Speech By

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DEFAMATION (MODEL PROVISIONS) AND OTHER LEGISLATION AMENDMENT BILL

Mr BERKMAN (Maiwar—Grn) (2.47 pm): As others have done, and as this is the first time on my feet since the untimely passing of the member for Stretton, I express my sadness at his passing. I reflect on what an open and collegiate member he was. Perhaps more than anyone in this place, he was very keen on one of those corridor chats to chew over the politics of a particular issue. I always enjoyed his company, despite having locked horns with him as I have with pretty much every committee chair at different points along the way.

I rise to speak to the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021. At the outset I will say that we support this bill. It is very useful to have a national approach to issues such as this that cross state borders routinely. We very clearly support reforms to limit the misuse or abuse of our defamation laws, particularly by wealthy litigants to silence journalists and everyday people without a good reason. In some quarters our legal system is infamous for failing to protect free speech and defamation is a crucial part of that problem. Without a constitutionally enshrined right to free speech we have the more limited implied right to freedom of political communication and, with very limited protections for press freedom, defamation plays a very important role in how we deal with free speech.

In the past few months alone there have been several high-profile defamation cases waged by powerful individuals against their critics, of which I am sure we are all aware. After threatening to sue my federal Greens colleague Larissa Waters earlier this year, Peter Dutton is now suing a refugee activist for a tweet labelling the minister a 'rape apologist'. Andrew Laming sent concerns notices to people who used the term 'upskirting' to describe him taking photos of a woman bent over at her workplace. John Barilaro is suing a YouTuber for videos he says brought him into public disrepute. Ben Roberts-Smith is suing multiple newspapers and journalists for publishing allegations related to war crimes and domestic violence, which are clearly issues of extraordinary public interest and warrant the reporting that has been made.

Perhaps most infamously in recent times, Christian Porter sued the ABC for publishing an article about rape allegations against him, even though he was not named. There was a funny thing about the Porter case, aside from the very particular role that he held in federal parliament. He had previously criticised our defamation laws for the way they can allow powerful people to bully their critics into silence even with just a threat of having to defend an expensive defamation case. Unsurprisingly, once he had skin in the game he backtracked, of course.

It is really important to focus on this case and what it tells us. The outcome in that case lays bare just how slim his prospects of success really were. I would also say that Porter's reaction to the settlement—a settlement that was made without damages—and the way he spun the outcome of that litigation is really important for us to recognise. Just the initiation of baseless defamation claims allows

quite extraordinary twisting of the truth and dissemination of really damaging misinformation. I have to credit a tweet from Huw Parkinson which I think sums up that case and the outcome almost too well. The tweet simply says—

was going to roast a potato tonight. decided not to roast the potato. this is a humiliating back down by the potato.

I will not table it; it is probably unnecessary. I will not go into just how concerning it is that a man in charge of writing our defamation laws nationally was simultaneously using them for himself. Going back to his early criticisms, he was right in the first instance: it is all too common for CEOs, politicians and celebrities to use their wealth and power to wipe away anything they do not want on the public record and to maintain their position simply by threatening people with defamation and forcing them to either retract their statements or battle it out in court.

This is why I strongly support the introduction of the serious harm threshold for defamation proceedings similar to what already exists in the UK. I hope it means not only that fewer defamation actions succeed in circumstances where they clearly should not but also that fewer trivial or malicious claims are initiated in the first place. I recognise that the defence of triviality already goes some way to filtering out these claims, but a serious harm threshold with the onus of proof on the plaintiff is stronger and, I would agree, more appropriate. I agree with replacing the existing provisions with the serious harm threshold.

I also support the creation of a new public interest defence where the defendant can prove the statement was or formed part of a statement on a matter of public interest and they believed its publication was in the public interest. This is, again, stronger than the existing qualified privilege defence which presents a very high bar. If you told most people in Queensland that a specific public interest defence does not already exist in the context of defamation they might be shocked, and it is high time we saw that introduced.

Defamation laws, historically and right now, are often used by people in positions of significant power and privilege, so it is all the more important that we protect a right to publish information and critiques about those people who all too often will be paid with our taxes, are elected to represent us and make the laws we are all expected to obey, even if they might not like it. In simple terms, if you wield power and authority you should expect robust scrutiny and critique, including in the public arena.

It is interesting to consider these laws alongside or in the frame of racial vilification laws and similar laws. Those who make liberal use of our defamation laws to protect themselves from criticism tend to have a different view on free speech when it comes to something like racial vilification. For some, it is fine to use your platform as a news commentator or politician to spout Islamophobic hate speech that, left unchecked, can and does lead to hate crimes, but God forbid someone on Twitter calls you out for your racism, sexism or history of violence. For the same reasons we have defamation laws for instances where actual harm has been inflicted, and my federal Greens colleagues have for some time been pushing to outlaw hate speech. Alongside reforms such as these currently before the House, we should be doing everything we can to shift the intention and effect of our laws towards protecting people from real harm and protecting free speech, rather than protecting the rich and powerful from scrutiny or from any repercussions for their actions.

The preponderance of defamation actions, particularly by high-profile figures, including politicians, does tend to have a snowball effect. For example, lawyers in the area suggested that the suit brought by Joe Hockey in 2015 seemed to encourage more MPs to have a crack. This bill, particularly the serious harm threshold and the public interest defence, is a good step towards stopping or at least slowing that snowball and beginning to dismantle the idea that our defamation laws are just a tool for powerful people—a tool they can use to protect themselves against public scrutiny and critique. It is a good bill and I look forward to supporting it.