Speech By

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MEMBER FOR CURRUMBIN

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DEFAMATION (MODEL PROVISIONS) AND OTHER LEGISLATION AMENDMENT BILL

Mrs GERBER (Currumbin—LNP) (12.07 pm): The Defamation (Model Provisions) and Other Legislation Amendment Bill 2021 is an important reform because it maintains uniform defamation legislation across all states and territories. I note the contribution of the shadow Attorney-General and member for Clayfield in which he set out the history of defamation laws in Queensland and the history of how this bill has come before the parliament, including the significant delay by this lazy state Labor government in introducing these reforms into the House. When all other jurisdictions enacted uniform defamation laws last year, this lazy government is only now bringing reforms before the parliament. One of the main reasons this reform is necessary is because, in this day and age, it is typical for the same matter to be published in more than one jurisdiction, including in more than one state, so it is important that publishers and potential plaintiffs are subject to consistent rights and limitations under uniform defamation laws across all states and territories.

After a comprehensive review of the Defamation Act and Limitation of Actions Act, it is clear that there are limitations that should be refined. In her introduction to the bill the Attorney-General stated that the proposed amendments are to ensure that these acts can more effectively fulfil their policy objectives, namely, to protect reputations from serious harm whilst encouraging responsible free speech. It is hoped that these 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, and modernise provisions to apply more appropriately to digital publications.

To this end, the bill addresses the widespread national concern about the operation of defamation law and attempts to overcome the deficiencies identified through the review process. This includes amendments that will introduce a single publication rule for multiple publications of the same defamatory matter and provide flexibility to extend the limitation period by up to three years from the date of publication, when it is reasonable to do so. Further, before defamation proceedings can commence, a plaintiff will be required to give a concerns notice to the publisher of potential defamatory content.

The bill also introduces provisions to count certain individuals as employees of a publishing corporation for the purpose of determining whether the corporation can sue for defamation. Further, the bill clarifies the law around imputations to ensure that the defence of contextual truth operates as it was intended.

The bill also recognises the special role played by professional academics and the fluid nature of academic inquiry and opinion which often relies on emerging or incomplete sources of information. Because of this, the bill provides a defence in respect of peer reviewed matters that are published in academic or scientific journals.

Lastly, this bill also amends the Heavy Vehicle National Law Act 2012 to ensure that vehicles operating under the Performance Based Standards Scheme will not be subject to higher penalties for traveling off route. Without this amendment, a vehicle may get away with being overweight, wide or long if it is reaching certain performance standards, yet could be pinged for not taking the right route, or even getting lost. This can result in inconsistent and often unfair penalties for PBS vehicles, and can even result in the initiation of court proceedings instead of the issue of an infringement notice. In an effort to ensure that such issues are dealt with more reasonably, the bill repeals the offending provisions from the Heavy Vehicle National Law Act 2012.

As the deputy chair of the Legal Affairs and Safety Committee, the committee that was tasked with considering this bill, I would like to thank the committee secretariat for all of the work they have done, and also acknowledge and thank all of the stakeholders who made submissions which were particularly helpful to the committee in considering the amendments to the Defamation Act and the Limitation of Actions Act.

The Queensland Law Society, in their submission, highlighted the importance of the defamation amendments to 'achieve consistency across the Australian jurisdiction'. This was the aim of the attorneys-general of each state and territory back in 2004, when agreement was made to enact uniform model provisions.

Of particular note, the introduction of section 29A, the public interest defence, and the amendments to section 30, qualified privilege defence, are vital in ensuring free speech and free and fair journalism. The Queensland Law Society raised that, for over a century, Queensland defamation law has had reference to the defence of public interest, so the reintroduction of this defence is good to see. However, at this point I have to echo the concerns of stakeholders that monitoring and oversight will be needed to ensure that any unintended consequences of these amendments can be identified and addressed.

Stakeholders have also expressed concern regarding the introduction of 'serious harm' as an element of the cause of action and the effects that this may have on parties in practice. Earlier this year, the Attorney-General outlined that one of the purposes of these amendments is to 'discourage and prevent expensive litigation' and to 'otherwise encourage the early resolution of defamation claims'. However, it must be noted that a number of the submitters to the committee practising in the defamation space have expressed concern that the serious harm provision may not in fact achieve this objective. Instead, concern was expressed that defamation cases are likely to get tied up in court because of the poorly drafted legislative amendments. The concern of submitters was that this is not just time spent in court; this is extended legal fees, further delays in our justice system, and increased risk for small businesses that get caught up in these cases.

4ZZZ, an independent community radio station here in Brisbane, submitted to the committee that the payable level of damages under the legislation is two-thirds of their annual operating budget. With such a high level of damages payable, businesses like 4ZZZ are concerned that they may need to go to court to protect themselves against possible claims. I sympathise with the submitters in this regard. As a former prosecutor and from my time spent as a lawyer in private practice, I have spent time in the courtroom and I have experienced firsthand the damage that unclear and unmoderated legislation can wreak on our justice system.

Whilst most of the amendments in this bill are positive, this should not overshadow the dangerous path taken to introduce significant changes without proper oversight. To this end, I note that the reform of defamation law in Queensland is an ongoing process, a process which Queensland is lagging behind in. Nevertheless, because I am a positive person, I look forward to seeing the continued involvement of stakeholders in the reform process to ensure defamation legislation in Queensland performs as it should. Let's hope it does not take another 15 years to achieve it.