



Speech By  
**Hon. Shannon Fentiman**


**MEMBER FOR WATERFORD**

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Record of Proceedings, 15 June 2021

**DEFAMATION (MODEL PROVISIONS) AND OTHER LEGISLATION  
AMENDMENT BILL**

**Second Reading**

 **Hon. SM FENTIMAN** (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (11.18 am): I move—

That the bill be now read a second time.

I would like to thank the Legal Affairs and Safety Committee for its consideration of the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021. The committee's report No. 9 tabled on 4 June 2020 made a single recommendation—that the bill be passed. I would also like to take this opportunity to thank those who made submissions to the committee's inquiry. The bill includes amendments to the Defamation Act 2005, the Limitation of Actions Act 1974 and the Heavy Vehicle National Law and Other Legislation Amendment Act 2019.

The heavy vehicle national law amendments will repeal provisions from the Heavy Vehicle National Law and Other Legislation Amendment Act 2019 to prevent unintended consequences for the heavy vehicle industry. Minister Bailey will speak in more detail to these amendments during the course of the debate.

The amendments to the Defamation Act and the Limitation of Actions Act are about protecting Queenslanders. The amendments will allow for freedom of expression; they will allow for modern media reporting, open and transparent reporting, in our state; and, especially, they will protect individuals from reputational harm. These amendments are such a critical step in protecting Queenslanders when they speak out. By ensuring that Queensland is in line with the national approach, defamation laws will now provide greater clarity to the courts, the community and the media.

The amendments to the Defamation Act and Limitation of Actions Act closely mirror the model defamation amendment provisions approved by the former Council of Attorneys-General in July 2020 following a two-year review of the model defamation provisions undertaken by the Defamation Working Party. As I have previously advised the House in my introductory speech, passage of these amendments will ensure continued uniformity of defamation law in Australia with all jurisdictions committing to commencing the provisions on 1 July 2021 or as soon as possible thereafter.

The decision to achieve and maintain uniformity of defamation law is based on the fact that it is commonplace for the same matter to be published in more than one Australian jurisdiction and individual and corporate publishers should not need to consider the potential impact of different state and territory defamation laws before deciding whether to publish material. Also, given that the changes to the uniform laws may be considered more or less favourable to a party depending on the circumstances of their claim or defence, there is potential for forum shopping until the legislation of all jurisdictions becomes uniform.

I will take this opportunity to remind members of the more significant reforms contained in the bill. The bill will introduce a single publication rule, similar to section 8 of the Defamation Act 2013 (UK). 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. Currently, publication occurs when it is received in a communicable form, or downloaded, by at least one third party and each publication constitutes a separate cause of action. For internet publications, publication occurs each time a webpage containing defamatory matter is downloaded, even though the content is the same, and a plaintiff could rely on later publications, in some cases years after the initial publication, to avoid the strict application of the limitation period.

In contrast, the single publication rule will apply where there are multiple publications of the same defamation matter by the same publisher—or an associate of the publisher—so that the one-year limitation period for each publication starts running from the date of the first publication; and, for an electronic publication, from when it is uploaded or sent to the recipient. The bill enables the court to extend the limitation period for a maximum of three years where the plaintiff satisfies the court that it is just and reasonable to do so in all the circumstances.

The bill will also introduce a serious harm element, like section 1 of the UK act, which requires the plaintiff to establish that the publication has caused, or is likely to cause, serious harm to their reputation. If the plaintiff is a corporation, the corporation must also prove that serious financial loss has been caused, or is likely to be caused, by the publication.

The bill includes a procedure for the court to determine whether the serious harm element is established. For instance, the relevant judicial officer is to determine the issue as soon as practicable before the trial commences unless there are circumstances justifying postponement. The serious harm threshold is aimed at encouraging the early resolution of defamation proceedings by enabling the issue to be dealt with as a threshold issue. As a result, the defence of triviality will be abolished.

The bill contains a number of amendments to the pre-litigation process in part 3 of the Defamation Act, including: making it mandatory, rather than optional, to issue a concerns notice prior to commencing defamation proceedings in court; formalising the requirements of a concerns notice; and providing further clarity around the offer to make amends process, including the required content and the time frames.

The bill will also introduce two new defences. The first is a public interest defence based on the defence of 'publication on matter of public interest' in section 4 of the UK act, which applies 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. Unlike the UK provision, the defence sets out a list of non-exhaustive factors the court may take into account when considering the defence, for example: the seriousness of the defamatory imputation; whether the matter published relates to the performance of the public functions or activities of the person; and the importance of freedom of expression in the discussion of issues of public interest.

As a result of the creation of this new defence, the bill amends the factors the court may take into account when considering the existing defence of qualified privilege—section 30 of the Defamation Act—to ensure that there is no overlap between it and the new public interest defence. The second defence, similar to section 6 of the UK act, applies to the publication of a defamatory statement in a scientific or academic journal provided an independent review of the statement's merits has been undertaken, for example, by an editor with relevant experience. This new defence can be defeated if the plaintiff proves that the statement was not published honestly for the information of the public or the advancement of education.

Finally, the bill clarifies that the cap on damages for non-economic loss sets a scale of damages with the maximum to be awarded only in a most serious case—as was originally intended—and applies regardless of whether aggravated damages are awarded.

I have previously reflected on the importance of balanced defamation law in this House. Defamation laws provide an important avenue for defamed persons to correct the record and seek redress for harm caused. It is important that Queensland's defamation laws keep pace with modern technology. That is why this government has joined every other jurisdiction in the country to progress these laws. These amendments to the Defamation Act and Limitation of Actions Act are aimed at protecting reputations from serious harm while encouraging responsible free speech.

In summary, 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. Subject to passage, the bill concludes the first stage of the national review of the model defamation provisions noting that the Defamation Working Party is undertaking a second stage focussed on responsibilities and liability of digital platforms for defamatory content published online as well as defences applying to disclosures of criminal conduct and misconduct in the workforce. Public consultation on the Stage 2 discussion paper recently concluded and I am advised that submissions are currently being considered by the Defamation Working Party. I commend the bill to the House.