




Speech By
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MEMBER FOR MACKAY

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

 **Mrs GILBERT** (Mackay—ALP) (12.46 pm): I would like to place on record my condolences to Duncan Pegg's family. Duncan was a great friend to many. He is sadly missed, but he is remembered with great fondness.

I would like to add my support to the Defamation (Model Provisions) and Other Legislation Amendment Bill. The bill fulfils Queensland's commitment to introduce the model definition amendment provisions as well as Queensland's obligation under the Model Defamation Provisions Intergovernmental Agreement and ensures the continued uniformity of defamation laws in Australia. This is a timely bill. Around Australia we are seemingly becoming more litigious. We are seeing more high-profile cases in the media of celebrities—and most recently a federal politician—suing for defamation. On some days our newsfeeds are clogged with overseas cases about defamation. People are less likely to take a hit on their character without seeking redress. We need consistency across Australia for fairness for all parties.

Work on the bill commenced in 2004 when the attorneys-general of the states and territories agreed to support the enactment in their respective jurisdictions of uniform model provisions in relation to the law of defamation called the Model Defamation Provisions, or MDPs. The MDPs were subsequently enacted. Each state and territory is a party, not the model defamation provisions intergovernmental agreement.

In Australia it is common to see the same printed material across a number of publications across a number of states. Some weeks, *Media Watch* on the ABC devotes a whole episode to the very fact that some articles are re-headlined using the same content with different by-lines. Based on the fact that it is commonplace for the same matter to be published in more than one Australian jurisdiction, it is important for potential plaintiffs and publishers to know their rights and limitations under the defamation law without having to consider different laws in states and territories.

It is important as a society that we are able to have robust discussions and respectfully promote freedom of speech. In saying that, some people do not know when they are stepping over the line of what is acceptable to our community with their expressions and do not understand the consensus of common decency. A person's reputation can be the most valuable possession they own. All of us here would want our reputations protected from harm and would want to be able to take action when required to protect them.

The amendments will discourage and prevent expensive litigation for minor or insignificant claims; otherwise encourage the early resolution of defamation claims; ensure that the law of defamation does not place unreasonable limits on the freedom of expression by encouraging open and transparent reporting and public discussion here in Queensland; and modernise provisions to apply more appropriately to digital publications. The implementation of the amendments in this bill will keep Queensland's laws consistent with other jurisdictions in Australia. A national approach to defamation

laws will provide greater clarity to the courts, the community and the media. It is important that people know their rights and limitations under the law. Uniformity of law will give corporations and individual publishers confidence they will no longer need to consider the potential impact in each state or territory before publishing materials.

The bill proposes to implement the MDAPs and includes amendments: to introduce a single publication rule for multiple publications of the same defamatory matter by the same publisher or an associate of the publisher so that the start date of the one-year limitation period for each publication runs from the date of the first publication, and for an electronic publication the start date runs from when it is uploaded for access or sent to the recipient rather than when it is downloaded or received; to provide flexibility to extend the limitation period by up to three years running from the date of publication where it is just and reasonable to do so and to enable pre-trial processes to be concluded; to introduce a serious harm element for an action for defamation, coupled with the abolition of the defence of triviality so 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, with the onus on the plaintiff to establish serious harm and, if the plaintiff is a corporation, that serious financial loss has been caused or is likely to be caused by the publication; to require that, if raised by a party, a judicial officer is generally to determine whether the serious harm element is established as soon as practicable before the trial; to provide for certain individuals to be counted as employees of a corporation for the purpose of determining whether the corporation can sue for defamation; to require a plaintiff, before defamation proceedings are commenced, to give a concerns notice to the publisher of potential defamatory matter, subject to some exceptions, for example, if the court is satisfied it is just and reasonable to grant the plaintiff leave to commence despite noncompliance; to make various amendments with respect to the form, content and timing for concerns notices and offers to make amends; and to clarify that a defendant may plead back imputations relied on by the plaintiff as well as those relied on by the defendant to establish the defence of contextual truth, ensuring the defence operates as was originally intended.

This bill will allow robust debate. It will give protections to parties for their reputations and it gives consistency and uniformity. I commend the bill.