



Speech by

BILL FELDMAN

MEMBER FOR CABOOLTURE

Hansard 18 October 2000

DEFAMATION AMENDMENT BILL

Mr FELDMAN (Caboolture—CCAQ) (9.53 p.m.): I rise to speak on the procedural motion that was moved by the honourable member for Logan. He pointed out that he and I had a conversation about this a little earlier. I, too, will allude to some of that conversation. I note that the Members' Ethics and Parliamentary Privileges Committee looked at this subject for some time and produced a report back in January 1999. What concerns and worries me is that, when this matter is referred to a committee, it could get shelved and locked away forever and a day before it is reported on.

As I say, the committee's report was produced in January 1999. It is now October 2000. This issue has been with the committee for a long time. I guess that is why I was seeking from the honourable member for Logan some sort of firm date on which the committee's report could be made to the House to be addressed in the proper forum, which is of course the floor of the Parliament. That is where it should be discussed and where the content of this Bill should be decided.

I again raise that issue with the honourable member. I know that he has given the commitment that from time to time the secretariat of the committee will report back to me and the honourable member for Ipswich West, who brought this Bill to the House. I guess we will get reports on how it is progressing in the committee. An issue as important as this, which actually covers privilege not just for the member but for the member's staff in his electorate office, the staff under his control in his parliamentary office and the constituents who bring matters to him or to his staff, is too important to just leave lying unresolved in a committee and waiting to be addressed.

Perhaps there should be an onus—I say this to the honourable member for Logan—on the committee to report to the honourable member for Ipswich West and me on this Bill at least once a month so that we actually know that this Bill and the issues that it raises are being brought up and discussed—and I intend to talk about those issues shortly. An issue as important as this, which has the ability to affect the lives of members, their staff and constituents, is just too important to let lie with no-one overseeing it or ensuring that it is being looked at, reported on and brought back to the floor of this Parliament so that we know what the position is. It is with those comments that I seek that assurance from the committee and from the member that that will be part of the process that will be adopted once it goes to the committee for consideration.

This Bill was presented to this Parliament in August last year by the member for Ipswich West. Our simple intention in putting this legislation forward was to extend the protection from defamation beyond proceedings in the House to also cover constituents and staff of a member of the Legislative Assembly in the course of their duties. The 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 the member to a Minister, the Premier or the relevant Government department. As most members of this House would be aware, a 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 in the course of their duties would similarly be very vulnerable.

This 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. I am sure that there are quite a few members looking down the barrel of bypass projects in their electorates. That applies to me

with regard to a project in Ningi. Therefore, this has special relevance to me in particular and to the member for Burdekin, who has already tabled petitions in relation to that matter. However, this female constituent was upset that the project was going ahead when landowners were previously told that it would not. In her letter she referred 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 project and its impact 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".

The constituent forwarded a letter asking for help to the Premier of the State and to Mr Borbidge and Mrs Sheldon. What resulted was rather 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. When one looks at this in its pure form, the woman had written to the Premier in good faith to ask for help. Rather than receiving a letter of response from the Premier, she 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 a politician of their concerns or their complaints.

In a Courier-Mail article dated 21 October 1995, the injustice of this circumstance and the serious question of privilege were 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 that the Premier is not able to answer each letter and solve each problem personally. Of course he must forward them to the relevant department and 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 have to say that I do—and I do not hope that another caricature is drawn of me in a position with Mr O'Gorman which leads people to think unsavoury things—said—

"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 on 21 October 1995 the author rightly states—

"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 parliamentary member's staff are also protected from that defamation should they publish something by relaying it to the member. We have to understand the meaning of the word "publication". We have to look at the way "publication" is defined. Of course, "publication" refers to the conveying of information. It is irrelevant whether this occurs via a fax machine, is personally handed to another, is printed in a newspaper or is mailed in a letter.

A member's job is to follow through with constituent complaints or concerns. If their job is impeded by a threat to a constituent or to staff members for relaying the concern to the relevant Minister, then the system is definitely rendered useless. Members are often 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 to seek some form of explanation or redress. The failure of the Defamation Act to protect a constituent, the member's staff or the member is a serious issue that requires correction. I believe that this Bill achieves that correction.

I have no problem with this Bill being forwarded to the Members' Ethics and Parliamentary Privileges Committee because I think it will come to the same conclusion in the long run, that is, that this Bill definitely does that even though it may require a little tinkering around the edges. I take on

board the fact that not every Bill that comes before this House is perfect, otherwise there would not be the need for so many amendments to legislation which comes before this House. This Bill is self-explanatory and attempts to cover the process from the constituent right through to the Minister.

Proposed section 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. Proposed section 15A(2) makes it lawful for the staff member to publish the defamatory matter to the member if the publication is made without malice. Proposed section 15A(3) allows the member to publish the information to the Minister or to one of his staff if the publication is made without malice. Proposed section 15A(5) places the onus of proof that the matter was published with malice upon the party alleging that 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.

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 October 1995, 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 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 members of this House also agree.

It was clear that the Goss Labor Government agreed with Mr Lingard, because it stepped in to help resolve the issue. The Deputy Premier, Mr Elder, the then Transport Minister, stated in a Courier-Mail article on 24 October 1995 that "people should feel free to complain to politicians about public servants without fear of legal threats". What we are talking about here is that real fear. People are scared enough when they approach a member of Parliament. We see it time and time again. It is usually only when they are affected to such a degree and they feel such rage that they generally come to see their local member in relation to a particular issue.

I am glad that the Deputy Premier agrees with the purpose of the Bill. It is necessary for a member's staff and his constituents to feel safe from the 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.

An increase in parliamentary privilege is not something the City Country Alliance 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 put too far above the law. However, members of Parliament and their staff do require certain protection, according to a set of specific guidelines, from legal responsibility in the course of doing their jobs. The Members' Ethics and Parliamentary Privileges Committee, in its Issues Paper No. 3 of 1997, referred to this same issue. In referring to the communication between constituents, staff and members it states—

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

Mr Neal, the member for Balonne, in a speech delivered by Mr Lingard in this House on 18 June 1992, although referring to parliamentary privilege in general, sums it up in appropriate terms. He stated—

"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."

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 the threat of legal action hanging over their heads. Without this Bill, the foundations upon which Parliament is established and the purposes for members to be in this House are undermined severely.

I can recall a matter coming to me in 1998. The matter concerned a gentleman who was not a constituent of mine but who felt that he needed me to speak on his behalf because he felt he would not receive the same degree of support from his local member. He handed me a great wad of documents—letters he had written and information he had transcribed into basically what was his story. What he had and what he had written were clearly defamatory. Although I felt in my heart of hearts that he was doing this without malice, what he had written was clearly defamatory.

I had to tell him that I could not pass on that information because of the way it was written and that, until he came to be of a frame of mind such that he was not going to write those things in a clearly outrageous and defamatory manner, I could not actually take those matters and forward them on to any Minister for fear that the people he was talking about would actually sue him. He left rather upset, but he has not been back to advocate for and push the matters he came to me with. So one tends to think that what he was doing was malicious, rather than trying to address a legitimate concern.

The Defamation Amendment Bill is necessary to uphold the true reason for the existence of politicians, that is, to represent the people. If we are not going to represent our constituents and we are not going to do our jobs to the best of our ability—at times that means trying to protect them from themselves—then we are not doing our jobs as true representatives. We will be supporting the procedural motion but, clearly, we do need certain—

Time expired.
