Speech By

Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 16 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) (3.04 pm), in reply: At the outset, I would like to thank all members who have contributed to the debate on the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021. As I indicated earlier, the bill amends the Defamation Act 2005 and the Limitation of Actions Act 1974 to implement changes to the model defamation provisions agreed to by the former Council of Attorneys-General in July 2020. The bill fulfils Queensland's commitment to introduce the model defamation amendment provisions 2020, as well as Queensland's obligations under the Model Defamation Provisions Intergovernmental Agreement. Passage of the bill will assist in ensuring continued uniformity of defamation law in Australia and, accordingly, will aid potential parties in knowing their rights and limitations under the law and restrict the scope for forum shopping between states and territories due to differing legal frameworks.

The bill also includes amendments which repeal provisions of the Heavy Vehicle National Law and Other Legislation Amendment Act 2019 to prevent unintended operational consequences for the heavy vehicle industry. I would now like to address comments made during the debate.

I acknowledge the contribution made by the member for Redlands concerning one of her constituents who was threatened with legal action for making Facebook comments about property developers and council decisions. As I have stated before in the House, these laws are about protecting Queenslanders. They strike the right balance by allowing for freedom of expression but also protecting individuals from serious reputational harm.

I thank the member for Clayfield for meticulously taking the House through the history of defamation law. The member was very proud of his 29-page speech, noting his speech was longer than the bill itself. Needless to say, I think the member has some time on his hands. The member for Clayfield, towards the end of his history lesson, finally posed some questions to me.

The member for Clayfield raised the interaction between defences under the Defamation Act 2005 and section 54 of the Parliament of Queensland Act 2001 which provides that a person does not incur any civil or criminal liability for the publication of a fair report of a document that is tabled in the Assembly by a member with the express permission of the Speaker or leave of the Assembly. In this regard, I say to the member for Clayfield, perhaps if he spent less time reminiscing about defamation law in Roman and medieval times and spent more time reading the Defamation Act, he would know that section 24(1) of the Defamation Act provides a defence under this division is additional to any other defence or exclusion of liability available to the defendant apart from this act, including under the general law, and does not of itself vitiate, limit or abrogate any other defence or exclusion of liability.

The member for Clayfield also asked whether clause 16, which establishes the public interest defence in new section 29A, applies to republishing proceedings in parliament and what factors in section 29A(3) would be enlivened by such a republication. In this regard, I refer the member for Clayfield to section 28 of the current act, which provides a defence to the publication of defamatory matter if the defendant proves that the matter was contained in a public document or fair copy of a public document, or a fair summary of or fair extract from a public document. A public document is defined as including any report or paper published by a parliamentary body or a record of votes, debates or other proceedings relating to a parliamentary body published by or under the authority of the body of any law.

I also refer the member for Clayfield to section 29 of the current act, which provides a defence to the publication of a defamatory matter if a defendant proves that the matter was, or was contained in, a fair report of any proceedings of public concern, which includes any proceedings in public of a parliamentary body. Further, the defence also applies if the defendant proves that the matter was, or was contained in, an earlier published report of proceedings of public concern; the matter was, or was contained in, a fair copy of or a fair summary of or a fair extract from the earlier published report; and the defendant had no knowledge that would reasonably make the defendant aware that the earlier published report was not fair.

It is worth noting that the defences in sections 28 and 29 can be defeated if the plaintiff can prove that the defamatory matter was not published honestly for the information of the public or advancement of education.

The proposed new public interest defence in section 29A in the bill will apply to any case where the defendant proves that the alleged defamatory matter concerns an issue of public interest and the defendant reasonably believed that the publication of the matter was in the public interest. In determining whether the defence is established, a court must take into account all of the circumstances of the case and this might include the factors outlined in subsection (3) such as seriousness of any defamatory imputation carried by the matter published; the extent to which the matter published distinguishes between suspicions, allegations and proven facts; and the extent to which the matter published relates to the performance of the public functions or activities of the person. The factors that are relevant to a proceeding or additional factors which the court might wish to consider will depend on the circumstances of any given case.

I now turn to the contribution from the member for Currumbin. The member for Currumbin, who also serves as the deputy chair of the Legal Affairs and Safety Committee—the very committee that examined this bill—claimed all other jurisdictions had enacted laws last year. This is not correct. A number of other jurisdictions are yet to introduce legislation to their parliaments implementing the July 2020 agreement. That is a basic fact I would have thought even the member for Currumbin could have gotten right.

I also point out that it is clear the members for Clayfield and Currumbin did not share notes prior to delivering their contributions. On the one hand, the government was criticised for not legislating in this area quickly enough. The member for Clayfield even referred to a quote which suggested bringing a bill before the House was as easy as a cut-and-paste job. Yet the member also in the same speech noted that defamation law was complex and that it was important to get this right.

On the other hand, the member for Currumbin referred to the reforms as ‘dangerous’, cautioned the government on the significance of these reforms and warned of potential unintended consequences. Nonetheless, despite the constant negativity from those opposite, it is once again a Labor government implementing reform in Queensland for the benefit of Queenslanders.

In conclusion, the amendments to the Defamation Act and the Limitation of Actions Act are aimed at discouraging and preventing expensive litigation for minor or insignificant claims; otherwise encouraging the early resolution of defamation claims; ensuring 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 modernising provisions to apply more appropriately to digital publications. I commend the bill to the House.