr RUSSO: In relation to the boundaries of privilege and absolute privilege, are you aware whether or not these have been tested in the courts?

Mr Kraa: Is this in relation to how the broadening of absolute privilege might apply for police?

Mr RUSSO: Any entity. I know it is a broad question, so you are at liberty to answer in any way—

CHAIR: Sorry, member, could you ask that question again? I missed it.

Mr RUSSO: Are you aware of any cases where absolute privilege and privilege have been tested in the courts to date?

Mr Bourke: Do you mean specifically in the context of defamation?

Mr RUSSO: Yes.

Mr Kraa: I suppose absolute privilege is a complete indemnity for proceedings. Often when an occasion of absolute privilege applies it is very rare for proceedings to even be brought forward and are often decided quite early in those situations as well as it is often clear-cut. If a complaint or a publication is made within the absolute privilege confines then that is a complete indemnity.

Mr FIELD: How does extending the absolute privilege defence to complaints made to Queensland police provide certainty for victims of crime?

Mr Kraa: As I was just saying, the absolute privilege defence is typically very clear-cut. It provides a complete indemnity in the occasion that it arises. It allows for someone who wishes to make a complaint to police to have that certainty, that they will be completely protected in making that complaint, and they will not have any threat of a defamation suit being brought against them. Under defamation law, there are a range of defences that might be available, but it means they do not have to rely on proving other elements or criteria that exist under other defences. They have the benefit of this clear absolute privilege defence and that gives them certainty.

Ms BUSH: I have a question, but can I just pick up on my last question? With regard to the court timeframes, you mentioned they would have to get a successful prosecution through. How long, on average, is it taking? What I am interested in is where someone is identified online for something that is not true and it has serious implications, including a risk to their personal safety. They contact the community Facebook provider and say, 'Take it down.' They hear nothing for seven days. They lodge the matter in court. When are they likely to get an outcome?

Mr Kraa: For the court to use the new power to order that a digital intermediary be the one to take the content down, there does need to be a judgement for defamation against a defendant in the proceedings, or you can also apply where the court has granted a temporary injunction or makes some other temporary order that prevents the defendant from continuing to publish or republish the matter, pending the determination of a final proceeding. That not only applies to temporary injunctions but also to final injunctions as well. I, unfortunately, probably cannot provide an average time off the top of my head around these proceedings, but there is an ability to seek those temporary injunctions from the court, and to then avail that new court power to order the digital intermediary to take some action.

Ms BUSH: I wonder, in the interests of time and subject to the chair's approval, whether you could do any work with courts to find out an average length of time—maybe what time it took last year, what was the average length of time for defamation cases to proceed through the courts, just so we have a sense of that totality. It is really serious. It is becoming, I think, more and more of an issue. I guess the question is that it comes down—

CHAIR: Member for Cooper, timeframes in relation to defamation cases would be, I imagine—

Ms BUSH: I am after the median timeframe.

CHAIR: I think it is probably straying outside the bill, in terms of timeframes—

Ms BUSH: I am specifically asking about the timeframes. This bill introduces powers for a court to deal with defamation matters, and I am asking specifically the median timeframe that would take, according to data that the courts do have. I think that is entirely relevant.

CHAIR: Is that something where you could see what is available?

Mr Kraa: We could take it on notice and see what is available and get back to you with what we can, based on our courts and tribunal data. We are happy to take it on notice, Chair.

CHAIR: I imagine it would vary quite a bit, though.

Mr Kraa: Yes.

Ms BUSH: Just a median figure.

CHAIR: It is like saying how long does an assault charge take in court. Some are dealt with straightaway; some are dealt with over two years.

Ms BUSH: Which is why they use the median. I am happy for the median data. That would be great.

CHAIR: If that is available.

Mr Kraa: Yes, we will make best endeavours.

Ms BUSH: The question that I had was around that link. We have seen marches and things happening in streets. I am very concerned about vulnerable users—women, our queer community, people who have migrated to Australia—who are being vilified online and offline. I am curious how this bill sits alongside, I think it was, bill No. 22 in the 57th Parliament around vilification and hate crime. How does this bill sit alongside those efforts to reduce online vilification, defamation and hate speech?

Mr Kraa: I suppose that is not a primary purpose of some of the aspects in this bill. However, I do think that these measures targeted at digital intermediaries, particularly the new defence, seek to clarify actions and timeframes that might be expected of digital intermediaries, if they wish to take advantage of these new measures. Expecting that digital intermediaries will, it may be expected or hoped for that then there will be a greater prevalence of accessible complaint mechanisms and processes to ensure that the complaints are actioned within seven days and that type of thing.

Ms BUSH: I imagine there would be overlap. Someone is named and targeted online. There are usually a few issues conflated in that, including comments about race or disability or something of that nature.

CHAIR: Member, you are straying into hypotheticals now in terms of hypothetical situations, but dealing with the defamation of an individual online—

Ms BUSH: Where I was going with the question is: what training is being given or what resources are being given to courts and police to deal with those complex issues that are dealing with both defamation and potentially offences under the Criminal Code?

CHAIR: I think that you are possibly asking about matters outside the scope of the department.

Ms BUSH: It is a resourcing question.

CHAIR: The department is not in charge of police, member.

Ms BUSH: But certainly the department is involved in drafting budget submissions that sit alongside bills that are introduced, and that is what I am asking.

CHAIR: I will let you do your best to answer that. I understand—

Mr Bourke: There was an extensive body of work that supported that parliamentary inquiry and then the subsequent reforms coming out of the serious vilification act, and police have done a range of things in that space. I think this is a broadly complementary set of reforms, but I do not think, Leighton, anything specifically. However, I think there is a whole heap of existing work already being done at the police level around vilification and, as Leighton touched on, I think these reforms, particularly the defence, would play a complementary aspect to helping remove that content.

Mr Kraa: That is right, and I suppose, as I think about it, not just the defence for intermediaries, but also the part B which is extending the absolute privilege complaints to police. If there are scenarios of vilification or hate speech that arise in a criminal sense, complaints to police have now this certainty of an absolute privilege defence. The bill may be seen there as taking a positive measure in ensuring that people are not dissuaded or discouraged from making complaints to police.

Ms BUSH: It sounds complementary then to the 17 recommendations in report 22. Beautiful, thank you.

Ms MARR: Further to what the chair was saying before about MPs—we have had the conversation with some of the councillors here locally—can you please advise whether local councils would be classified as digital intermediaries and therefore be able to access this new defence as well?

Mr Kraa: A digital intermediary is defined, purposefully so, quite broadly in the bill, as anyone who provides or administers the online service on which matter can be published. So if in that scenario you outlined the council was operating an online service, whether that was a website or a social media page, for example, then they would be picked up as a digital intermediary and therefore may be able to access some of the benefits such as the new defence that is outlined in the bill.

Ms MARR: Are you able to give an example of how they might use this new defence?

Mr Kraa: I suppose one example might be a Facebook page or some other social media page that the council operates, and they may use that page to engage with the community. Because it is used for engagement, it might be used quite prevalently and then there might be a lot of comments that are posted by many members of the community. So, in a scenario where a particular member of the community writes something that is defamatory about someone else, then there is a risk there that the council, as the operator of that page, will be liable for publishing that defamatory content, as a digital intermediary. However, as we have spoken through the hearing so far, provided they have that accessible complaints mechanism and action the complaints within seven days of receiving them, they will be able to benefit from that new defence, and that supports that process when they are running some kind of online service.

Ms McMAHON: In relation to comments on Facebook pages, public pages, community pages, noting we now have a range of terms when it comes to the digital intermediary, the administrator of the page—we have poster, we have author, we have originator, we have publisher—can you briefly talk to where they may intersect or be complementary in terms of definitions or where one is very specific to a person such as an originator? Can you also explain, say, in the local community crime pages where someone is posting videos of things that they believe are suspicious or a crime where a person might be either visually identified or identified by name how that might fit into all of these definitions of 'poster', 'author', 'originator' and 'publisher'?

Mr Kraa: Those terms are all specific terms included in the bill to be inserted into the act to give some clarity for how these new provisions relating to digital intermediaries will operate. The reason some of those terms around 'poster', 'originator' and 'author' are very important is that the new defence or exemptions for digital intermediaries are not intended to capture those people. If you are the poster of material or the author of material, you will continue to be liable under defamation law as per the status quo. These new defences are not drafted in a way to give those posters, authors or originators any means of defence. They are targeted very much at what might be a subordinate distributor or someone who comes in in the process of publishing.

Ms McMAHON: They are all very specific. As an example, an originator might be an author of a document or a person who takes a photo. A poster might be someone different who then takes the original authored work and posts it on the Facebook page, so you do have a different originator and you do have a different poster.

Mr Kraa: That is right. They can capture different people. The poster, for example, is going to be the person who places the material online. The author and originator may be separate to the actual poster—the author being the person who authored the material and the originator could be a person who plays a part in the development of the material that is ultimately posted.

Ms McMAHON: The issue might be that someone posts on the community Facebook page, the person who is subject to the post communicates with the administrator, the digital intermediary, and as a result it gets taken down but in the interim people have shared that post. I note that they have seven days, but in a lot of these groups there might be hundreds and hundreds of shares of that particular post. While the defence might exclude the initial digital intermediary on the Facebook page from being defamed, does the aggrieved person then have to contact or try to find all of those hundreds of people who then shared that particular post who are now, I am assuming, posters of such defamatory material?

Mr Kraa: That is right. If you are republishing something or publishing it again in your own right by sharing it or something like that, you are not a digital intermediary; you are reposting or posting the matter.

Ms McMAHON: I wanted to capture for clarity for those hundreds of people watching that, if you post something that you found on a community Facebook page and you proactively share that, you are not captured by the defences in this legislation?

Mr Kraa: In that scenario you are not a digital intermediary because you are not providing the service that someone else is putting the post on. I think the scenario you are speaking to there is you are actually taking the active step of publishing the matter yourself whether that be by sharing or reposting.

Ms McMAHON: You might be in a small closed group and then you share it more widely and publicly into other groups. You are not protected as a digital intermediary in this piece.

Mr Kraa: The digital intermediary defence is not designed to allow those people to not be liable for defamation if they are reposting or resharing material. Just to touch on one of the other points you spoke to though, it is certainly a concern how quickly things can be shared in the online space. Maybe they are shared across platforms or through other means. One thing we could speak to in the bill that addresses that is the ability for the court to make an order against a digital intermediary who is not a party to the proceeding. If it was originally a defamatory post on Facebook, for example, and then it was shared over to a different platform, that different platform might not be a party to the proceedings but the court might be able to look at the scope of where the material has been published and try to address it that way. It is certainly a broad concern that is going to exist.

Ms McMAHON: Obviously, going to the member for Cooper's concerns, it could be months and months away before a takedown order.

Mr Kraa: This effectively is the current status quo in terms of the online space and defamation.

CHAIR: I was going to clarify that we are not seeking to increase defamation laws. They are the laws as they are. The intent of this bill is to provide a defence for third parties who may not know that this material has gone up on a platform they have. When they find out and they do something about it, it provides them with a defence. That is the broad intention of the bill.

Mr Kraa: That is right. It is providing those intermediaries—people or organisations—clarity around how they can have a defence.

CHAIR: The bill itself is not designed to try to expand defamation laws to capture more people in it or anything like that. That is not the intent of the agreement between the council.

Mr Kraa: That is right. Specifically the intent was not to change or interfere with the definition of 'publisher', which is one of the key scenarios where defamation law arises.

Ms MARR: If you were to reshare a post, does that not make you a publisher?

Mr Kraa: It is going to depend on the circumstances of how you reshare. There is a scenario where you may just reshare a hyperlink, for example, whereas if you are resharing or reposting content along with that hyperlink—that question is going to then turn on your liability under defamation law as a publisher or a poster of the matter. It sits outside of this bill. That scenario is not going to mean you are a digital intermediary for the benefit of these new defences we are speaking to. Whether you are in that scenario liable under defamation law is going to depend on the specific circumstances of how you have shared or reposted that content.

Ms MARR: So they can be captured another way.

CHAIR: We will close the briefing unless there are any other pressing questions. Thank you to everyone who has participated today. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course. I note one question was taken on notice in relation to any information you can provide about defamation proceedings and the length of time they take and whether that is relevant to the bill. Could we have your responses by 10 am on Friday, 14 November so we can include them in our deliberations?

Mr Bourke: We will do our best.

CHAIR: I declare this public briefing closed.

The committee adjourned at 11.28 am.