




Speech By
Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 25 May 2022

EVIDENCE 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) (3.25 pm): I move—

That the bill be now read a second time.

On 16 November 2021, I introduced the Evidence and Other Legislation Amendment Bill 2021 into the House. The bill was referred to the Legal Affairs and Safety Committee for consideration. The committee tabled its report on 11 February 2022 making three recommendations. The government response to the Legal Affairs and Community Safety Committee report was tabled on 9 May 2022. I will address the recommendations in more detail shortly, but I can foreshadow that I propose to move some amendments to the bill to address issues raised during the committee process. I would like to take this opportunity to thank the Legal Affairs and Safety Committee for its detailed consideration of the bill. A total of five submissions were received by the committee in the course of its inquiry. I extend my thanks to those organisations that made detailed submissions and gave evidence before the committee.

The committee's first recommendation was that the bill be passed. I thank the committee for its support. The bill delivers a number of important justice related reforms for Queensland and reflects this government's ongoing and unwavering commitment to ensure Queensland's laws and justice system remain contemporary, efficient and fair for everyone.

The first key area of reform in the bill is to establish a legislative framework for shield laws in Queensland to ensure journalists can more effectively fulfil their role as facilitators of free communication and report on matters of legitimate public concern. The bill introduces a qualified journalist privilege in certain contexts to provide better protection for the identity of journalists' confidential informants by creating a presumption against compellability and disclosure where this would reveal the identity of the informant or allow their identity to be ascertained.

The framework in the bill allows a balance to be struck between protecting confidential informants while allowing courts to require disclosure if it is in the public interest. Under the provisions in this bill, journalist privilege will apply in any proceeding before a court of record, whether or not the court is bound by the rules of evidence in the proceeding. This includes evidence given in a proceeding as well as disclosure requirements associated with the proceedings, such as summonses and subpoenas.

The bill expressly excludes proceedings under the Crime and Corruption Act 2001 from the shield laws framework and does not extend the framework to Crime and Corruption Commission proceedings. I want to acknowledge that the application of shield laws to the Crime and Corruption Commission was a key issue raised by submitters during the committee's consideration of the bill. As I stated in my explanatory speech, the application of privileges in the context of Crime and Corruption Commission investigations, hearings and proceedings is very complex.

The Parliamentary Crime and Corruption Committee has recognised the complexity of the existing privileges framework in the Crime and Corruption Act and recommended that the framework be reviewed. I can assure stakeholders that the government is committed to examining shield laws as

part of this ongoing work regarding the operation of privileges under the Crime and Corruption Act. We need to ensure that the operation of any new privilege introduced into that framework is clear and effective. It is not simply a matter of amending this bill to remove the provision relating to the Crime and Corruption Act; we have to take the time to ensure we get the right approach and consult.

My understanding is that the legislative frameworks in the majority of Australian jurisdictions do not expressly provide whether or not journalist privilege applies to their integrity, crime or corruption bodies. This creates a degree of ambiguity in whether or not journalist privilege may be claimed, creating uncertainty for journalists and the relevant bodies.

The bill also applies journalist privilege to search warrants to ensure that confidential informants are not vulnerable at an early stage of an investigation. The bill provides that a journalist or relevant person will be able to object to the inspection, copying or seizing of a document by an authorised officer on the basis of journalist privilege, and sets out a procedure for managing the document or thing and determining the objection.

Recommendation 2 of the committee's report is that I provide an update in this speech in relation to the consideration of the issues raised by stakeholders about proposed section 14ZF. The issue raised by this recommendation relates to a suggestion that section 14ZF be amended to specify that the authorised officer who executed the search warrant bears the onus of proving that the public interest in disclosing the informant's identity outweighs the matters mentioned in section 14Y(1)(a) and (b) relating to adverse effects on the informant or another person and the public interest. I acknowledge the benefits in providing further clarity and will be moving an amendment during consideration in detail to specify that the person seeking to deal with the sealed or stored document or thing, in a way authorised under the warrant, has the onus of satisfying the court about public interest considerations on the balance of probabilities.

I acknowledge that some submitters raised other concerns with the committee about the procedures for search warrants in the bill. While amendments are not proposed to address these concerns, I can assure stakeholders that the Department of Justice and Attorney-General will monitor the practical operation of the provisions to ensure the protections offered by the shield laws framework are effective.

Another significant reform in the bill is to provide a legislative framework enabling videorecorded statements to be used as an adult victim's evidence-in-chief in domestic and family violence related criminal proceedings to support the operation of a pilot. The pilot will build on the significant work of the Palaszczuk government to respond to the impacts of domestic, family and sexual violence in Queensland. This includes the establishment of the independent Women's Safety and Justice Taskforce, which will be providing its final report on women's experience in the criminal justice system in June. While the bill introduces a broad legislative framework, it will only apply to a domestic violence proceeding as defined. This definition allows the parameters of the pilot to be established by regulation.

As I indicated in my explanatory speech, consideration is being given to the operation of a 12-month pilot which would run simultaneously in two Magistrates Court locations, at Ipswich and Southport. I acknowledge that some stakeholders raised concerns with the committee about the need for increased clarity in relation to the pilot. I can assure those stakeholders that further consultation will be undertaken with key stakeholders about the details of the pilot ahead of the making of the regulation.

Recommendation 3 of the committee report is that I give an update on the consideration of the issues raised by submitters in relation to the definition of 'domestic violence offence'. This recommendation was made following concerns raised by Women's Legal Service Queensland during the committee process about the potential for this definition to be interpreted in a way that will inadvertently narrow the types of matters where a recorded statement can be used. I recognise the benefit of clarifying this issue and therefore will be moving an amendment during consideration in detail to make clear that the definition of 'domestic violence offence' applies to breaches of domestic violence orders or other criminal offences, such as assault, committed in a domestic violence context.

The second key amendment I will be moving for the videorecorded evidence provisions is in relation to the definition of 'trained police officer'. While this amendment was not recommended by the committee, it responds to stakeholder views expressed during the committee process. As I outlined in my explanatory speech, allowing evidence-in-chief to be given by way of videorecorded statement offers potential benefits for victims of domestic and family violence.

A key safeguard for victims as part of the pilot is the requirement that statements are taken by trained police officers who must ensure that a complainant has given their informed consent to the making of a statement. A number of stakeholders have emphasised the importance of training and the need for it to encompass education about the impacts on domestic and family violence and trauma for victims. To this end, submitters have identified an opportunity to clarify the nature of the training in the

definition of 'trained police officer' in the bill. I would like to thank submitters for this input and will be moving an amendment during consideration in detail to make clear that police must receive domestic and family violence training. The videorecorded evidence provisions will commence on a date to be set by proclamation to ensure there is sufficient time for this training to be delivered.

During the committee process, some stakeholders raised concerns that the pilot could impede the efficient administration of justice or prejudice an accused and their ability to receive a fair trial. While I acknowledge the use of videorecorded evidence-in-chief does represent a significant departure from the usual rules of evidence for criminal proceedings, the bill is not intended to override the court's general discretion to exclude evidence. Also, the pilot will be subject to an independent evaluation. Impacts on fair-trial rights of the accused, as well as the experiences of victims, will form key components of this evaluation.

I note that the opposition committee members in their statement of reservation have sought further details about the evaluation, including the independent assessor. The independent evaluator has not yet been appointed. Subject to passage of the bill, it is proposed that an appropriately qualified and experienced evaluator would be engaged through a procurement process. Any relevant findings made by the Women's Safety and Justice Taskforce will also need to be considered. The task force's discussion paper on women's and girls' experiences across the criminal justice system refers to the pilot and includes discussion about whether or not videorecorded interviews between police and victims for sexual offences could be used as evidence-in-chief in trials. I look forward to considering the task force's findings later this year.

The final amendment to the videorecorded evidence provisions which I will be moving during consideration in detail is to address a technical error which has been identified in new section 93AC of the Evidence Act.

I will now turn briefly to the amendments in the bill which deliver on the government's response to the State Coroner's recommendation in the findings of the inquest into the death and disappearance of Daniel Morcombe. The provisions in the bill respond to the Coroner's recommendation by creating a clear disclosure process in relation to human remains which allows criminal courts to have regard to the need not to unnecessarily delay the return of a deceased person's body under the coronial system. I want to once again thank Denise and Bruce Morcombe for their engagement with these reforms and for their strong and tireless advocacy to increase the safety of children here in Queensland.

Finally, the bill also contains technical amendments to support the operation of a scheme to allow the electronic transfer of warrants and to ensure service as a magistrate in Toowoomba constitutes regional experience for the purpose of a transfer decision. I commend the bill to the House.