




Speech By
Peter Russo
MEMBER FOR TOOHEY

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DEFAMATION (MODEL PROVISIONS) AND OTHER LEGISLATION AMENDMENT BILL

 **Mr RUSSO** (Toohey—ALP) (11.57 am): I would like to speak today in support of the Defamation (Model Provisions) and Other Legislation Amendment Bill. The objectives of this bill are to amend the Defamation Act 2005 and the Limitation of Actions Act 1974 to implement the Model Defamation Amendment Provisions 2020 which have been adopted by each state and territory. It also proposes to repeal sections 10 and 11 of the Heavy Vehicle National Law and Other Legislation Amendment Act 2019 as the issues addressed through these provisions will instead be resolved as part of the Heavy Vehicle National Law Review.

It was in 2004 the attorneys-general of the states and territories agreed to support the enactment of the uniform model provisions in relation to the law of defamation. These provisions were enacted in Queensland in the Defamation Act 2005. In June 2018 the former Council of Attorneys-General agreed to reconvene the Defamation Working Party to consider whether the policy objectives of the model defamation provisions as they were previously agreed to remained valid and whether the provisions remain appropriate to achieve their objectives. It is a policy intent that the defamation laws are to protect and balance the fundamental rights of an individual in a democracy. Defamation laws should seek to balance competing rights of members of the public. The bill we are debating today is the result of that review and seeks to introduce the reforms contained in the Model Defamation Amendment Provisions.

On 20 April the bill was referred to the Legal Affairs and Safety Committee. The committee subsequently invited stakeholders to make written submissions on the bill and in total the committee received six submissions. The Department of Justice and Attorney-General provided the committee with a public briefing on the bill and further provided written advice to the committee in response to matters raised in the submissions. It should be noted that the committee's inquiry was in addition to an extensive public consultation process that took place over a two-year period and that 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 New South Wales Solicitor-General. The heads of jurisdiction and legal stakeholders in Queensland were consulted during the consultation process. Additionally, information about the consultation process was uploaded onto the department's webpage and the community consultation page. Extensive and full consideration was given to the review, the existing legislation and whether these reforms were needed.

The department clarified to the committee why it is important that jurisdictions achieve and maintain defamation law uniformity. The department stated that it is 'based on the fact that it is commonplace for the same matter to be published in more than one Australian jurisdiction and it is important for potential plaintiffs and publishers to know their rights and limitations under defamation law, without having to consider differing state and territory laws'.

In her introduction to the bill, the Attorney-General stated that the amendments to the Defamation Act and the Limitation of Actions Act are 'aimed at protecting reputations from serious harm whilst encouraging responsible free speech'. The Attorney-General continued—

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 defamation law amendments proposed for implementation include introducing a single publication rule for multiple publications of the same defamatory matter by the same publisher or an associate of the publisher. Some of the more 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.

Under the current provisions in the Limitation of Actions Act, an action for defamation is to be brought within one year from the date of publication, although the court could extend the limitation period by up to three years if satisfied that it was not reasonable in the circumstances for the plaintiff to have commenced an action in the one-year period. The rule is based on section 8 of the UK's Defamation Act 2013. It will apply if a person publishes or uploads, in the case of internet publications, a statement to the public—the first publication—and subsequently publishes or uploads that statement or a statement that is substantially the same. The date of the first publication is the start date for a limitation period for all publications unless the subsequent publication is materially different from the first. The court will be empowered to extend the limitation period if the plaintiff satisfies the court that it is just and reasonable to do so in all of the circumstances of the case. LawRight expressed the view that the bill appropriately balances the protection of a plaintiff's reputation with the need to reduce the risk of 'endless limitation periods caused by digital publication and online archiving.'

The department advised that during their consultation stakeholders expressed concern that defamation law was becoming 'increasingly used for trivial, insignificant and vexatious claims'. In this regard, the bill introduces a serious harm element that 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. This is similar to section 1 of the UK act. If serious harm is raised, the relevant judicial officer is to determine the issue as soon as practicable before the trial commences unless there are circumstances justifying postponement. LawRight stated that the 'introduction of a serious harm threshold ... will hopefully discourage spurious or trivial claims and allow for a mechanism for such proceedings to be resolved promptly.'

The purpose of the proposed amendments to part 3 of the Defamation Act is to clarify and refine pre-litigation processes and procedures 'to better facilitate resolution of defamation disputes without litigation'. The bill introduces, in clause 1, a new public interest defence, which is section 29A of the Defamation Act, to protect reasonable public interest journalism, based on section 4 of the UK act. It will apply where the defendant can prove that the statement complained of was, or formed part of, a statement on a matter of public interest and the defendant reasonably believed that publishing the statement was in the public interest.

The bill proposes to replace section 26 to make it clear that in order to establish the defence of context truth a defendant may rely on, or plead back, substantially true imputations originally pleaded by the plaintiff. LawRight expressed support for clause 19 of the bill, which amends section 31 of the Defamation Act, which is defences of honest opinion, particularly the clarification for the purposes of this section as to when an opinion is based on proper material.

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 law' and further stated—

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.

The committee received a late submission containing several matters relating to the national model provisions for defamation. The submission was received too late for the committee to consider it fully, incorporate it into the report or ask for the department's response. The bill also introduces amendments to the Heavy Vehicle National Law Act. I commend the bill to the House.