



Speech by

JACK PAFF

MEMBER FOR IPSWICH WEST

Hansard 26 August 1999

DEFAMATION AMENDMENT BILL

Mr PAFF (Ipswich West—ONP) (10.16 a.m.): I move—

"That the Bill be now read a second time."

I rise today to introduce to this House a Bill to amend the Defamation Act of 1889 to extend the protection from defamation beyond the House to also cover constituents and staff of a member of the Legislative Assembly.

The current Defamation Act does not cover the circumstance of a constituent making an inquiry to a member or his staff and the transfer of that information from member to Minister, Premier or department involved. The constituent, if making any defamatory claims, can be held liable for defamation by the person referred to in the complaint. A staff member who passed on the complaint would similarly be vulnerable. This type of situation occurred in 1995 under the Goss Government.

For those who are not aware of the case—a constituent forwarded a letter to the Premier of the time, complaining about the actions of a member of the Department of Transport in relation to a new bypass project. The lady was upset that the project was going ahead when landowners were previously told that it would not. She referred in her letter to a representative of the Department of Transport and said that he "bullies and uses standover tactics to humiliate and degrade the owners in his way." Apart from expressing her grief over the bypass situation and the effect upon the families affected by the project, she also claimed that the Department of Transport officer "disputes lots of things he knows very little about."

This constituent forwarded a letter, asking for help, to the Premier of the State, to Mr Borbidge and Mrs Sheldon. What resulted was ludicrous. The Premier had forwarded the letter to the Department of Transport, and the person referred to in the letter sued the constituent for damages to the value of \$10,600. A woman who had written to the Premier in good faith, to ask for help, rather than receiving a letter of response from the Premier, received a letter from a solicitor and then a summons.

Although at the end of the day some type of agreement was worked out between the Government and the public servant involved and the action was stopped, the trauma this woman must have experienced was inexcusable. This situation raised some serious questions at the time regarding the coverage of parliamentary privilege and the liability of constituents who tell politicians of their concerns or complaints.

In a Courier-Mail article dated 21 October 1995, the injustice of this circumstance and the serious question of privilege was raised. I quote a few of the comments from different people referred to in the article. The 61 year old pensioner involved commented—

"It has come to the day when the public can't even turn around and say their piece ... this will frighten off other people from writing to the Government."

A spokesman for Mr Goss said—

"The Premier gets hundreds and hundreds of letters every week ... all letters of complaint are forwarded directly to the specific department."

And fair enough. I am quite sure the Premier is not able to answer each letter and solve each problem personally. Of course, he must forward them to the relevant department to seek advice or action.

The then president of the Council for Civil Liberties, which is not an organisation I generally agree with but in this case I do, stated—

"Perhaps ordinary people will have to stop writing to the Premier, or ministers or MPs and take their complaints to the CJC instead. That way at least citizens will not get taken to court for complaining."

Associate professor of politics Ross Fitzgerald said that the defamation action seemed draconian "and would stifle freedom of debate."

In a Courier-Mail editorial of 21 October 1995, the author rightly states that—

"There can be no doubt that it ought to be the right of ordinary people to complain to their political representatives about the way those employed by the Government—as public servants, police, teachers or judges—behave towards them. They should be able to do so without any fear that they might be sued for defamation and face crippling costs defending themselves, as well as the possibility of paying damages. If that is not the law, it ought to be."

That is what this Bill does. It amends the Defamation Act so that situations such as this do not occur again. It even goes a step further and ensures that a member's staff are also protected from defamation should they publish something by relaying it to the member. "Publication" refers to the conveying of information, and it is irrelevant whether this occurs via a fax machine or whether it is personally handed to another, printed in a newspaper or is mailed in a letter.

A member's job is to follow through with constituent complaints or concerns. If the member's job is impeded by a threat to a constituent or to staff members for relaying the concern to the relevant Minister, the system is rendered useless. Often, members are faced with complaints or concerns that specifically refer to another person. During the course of his job, it is necessary for him to forward these concerns to the appropriate people and seek some form of explanation or redress. The failure of the Defamation Act to protect the constituent, the member's staff or the member is a serious issue that requires correction. This Bill achieves that correction. The Bill is self-explanatory and honourable members will see that we have attempted to cover the process from the constituent through to the Minister.

I seek leave of the House to have the rest of my second-reading speech incorporated in Hansard.

Leave granted.

15A (1) of the amendment bill makes it lawful for a constituent to publish defamatory matter to a member or to a member's staff if it is made without malice.

15A(2) makes it lawful for a staff member to publish the defamatory matter to the member if the publication is made without malice.

15A(3) allows the member to publish the information to the Minister or one of his staff.

15A(5) places the onus of proof, that the matter was published with malice, upon the party alleging it was made with malice. This is necessary considering the practical event of this occurring and is the most rational way of approaching the issue of pursuing for defamatory reasons.

Mr Speaker, members of this House supported a change to protect constituents from situations such as that faced by the pensioner in 1995.

Mr Lingard spoke in the House on 19/10/95, saying: "How the heavens are we ever going to carry out our job as members of Parliament ...? How can I be assured that any letter of mine to the Premier which might contain the word "bully" will not result in that sort of action?" Of course, the action he referred to was the defamation action.

He also rightly stated: "It is a ridiculous situation because, as the solicitors said, the Premier distributed the letter to the Department of Transport—as clearly all Ministers would distribute letters—and from that we have defamation action." It is obvious that the comments referred to here are relevant points with which I am sure the Member for Beaudesert still agrees, and with which other Members of this House also agree.

It was clear that the Goss Labor Government agreed with Mr Lingard as they did step in and help to resolve the issue. The Deputy Premier, Mr Elder, the then Transport Minister, stated in a Courier Mail article on the 24/10/95 that: "people should feel free to complain to politicians about public servants without fear of legal threats."

I am glad, Mr Speaker, that the Deputy Premier agrees with the purpose of this bill.

Mr Speaker, it is necessary for a member's staff and his constituents to feel safe from threat of litigation in order for the Member to conduct his job. Therefore, it is necessary for the privilege of parliament to be extended to this extent.

This bill achieves that purpose.

Increasing Parliamentary privilege is not an issue that One Nation would generally support as it is necessary that the pendulum should not be allowed to swing too far and that members of parliament are not made exempt from the law.

What is necessary though, Mr Speaker is that Members of Parliament do require certain protection, according to a set of specific guidelines, from legal responsibility in the course of doing their job.

The Members' Ethics and Parliamentary privileges Committee, in issues paper No. 3, 1997 refer to this same issue. In referring to the communication between constituents, staff and Members, I quote:

"There is a strong argument that this type of correspondence should have some qualified privilege."

Mr Neal, Member for Balonne in a speech delivered by Mr Lingard in this House on the 18/6/92, although referring to parliamentary privilege in general, sums it up in appropriate terms:

"The officers and staff of the Parliament, and others on whom... the processing of various papers and reports devolves, must be able to carry out those duties with total confidence in the knowledge that they will not incur civil or criminal responsibility."

Mr Speaker, this bill ensures that constituents and staff of a Member of the Legislative Assembly are safe from defamation should they pass on information to the Member or to the Minister.

It is clear that this bill is necessary to ensure that those involved in the process of representing the people are free to do their job without threat of legal action over their head. Without this bill, the foundations upon which Parliament is established and the purpose for Members to be in this House is severely undermined.

The defamation amendment bill is necessary to uphold the true reason for the existence of politicians—representation of the people.

Mr Speaker, I commend this bill to the House.
