




Speech By
Patrick Weir

MEMBER FOR CONDAMINE

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DEFAMATION (MODEL PROVISIONS) AND OTHER LEGISLATION AMENDMENT BILL

 **Mr WEIR** (Condamine—LNP) (12.53 pm): I rise to make a brief contribution to the debate on the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021. The Defamation (Model Provisions) and Other Legislation Amendment Bill 2021 was introduced into the chamber and referred to the committee on 20 April 2021, and the committee was to report to the House by 4 June 2021. In regards to consultation on the Defamation Act amendments proposed in the bill, the explanatory notes state—

In reviewing the MDPs, the DWP—

which is the model defamation working party—

undertook an extensive public consultation process over a two year period which included the public release of a discussion paper, background paper and draft amendments for comment, four stakeholder roundtables and the engagement of an expert panel comprised of judges, academics, defamation practitioners and the NSW Solicitor-General.

The attorneys-general of the states and territories agreed in November 2004 to support the enactment in their respective jurisdictions of uniform model provisions in relation to the law of defamation, called the model defamation provisions. The MDPs were subsequently enacted. In Queensland the MDPs were enacted in the Defamation Act. The bill fulfils Queensland's commitment to introduce the model defamation amendment provisions as well as Queensland's obligations under the Model Defamation Provisions Intergovernmental Agreement and ensures continued uniformity of defamation law in Australia.

It is worth noting that this legislation needs to be passed by 1 July this year—in just two weeks time. If this parliament had been labouring under a heavy legislative workload, you could understand it but, given that we have been debating no more than two bills at best per sitting week and only one for the entire last sitting week, this is nothing less than incompetence by this lazy Palaszczuk government.

The bill introduces a range of amendments including: 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; and to provide for a defence for the publication of defamatory matter concerning an issue of public interest—where the defendant can prove that the statement complained of was, or formed part of, a statement on a matter of public interest and reasonably believed that publishing the statement was in the public interest, and includes a non-exhaustive list of factors the court may take into account when considering the defence.

Submitters were generally supportive of the proposed amendments to defamation law. The Queensland Law Society particularly welcomed the objective to achieve consistency across Australian jurisdictions but noted that—

... some of the reforms introduce significant changes to this area of the law ...

and—

The effect of these changes in Queensland and elsewhere across Australia should be monitored to ensure that any unintended consequences arise can be identified and addressed.

DJAG advised that during their consultation stakeholders expressed concern that defamation law was becoming increasingly used for trivial, insignificant and vexatious claims. DJAG advised—

Currently there is no obligation on the plaintiffs to prove that harm was caused by the defamatory imputation; however, a defendant can rely on the defence of triviality where they can prove the circumstances of the publication were such that the plaintiff was unlikely to sustain any harm.

In this regard, the 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, with the onus on the plaintiff to establish serious harm.

All of us have seen an increase in the number of defamation cases in our society. Some of these are high-profile public figures, and there has been one very public case in the Toowoomba region. If somebody feels that they have been deliberately defamed, they should have the right to prosecute and have the record corrected. Unfortunately, we are seeing an increase in cases that are based on little evidence and are intended to inflict public humiliation and embarrassment to the intended victim. Even if these cases are found to be baseless, the reputational damage done is often irreparable. Anything that can be done to lessen the number of frivolous cases without restricting free speech is to be supported.

I note that there is a minor amendment to the national heavy vehicle legislation which is non-controversial. We will be supporting the bill.