




Speech By
Kim Richards

MEMBER FOR REDLANDS

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DEFAMATION (MODEL PROVISIONS) AND OTHER LEGISLATION AMENDMENT BILL

 **Ms RICHARDS** (Redlands—ALP) (11.39 am): I rise to speak in support of the Defamation (Model Provisions) and Other Legislation Amendment Bill. In July 2020 Queensland committed to introduce defamation reforms to ensure continued uniformity with other Australian jurisdictions, which is really important when it comes to how matters are published. The amendments to the Defamation Act 2005 and Limitation of Actions Act 1974 contained in this bill will fulfil this commitment to all Queenslanders.

In June 2018 there was a national review process of the Defamation Act. The review of the model defamation provisions considered whether the provisions remained valid and appropriate to achieve their objectives. On 27 July 2020 the former Council of Attorneys-General agreed that all jurisdictions would enact and commence the model defamation amendment provisions. The updating of the national approach to defamation laws will provide greater clarity to the courts, the community and the media. They are important so that people know their rights and limitations under the law.

Some of the significant model defamation amendment provisions in the bill include: the introduction of a single publication rule; a serious harm element; changes to the pre-litigation process and awards for aggravated damages; new defences relating to public interest; and journalism and peer-reviewed material published in academic or scientific journals. The bill introduces a serious harm element 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. If the plaintiff is a corporation, the corporation must also prove that serious financial loss has been sustained, or is likely to be sustained, by the publication. If the defamatory matter has not caused or is unlikely to cause serious harm to the reputation of the plaintiff or serious financial detriment to a corporation, an action can be disposed of early in the proceedings rather than being the subject of lengthy and expensive litigation.

I have certainly heard from many in my community about the costs of those processes. It is hoped that this change will deter the bringing of claims and proceedings for trivial, minor or insignificant matters. As I said, it is well known how drawn out and costly defamation proceedings can be. I want to share with the House details of an email and subsequent meeting I had with a constituent in relation to his request for our government to pursue the proposed changes contained in the bill. It was sent to me on 25 February this year. The email states—

Dear Ms Richards,

I write to request a meeting with you to outline my recent damaging experience of Queensland's defamation laws, and to encourage parliament to quickly adopt the Model Defamation Provisions agreed to by the Intergovernmental Committee of Attorneys-General last year. New South Wales has already adopted the MDP amendments in full. They aim to curb the rise in both the number of cases and the value of damages awarded in defamation matters.

In brief, two years ago, Councillor Karen Williams took action against myself and another party under the (still current) Queensland Defamation Act 2005. I took expert legal advice. I was told that my defences against the action, principally, substantial truth and honest opinion, were strong and the plaintiff was most unlikely to sustain the imputations she claimed. Given my background in journalism, this was the response I expected.

However, I was then advised to settle quickly, and pretty much on the terms demanded by Williams, not the least of which entailed a financial loss of about \$10,000. I had been caught in a SLAPP writ, a Strategic Lawsuit Against Public Participation, against which the current Queensland law offers no protection. In a SLAPP action, the plaintiff has no intention of pursuing a court case he or she is unlikely to win. The whole point is to cause the defendant to succumb to fear, intimidation, mounting legal costs, and/or simple exhaustion—then abandon any resistance, and pay up.

I'm sure you will note what a classic case of bullying this is: A dominant aggressor, overpowering an opponent who is largely defenceless. But it can only happen because the Queensland law, still, offers none of the preventative measures within the Model Defamation Provisions.

It need only be a brief meeting, but would appreciate the chance to give you a first-hand example of why this needs to be fixed as soon as possible.

Thank you

As a result of the introduction of the serious harm element, the defence of triviality—which provides a defence if the defendant proves that the circumstances of the publication of defamatory material was such that the plaintiff was unlikely to sustain any harm—will be repealed. In his contribution, the member for Clayfield said that Queensland is the defamation capital of the world. I would say that at the moment Canberra is close to the capital, but I would put Redlands up there as well. I would also share with the House something really quite extraordinary. I cannot recall any local government having the Ombudsman investigate their approach to defamation.

In January 2017 the Queensland Ombudsman reported on their investigation into Redland City Council. The report is titled *The Redland City Council defamation report: an investigation into the threat of legal action against two residents by Redland City Council*. The report states—

The investigation commenced following complaints from two residents, Complainant A and Complainant B, who had received letters from council threatening to commence legal action against them under the Defamation Act 2005. The letters were in response to alleged defamatory comments about council, council officers and the Mayor, Karen Williams on social media websites. Both letters demanded the complainants remove their comments and post an apology to council officers and the Mayor.

The letters stated that if the complainants did not comply with these demands within a specified timeframe, council may issue a concerns notice under the Defamation Act. The letters further stated that if the complainants did not comply with the concerns notice, legal proceedings may follow.

The investigation found that council's actions in threatening defamation proceedings against both complainants was unreasonable. The investigation further found that council's actions in threatening to take defamation action against the complainants was:

- based on a lack of clear analysis regarding who, if anybody, was defamed by the comments
- not based on instructions from any of the allegedly defamed parties
- not a reasonable or proportional response to what was relatively minor criticism of council's decisions.

Council also spent public funds in seeking external legal advice in drafting the letters to both complainants. The investigation determined that council did not have a policy to guide decision-making around whether to fund private legal action on behalf of councillors or council employees, and that the decision to expend public money was made solely by the council's Chief Executive Officer.

In addition, council wrote to the employer of Complainant B advising that she had published defamatory material online. This was as a result of Complainant B's professional signature block, which included her employer, job title and work email address, being included in an email which council alleged was defamatory.

The then Queensland Ombudsman, Phil Clarke, said that council's 'unreasonable threat of defamation' was not a 'reasonable and proportional response to what was a relatively minor criticism of Council's decision'. I table the article in the *Brisbane Times* that quoted Mr Clarke. I also table the Redland City Council defamation report prepared by the Queensland Ombudsman. I think it is a very interesting read and highlights why these provisions are so important. Along with many in my community who have been adversely affected by defamation laws in the past, I fully support the bill and I commend it to the House.

Tabled paper: Article from the *Brisbane Times*, dated 5 January 2017, titled 'Ombudsman blasts Redland City Council over Facebook legal threats' [879](#).

Tabled paper: Queensland Ombudsman report, dated January 2017, titled 'The Redland City Council defamation report: An investigation into the unreasonable threat of legal action against residents by Redland City Council' [880](#).