

DEFAMATION AND OTHER LEGISLATION AMENDMENT BILL 2025

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Submission to the Justice, Integrity and Community Safety Committee - Defamation and Other Legislation Amendment Bill 2025

Introduction

The role of the Victims' Commissioner is established under the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld). My role is to promote and protect victims' rights including to make recommendations about improvements to government policy, practices, procedures and systems to uphold the rights of victims.

The Defamation and Other Legislation Amendment Bill 2025 amends the *Defamation Act 2005* to implement a suite of nationally agreed changes to the law of defamation, arising from Stage 2 of the Review of the Model Defamation Provisions, approved in 2023 by the Standing Council of Attorneys-General (SCAG). Several states and territories have already enacted amendments to give effect to these changes.¹

My submission is limited to the provisions enacting the Stage 2, Part B amendments in Queensland. These are contained in Clause 8 of the Bill which amends section 27 of the *Defamation Act 2005*, Defence of absolute privilege. The aim of the amendment is 'to extend the defence of absolute privilege to publications of defamatory matter to officials of Australian police forces or services while they are acting in their official capacities'.²

I am supportive of the proposed amendments, as they assist victims to access the justice system and to be respected, seen and heard.

Reporting rates

Victim-survivors, especially of sexual violence offences or domestic and family violence, who speak publicly about their alleged experiences, are subject to threats and actions of defamation against them. This phenomenon is widely reported across Australian media and has a chilling effect on the willingness and likelihood of victims coming forward to seek justice.³ This effect extends to victims' willingness to report offences of sexual violence to police.⁴

In 2024, the number of victims of sexual assault in Queensland was 9,326, an increase of 11 per cent on the year prior, and the highest recorded number since the Australian Bureau of Statistics has tracked the data.⁵ Crimes of sexual violence offences are known to be notoriously underreported. It is estimated that only around 13 per cent of victims report to police.⁶

¹ New South Wales, Victoria, the Australian Capital Territory, Tasmania, and the Northern Territory.

² Explanatory Notes, Defamation and Other Legislation Amendment Bill 2025, 3.

³ Sarah Ailwood 'Defamation Law Reform in the #MeToo Era', (2024) Issue 18, *Court of Conscience*, 97.

⁴ Explanatory Notes, Defamation and Other Legislation Amendment Bill 2025, 7.

⁵ Australian Bureau of Statistics, Recorded Crime – Victims (released 3 September 2025) - <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/latest-release#queensland>.

⁶ Australian Bureau of Statistics, Sexual Violence - Victimisation (released 24 August 2021) <https://www.abs.gov.au/articles/sexual-violence-victimisation#police-reporting>.

In 2023, more than 1 in 2 recorded assaults were related to family and domestic violence in Queensland.⁷ In 2024-25, there were 25,871 domestic violence protection orders initiated, and 14, 374 varied.⁸ However, it is also accepted that domestic and family violence is underreported.⁹ Reporting of such crimes is essential for victims to be seen, have their rights protected and for community protection.

Greater protection for victim-survivors

Defamation law in Australia places the onus on the person accused of making the defamatory publication to prove they have a defence. Defamation proceedings in response to allegations of gender-based violence have been described as a tactic of DARVO (deny, attack, reverse victim and offender) – with proceedings initiated to intimidate, silence and punish victims.¹⁰ Perpetrators with significant financial resources may use threats of defamation to silence victims, knowing that the victim does not have resources to defend the allegations.¹¹

The defence of absolute privilege, which is a complete defence against defamation, currently applies to publications in the course of parliamentary proceedings¹² or court proceedings,¹³ but not in relation to communications or publications a victim may make to police in reporting their alleged experiences. Victims receive some protection in their communication to police, and are able to rely on the defence of qualified privilege, both under the general law and the *Defamation Act 2005*.¹⁴ However, the defence of qualified privilege can be defeated if it is proven that there were motivations of malice.¹⁵

Extending the defence of absolute privilege to publications of defamatory matter to police, acting in their official capacities, will enhance the safety and protection of victim-survivors. It will prevent further harm being inflicted on victims which may flow from defamation proceedings instigated due to publications of defamatory matter in police reports.

The recent Queensland case of *Sherman v Lamb*¹⁶ is one such example of the harm that can be inflicted on victims from defamation proceedings. In that matter, the victim reported coercive control and domestic violence to police. At trial at first instance, the perpetrator was successful in suing the victim for defamation. The defence of qualified privilege was denied because aspects of the victim's report went beyond information about domestic violence and some aspects were about conduct that was 'merely (if at all) morally objectionable'.¹⁷ His Honour found that 'police have no interest in or a duty to receive gossip or adverse commentary',¹⁸ and found her to be motivated by malice due

⁷ Australian Bureau of Statistics, Recorded Crime – Victims (released 3 September 2025) -

<https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/latest-release#queensland>.

⁸ Queensland Courts, Queensland Courts' domestic and family violence (DFV) statistics (7 August 2025)

<https://www.courts.qld.gov.au/court-users/researchers-and-public/stats>.

⁹ Australian Institute of Criminology, 'Key Issues in Domestic Violence' (2009) 7 *Research in Practice*.

¹⁰ Sarah J Harsey and Jennifer Freyd, 'Defamation and DARVO' (2022) 23(5), *Journal of Trauma and Dissociation* 481.

¹¹ Victorian State Government, *Review of the Model Defamation Provisions Stage 2 Part B – Policy options* (2022), 17.

¹² *Defamation Act 2005* ss 27(2)(a).

¹³ *Ibid* ss 27(2)(b).

¹⁴ Explanatory Notes, Defamation and Other Legislation Amendment Bill 2025, at 7.

¹⁵ Sophie Dawson, 'Sexual Assault Complaints and Defamation Law Reform' (2023) AULA 45, *Precedent*, 30.

¹⁶ *Sherman v Lamb* [2022] QDC 215.

¹⁷ *Ibid* [56].

¹⁸ *Ibid* [56].

to the ending of the relationship.¹⁹ These findings were overturned on appeal,²⁰ however the victim had already declared bankruptcy due to the cost of the litigation.

While not a criminal law matter, the use of threats of defamation to deter a victim of sexual harassment was considered in the recent Federal Court matter of *Magar v Khan*.²¹ In that case, the victim was awarded a record sum of \$305,000 for sexual harassment she suffered from the owner of a fast-food restaurant when she was employed there. In the course of her workplace complaint, the perpetrator's lawyers sent notices to her alleging her complaints were defamatory and requesting monetary compensation, an apology and a withdrawal of the complaint.²² This made her worried about her decision to seek legal help to claim her rights.²³ She was awarded \$10,000 for victimisation.

Extending the defence of absolute privilege to publications of defamatory matter to police will facilitate the dignity of victim-survivors and give them greater choice and control. The proposed amendments will go some way to preventing threats, or actual commencement, of defamation proceedings being used as a tool to intimidate victims to make them fearful of seeking help.

System design

The proposed amendments are an example of how legislation can better protect victim-survivors. The community must be made aware of these strengthened protections to ensure they have the desired effect on encouraging victim-survivors to report to police and to have a deterrent effect on perpetrators.

Victim-survivors are encouraged to seek support from a range of individuals, institutions and service providers such as workplace managers and colleagues, frontline support service workers, and bodies empowered to investigate human rights or work health and safety complaints.²⁴ The *Victims of Crime Assistance Act 2009* enables victims of sexual violence and domestic and family violence to report to a police officer, the victim's counsellor, psychologist or doctor, or a domestic violence service in order to be eligible for financial assistance.²⁵

While victims may be able to rely on the truth defence or defences of qualified privilege or the public interest to claims of defamation potentially arising from accessing those supports, legal processes would come at significant cost, accompanied by possible re-traumatisation.

The 2022 Victorian consultation paper, published during the Model Defamation Amendment Provisions review, considered whether 'absolute privilege should be extended to publications made to other relevant bodies'.²⁶ While there is a need to balance rights to privacy and the protection of reputation, systems should also be designed to encourage victims to report without fear, thereby promoting community

¹⁹ Ibid [58-61].

²⁰ *Bill Karageozis as trustee for the bankrupt estate of Siobhan Lamb v Sherman* [2023] QCA 258.

²¹ *Magar v Khan* [2025] FCA 874.

²² Ibid [31].

²³ Ibid [152].

²⁴ Sarah Ailwood 'Defamation Law Reform in the #MeToo Era', (2024) Issue 18, *Court of Conscience*, 99.

²⁵ *Victims of Crime Assistance Act 2009* (Qld) s 81.

²⁶ Victorian State Government, *Review of the Model Defamation Provisions Stage 2 Part B – Policy options* (2022), 30.

safety. There are existing protections with respect to some statutory authorities, such as the Health Ombudsman (see *Health Ombudsman Act 2013*, section 275).