




Speech By
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MEMBER FOR TOOHEY

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EVIDENCE AND OTHER LEGISLATION AMENDMENT BILL

 **Mr RUSSO** (Toohey—ALP) (4.00 pm): I rise to speak in support of the Evidence and Other Legislation Amendment Bill. The Evidence and Other Legislation Amendment Bill 2021 was introduced into the Legislative Assembly and referred to the Legal Affairs and Safety Committee on 16 November. The objectives of the bill are to establish a statutory framework that allows protection against the disclosure of the identity of journalists' confidential informants, known as shield laws; introduce a legislative framework to support a pilot enabling videorecorded statements taken by trained police officers to be used as an adult victim's evidence-in-chief in domestic and family violence related criminal proceedings; provide a specific process for the viewing and examination of the body of a deceased person in a criminal proceeding to implement the Queensland government's response to recommendation 2 in the findings of the inquest into the disappearance and death of Daniel James Morcombe; clarify the operation of computer warrants about bail; enable service as a magistrate in Toowoomba to constitute regional experience for a transfer decision under the Magistrates Act 1991.

The committee, in its report No. 23, which was tabled in this Assembly on 11 February 2022, has recommended to the Assembly that this bill be passed with three recommendations. Recommendation 1 is that the Evidence and Other Legislation Amendment Bill 2021 be passed. Recommendation 2 is that the Attorney-General, in the second reading speech, provide an update about consideration of the issues raised by stakeholders about proposed section 14ZF. Recommendation 3 is that the Attorney-General, in the second reading speech, provide an update on the consideration of the issues raised by submitters about the definition of a 'domestic violence offence'.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles—that is, to consider whether the bill has sufficient regard for the rights and liberties of individuals and the institution of parliament. The committee also examined the bill for compatibility with human rights by the Human Rights Act 2019.

On 23 November 2021, the committee invited stakeholders and subscribers to make written submissions on the bill. Five submissions were received: from the Bar Association of Queensland, Women's Legal Service Queensland, Queensland Council for Civil Liberties, Australia's Right to Know coalition of media organisations and last, but not least, the Queensland Law Society. The committee received a written briefing and a public briefing on the bill from the Department of Justice and Attorney-General and the Queensland Police Service on 29 November 2021. The committee received written advice from the department in response to matters raised in submissions. The committee held a public hearing on 1 February 2022 and the same five organisations that gave written submissions also appeared at the public hearing. We also received three written responses to questions taken on notice at the public hearing.

In relation to shield laws, the bill amends the Evidence Act 1977 to establish a framework to enable better protection of the identity of journalists' confidential informants. The department advised that the shield law amendments create a qualified journalist privilege that applies when an informant has given information to a journalist with the expectation that it may be published in a medium for the

dissemination of news and observations on news to the public and the journalist promises the informant not to disclose their identity as a source of the information. The amendments create a presumption that a journalist or relevant person is not compellable to answer a question or produce a document that would disclose the identity of the informant or enable their identity to be ascertained. However, the privilege itself is rebuttable and a court may order that the identity of the informant be disclosed after weighing competing public interests.

The privilege only protects the identity of the informant and does not apply to all journalistic material that a journalist or relevant person may wish to keep confidential. The bill also does not mandate the protection of the identity of the informant or regulate journalist conduct. A journalist or relevant person is not obliged to claim journalistic privilege, and how each person chooses to utilise the protection offered by the framework may vary depending on the particular circumstances.

In response to the committee's questions regarding the reason and timing of the proposed shield laws, the department advised that Queensland was out of step with the rest of Australia in protecting the journalist-source relationship. The Queensland Law Society advised that while they broadly supported the journalists' privilege, they were concerned about how it would operate in defamation proceedings, whistleblower protections and where there is potential for misuse. The department advised that the bill will operate alongside the Defamation Act 2005 and the Public Interest Disclosure Act 2010 and there were mechanisms for the court to flexibly and appropriately apply the shield law framework.

Australia's Right to Know explained that the shield laws were needed because when a journalist accepts a confidence they have a professional obligation under the professional code and that a journalist does not get to choose which circumstances they might respect. Once the confidence is accepted it is an absolute obligation to respect that confidence. The department confirmed that the bill provides that the privilege applies before a court of record, the privilege does not apply under the Crime and Corruption Act 2001.

Submitters supported the introduction of the proposed shield laws. However, submitters also supported the view that the laws should apply to the CCC. Submitters acknowledged the Attorney-General's comments when the bill was introduced that further consultation will be undertaken about the CCC and that the government will be in a position to determine the most appropriate course of action in due course. The committee supports the review proposed by the Attorney-General.

It should be noted that at this time the Queensland Police Service spends approximately 40 per cent of its time on domestic violence issues. The bill amends the Evidence Act, the Criminal Code and the Justices Act and other related legislation to establish a legislative framework for the giving of videorecorded evidence-in-chief by adult victims in criminal proceedings that result from breaches of the domestic violence act. The underlying policy intent is to remove the hearsay rule of evidence so that out-of-court statements can be used as evidence of the existence of a fact contained in them. This is not a novel concept to the criminal courts, where for a long time evidence in relation to offences against children has been taken by video and presented in the courts.

The reasons cited in the explanatory notes for enacting the proposed amendments include reducing the trauma of victims associated with the retelling of their experiences in court, illustrating a victim's demeanour and experience close to the time of the event and reducing the capacity of the perpetrator to intimidate a victim.

I believe that reducing the trauma to a domestic violence victim is vitally important as those people have already been traumatised. The Queensland Police Service advised that the modelling shows that there should be significant time savings for frontline police and significant benefits for domestic violence victims, including that in some instances police officers will no longer need to take victims from their homes at all hours of the night to take them to a police station to obtain an old-fashioned typed statement.

The Queensland Law Society, while supporting the measures aimed at minimising trauma for victims, noted that videorecorded statements and evidence from body worn cameras are already admissible in certain circumstances. The Law Society supported the proposed use of videorecorded statements in domestic and family violence proceedings in principle, noting that there are complexities with the proposal that may require further consideration.

The Bar Association noted that in some circumstances the benefits that are hoped for may not come to fruition and there may be unfairness caused to an accused. The Bar Association further noted that in a contested hearing—

Whilst the provisions would mean that in that setting the victim would not have to relay orally the account, the victim will nonetheless be reliving the experience they have already relayed on the video.

I commend the bill to the House.