Speech By

Michael Berkman

MEMBER FOR MAIWAR

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EVIDENCE AND OTHER LEGISLATION AMENDMENT BILL

Mr BERKMAN (Maiwar—Grn) (12.53 pm): I rise to speak on the Evidence and Other Legislation Amendment Bill. The Queensland Greens support this bill. Our view is that it does provide important and welcome reforms in relation to protections for domestic violence proceedings, shield laws for journalists and the implementation of recommendation 2 of the Daniel Morcombe inquest. Submitters have provided some important feedback on these issues. I will turn first to the shield laws.

As so many others said, the bill establishes a statutory framework to protect the identity of journalists' confidential sources. We describe these as 'shield laws'. The Greens strongly support those protections and see them as critical to a healthy democratic society and to the process of rooting out corruption. Effective shield laws encourage sources to come forward and expose wrongdoings and abuses of power. We welcome the fact that the bill provides a function based definition of journalists which applies beyond paid reporters in news organisations and includes civilian journalists, bloggers and those engaging in journalistic functions on social media.

However, a concerning pitfall of this bill is the fact that it excludes the operation of shield laws in proceedings held by the Crime and Corruption Commission. I have also prepared and circulated amendments to ensure that the newly codified journalistic privilege does in fact apply to CCC proceedings. I table a copy of those amendments, the explanatory notes, and the statement of compatibility.

Tabled paper: Evidence and Other Legislation Amendment Bill 2021, amendments to be moved by Mr Michael Berkman MP 725.

Tabled paper: Evidence and Other Legislation Amendment Bill 2021, explanatory notes to Mr Michael Berkman's amendments 726.

Tabled paper: Evidence and Other Legislation Amendment Bill 2021, statement of compatibility with human rights contained in Mr Michael Berkman's amendments 727.

Coincidentally, these amendments are identical to those amendments earlier circulated by the member for Clayfield and shadow Attorney-General. The proposed amendments can only be considered once under the standing orders. The shadow Attorney-General will do the honours of moving those amendments which we will unsurprisingly support in this instance.

I take a moment to consider the views expressed by some submitters on the exclusion of CCC proceedings from the shield law protections. First, I note that both the Bar Association of Queensland and the Queensland Law Society support the extension of shield laws to CCC proceedings. The submission from Australia's Right to Know coalition of media states—

The recent proceedings concerning "F" demonstrate how badly needed the privilege is both generally and specifically in relation to the CCC. If the shield does not apply to that body, journalists continue to risk being fined or jailed simply for doing their jobs.

Just to very briefly give light to the story of journalist F, this journalist refused to name their confidential source in a CCC proceeding. The Supreme Court decided that journalist F could not rely on public interest immunity. Even before we consider the protections afforded by shield laws, we know

that the CCC can pursue and uncover confidential sources through the courts. The Queensland Council for Civil Liberties in its submission stated—

… it is a classic illustration that people with extraordinary powers should not be exempt from supervision; they should have more supervision. The CCC, like any other body which has compulsive powers, should be required to demonstrate that the public interest outweighs the free speech interests of the journalist.

At the public hearing QCCL noted, again specifically in relation to the CCC, that—

It is a body with enormous power and a journalist should not be frightened of dealing with issues that it might be involved in and therefore threatened with the prospect of it being able to override an immunity which other bodies may not be able to.

Australia's Right to Know coalition, ARTK, also made some relevant comments in the public hearing—

The exemption of the CCC from the application of the bill is nonsensical as the shield is not absolute. The decision of whether the shield should or should not apply is made by a judge considering all the evidence and circumstances, and these decisions can and will be made to make that informed decision, including in the case of the Crime and Corruption Commission.

In addition to the public hearings and submissions, the Department of Justice and Attorney-General conducted consultation following the release of a discussion paper on shield laws. The survey results, as we have heard before, indicated that 94 per cent of survey respondents support the application of shield laws to CCC investigations. In its feedback on the discussion paper, QLS commented—this is very early in the piece—

While the CCC plays an important function in our society, shield laws should be considered to protect the identity of a confidential source in CCC investigations … A court would act as a check and balance on this privilege and be able to hear reasons from the CCC as to why, in a particular case, the shield should be overridden.

These are clearly quite widely shared views and views that have been expressed from very early in this process. I acknowledge that the Attorney-General when introducing the bill confirmed that the application of shield laws to the CCC would be considered separately—we heard more about that just a moment ago—and that stakeholders would be consulted as part of this process. We also heard the Attorney-General's statement that the government will be in a position to determine the most appropriate course of action in the 'first half of next year'—that is, this year. The first half of this year is very nearly over—in fact, this is the final normal sitting week before we enter the new financial year—but we have scant information on any further action to this point.

As ARTK points out, if the shield does not apply to the CCC from the outset, journalists with confidential sources will remain at risk, which serves to undermine the entire purpose of these laws. Without shield law protection under CCC proceedings, the public may be deterred from speaking up and out to journalists about issues of integrity and government malpractice. If the government does not extend the shield laws to the CCC now, I am left with very real concerns that this reform could simply be put off indefinitely and may never happen.

I reiterate one final point made by the Human Rights Law Centre in its submission on the Justice and Attorney-General discussion paper. It said—

Concerns that this broad approach will hamper investigations are misplaced. Making the privilege universally available does not mean it will operate in all proceedings. In each case, a court may choose to abrogate the privilege if it is in the public interest. In our view, it is preferable to determine the application of shield laws on a case-by-case basis, rather than exempting entire classes of proceedings at the outset.

If anything, it is even more important to allow journalists to report on tip-offs about corrupt behaviour compared to other matters. Tip-offs from public servants about corrupt conduct, whether committed by public officials or by big corporations, should be protected by laws such as this. The CCC has an important function in fighting corruption, but sometimes sunlight is the best disinfectant. Giving the CCC close to a blanket power to reveal journalists' confidential sources will prevent sunlight from getting into some very dark corners.

Finally, with your indulgence, Mr Deputy Speaker, I put on the record that the Greens support the other reforms in this bill, including establishing a framework for a 12-month trial of the giving of videorecorded evidence-in-chief in domestic and family violence proceedings. The objective of these reforms—that is, reducing trauma for DFV victims and survivors associated with retelling their experiences in court—is an incredibly important one. We see that the 12-month trial is an appropriate way to deal with concerns expressed about this. We further support the rest of the provisions relating to recommendation 2 of the Morcombe inquest. These are long-awaited reforms that we welcome.