




Speech By  
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**MEMBER FOR COOPER**

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

 **Ms BUSH** (Cooper—ALP) (12.29 pm): I rise to speak in support of the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021. As a member of the Legal Affairs and Safety Committee that looked at the bill, I start by thanking the secretariat and my parliamentary colleagues for their support on this. The Defamation (Model Provisions) and Other Legislation Amendment Bill 2021 amends the Defamation Act and the Limitation of Actions Act to implement the model defamation amendment provisions. This fulfils Queensland's commitment to introduce defamation reforms to ensure continued uniformity with other Australian jurisdictions.

This bill also amends the Heavy Vehicle National Law and Other Legislation Amendment Act to repeal sections 10 and 11 before their commencement. As we have heard from other speakers, the amendments have been proposed after considerable consultation, including a two-year review process undertaken by the Defamation Working Party. Additionally and recently the Legal Affairs and Safety Committee sought and received submissions from interested parties within Queensland. Generally, submitters were supportive of the proposed amendments to defamation law, with most welcoming the objective to achieve consistency across Australian jurisdictions. In summary, the amendments are aimed at protecting reputations from serious harm while encouraging responsible free speech.

The bill proposes a number of changes, and I am sure that everyone in the chamber today has closely studied the committee's final report and is across the findings and recommendations. However, I would like to unpack a few of the key changes introduced through the bill. The bill will introduce a single publication rule for multiple publications of the same defamatory matter by the same publisher or an associate of the publisher. Currently, under the Limitation of Actions Act, an action for defamation is to be brought within one year from the date of publication, with courts having power to extend the limitation period by up to three years if satisfied that it was not reasonable for the plaintiff to have commenced an action in the one-year period.

Currently, each publication of a defamatory matter is a separate cause of action, and publication occurs when it is received in a communicable form by at least one third party or, in the case of internet publications, when a third party downloads the webpage. Each time a webpage containing defamatory matter is downloaded, a separate cause of action arises even though the content may be the same. What this creates in practice is that a plaintiff can avoid the strict application of the limitation period—that they create these 'endless' limitation periods through digital publication.

This bill introduces a single publication rule which applies if a person publishes or uploads a statement to the public and then subsequently publishes or uploads either that statement or a statement which is substantially the same. In this scenario, the single publication rule will apply so that the date of the first publication is the start date for the limitation period for all publications, unless of course the subsequent publication is substantially different from the first publication. This rule is based on section 8

of the Defamation Act 2013 in the UK, and courts will still be empowered to extend the limitation period for up to three years from the date of publication if the plaintiff satisfies the court that it is just and reasonable to do so.

The bill will also introduce a serious harm element for an action for defamation, coupled with the abolition of the defence of triviality which responds to concerns raised by stakeholders that the existing defamation law was becoming 'increasingly used for trivial, insignificant and vexatious claims'. Currently there is no obligation on the plaintiffs to prove that harm was caused by the defamatory imputation. The onus is instead on the defendant to rely on defence of triviality where they can prove that it was unlikely the publication would cause the plaintiff any harm.

This bill introduces a serious harm element which provides that a statement will not be defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the plaintiff. This provision will place the onus on the plaintiff to establish serious harm and should encourage the early resolution of defamation proceedings by enabling the issue of serious harm to be dealt with as a threshold issue.

Serious harm is not defined in the bill. However, the amendment is based on the UK provision and it will be defined by case law, including jurisprudence developed in the UK, rather than defining it in the provisions of the bill. Submitters to the committee were generally supportive of this. LawRight made the observation that they often see trivial claims commenced for ulterior or improper reasons and were hopeful that this provision will limit the number of these matters that progress through the court. Community broadcaster 4ZZZ stated—

In the rare case our collective work may be considered to be defamatory, it would be challenging for an organisation of our size to mount a significant legal defence, given our limited resources. This would be especially frustrating in cases where the perceived harm is trivial to the complainant. The problem with using a defence in a court case for us would be the significant time and resources that would go into mounting such a defence.

The bill also proposes changes to the pre-litigation process under part 3 of the Defamation Act. The purpose of these changes is to better facilitate resolution of defamation disputes without litigation. This bill will make it mandatory to issue a concerns notice prior to commencing defamation proceedings in court. The purpose of the concerns notice is really to encourage a plaintiff to turn their minds to the serious harm element early in the proceedings and to give sufficient detail and opportunity to the publisher of the defamatory material to make reasonable offers to make amends. This might include removing the material, issuing an apology or offering compensation. All of those things combined are designed to try to assist people in resolving disputes before things get to court. Having spent quite a deal of time in the courts myself, yes, there are people who want their day in court, but overall parties usually on both sides just want a satisfactory outcome, delivered efficiently and with minimal stress. Again, submitters to the committee inquiry were generally supportive of this.

The bill will introduce new defences—most notably a new public interest defence to protect reasonable public interest journalism based on section 4 of the UK act and will apply where the defendant can prove that the statement complained of was, or formed part of, a statement on a matter of public interest and the defendant reasonably believed that publishing the statement was in the public interest.

The bill also contains amendments to repeal two uncommenced provisions from the Heavy Vehicle National Law and Other Legislation Amendment Act 2019. Sections 10 and 11 of that act were intended to harmonise penalty provisions within the heavy vehicle national law to ensure that performance based standards, or PBS, vehicles travelling on general access roads do not breach general mass and dimension limits. However, prior to the commencement of these sections, concerns were raised by the National Heavy Vehicle Regulator, and stakeholder consultation found that commencement of these sections would cause adverse and inconsistent mass and dimension enforcement outcomes for PBS vehicles found off route compared to other heavy vehicle classes.

Due to the complexity of the access arrangements in the act, it was determined that there was insufficient time to develop a nationally agreed policy approach that would ensure that further unintended consequences were not created and would also allow for the provisions to be amended prior to their automatic commencement on 27 September of this year. The legislative approach to repeal sections 10 and 11 prior to their commencement is supported by industry and will retain the status quo in relation to PBS vehicles detected off route and provide time for the issues to be addressed in a more fundamental and holistic way as part of the heavy vehicle national law review, currently being led by the National Transport Commission. I commend this bill to the House.