Speech By

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MEMBER FOR CLAYFIELD

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EVIDENCE AND OTHER LEGISLATION AMENDMENT BILL

Mr NICHOLLS (Clayfield—LNP) (3.36 pm): This is a complex bill dealing with some novel and complex changes to well-established areas of law. While all the changes contemplated by the bill are important, some stand out. Firstly, the bill deals with the issue of the so-called shield laws. These laws are designed to protect journalists when they report in the public interest against actions designed to force them to reveal their confidential sources in court. There is currently no common law privilege that allows journalists to refuse to reveal their confidential source which, it is argued, stifles the free flow of information and an active and free press. While the LNP welcome this change, we believe it can go further, and we will be seeking to move an amendment to the bill to extend the operation of the shield laws to matters before the Crime and Corruption Commission. In fact, amendments should be being circulated about that right now.

In passing, it is interesting to note how this government's attitude has changed. We only need to turn back to August 2020 when then attorney-general D'Ath wanted to actually introduce gag laws, stopping the reporting of matters reported to the CCC, outraging journalists and leading to our state's journal of record to publish a completely blank front page highlighting the Orwellian overreach of an arrogant Labor government. My, aren't we seeing that every day in this place at the moment!

Mr Hinchliffe interjected.

Mr NICHOLLS: I listened to my friend, the member for Sandgate's response there. Such was the reaction that the proposal did not even last 24 hours—not 24 hours! It lasted 20 hours—in fact, an embarrassing backflip or a spectacular backflip, depending on who was commenting about it and where you read the story, but that was the term used. That legislation did not even last a day. In fact, it was so bad that former attorney-general D'Ath gagged herself within 20 hours after introducing the bill. She issued one of the shortest media statements of all time announcing that the bill was withdrawn. I table a copy of that statement for the amusement of the House and anyone who might be inclined to read it.

Tabled paper: Media statement, dated 14 August 2020, by the former Attorney-General and Minister for Justice, Hon. Yvette D'Ath, in relation to the recommendations of the CCC and the withdrawal of a bill 713.

It should even be able to be read by the honourable member opposite for it is only a line long and it contains words of less than two syllables. Even the member should be able to read that. The second major change—

Mr Saunders: Sit down, you fool.

Mr NICHOLLS: Not only do you look like a clown, but you sound like one.

Madam DEPUTY SPEAKER (Ms Lui): Through the chair.

Mr NICHOLLS: The second major change the bill introduces involves overturning the rule against hearsay—

Mr SAUNDERS: Madam Deputy Speaker, I rise to a point of order. I take offence to that remark. I ask him to withdraw.

Madam DEPUTY SPEAKER: Member, your comments were unparliamentary and I ask you to withdraw.

Mr NICHOLLS: I am happy to withdraw.

Mr LANGBROEK: Madam Deputy Speaker, I rise to a point of order. My point of order is that the member for Maryborough also used unparliamentary language and I ask you to ask him to withdraw that.

Madam DEPUTY SPEAKER: Member for Maryborough, I ask you to withdraw your comments.

Mr SAUNDERS: I withdraw.

Mr NICHOLLS: The second major change the bill introduces involves overturning the rule against hearsay evidence and allowing the giving of evidence-in-chief by audio or video recording by domestic and family violence victims in criminal proceedings. Another significant change flows from the tragic abduction and murder of Daniel Morcombe. The State Coroner in that case made recommendations to impose a time limit on the testing of human remains. In fact, that recommendation was made some considerable time ago and the opposition has continued to pursue that both in estimates and in question time. Hopefully, this change will be of a comfort to families in the future. It is a testament, again, to the perseverance of the Morcombes' campaign for law reform. This is not the only one, but this is yet another one of the reforms they have campaigned for.

Other matters relate to computer warrants and the recognition of Toowoomba as regional service for the Magistrates Court service transfer policy. Let me deal with the videorecorded evidence material first.

If honourable members ask any law student or even an experienced practitioner, they will tell them that the law of evidence is one of the most important, arcane and confusing areas of the law to explain. I suspect it is so because it is so vital to determining the questions often placed before the courts. In civil litigation it is, of course, of importance. But in a criminal trial dealing with, as it does, determinations of guilt or innocence and punishment and deterrence as well as protection of society, it is absolutely vital. Perhaps that is why so much time and energy is expended on ensuring evidence is reliable and trustworthy and why so much time in court is spent on examining and cross-examining the evidence presented to ensure it is reliable and free from taint and/or interference. It is evidence that points the way to the truth that a court seeks when conducting a trial and adjudicating claims between parties.

Inevitably as part of that evidence evidence-in-chief has to be presented. The best person to present that evidence-in-chief in a criminal trial, especially for an assault, is the person assaulted. In doing so, the witness recounts the events of the assault in open court under the questioning usually of the prosecutor, a trained prosecutor, who elicits the evidence necessary to sustain the fundamentals of the offence.

Understandably and notwithstanding the care with which prosecutors take a victim through their evidence in court, this can sometimes be traumatic and upsetting. Certainly reports from victims of domestic and family violence indicate that this is especially the case in criminal proceedings. It may also be that victims are intimidated by an accused, especially if that accused is self-represented and sitting at the bar table directly in front of them in court. It is an attempt to address this very real concern that the suggestion has often been made to use video or audio recordings as evidence-in-chief in criminal trials. It is important to note that this type of evidence can be used in matters involving children.

The issue with this proposal is that it is not what lawyers sometimes call 'the best evidence'. It is, in fact, hearsay evidence. This bill negates the hearsay rule in domestic and family violence related criminal proceedings. The hearsay rule that evidence of a previous representation made by a person is not admissible to prove the existence of a fact that it can reasonably be supposed that the person intended to assert by the representation—that is the hearsay rule—is one of the most popularly known of the so-called rules of evidence.

As an aside, if honourable members ask any 19-year-old watching the Johnny Depp and Amber Heard trial on Snapchat, they can tell them all about the hearsay rule—that is how popular it is. It is, in fact, an exception to the admissibility rule of evidence. It applies to the criminal matters defined in clause 37 of the bill in new part 6A. Broadly, they are offences against the Domestic and Family Violence Protection Act or other criminal offences involving such a contravention. I do want to note that the amendments circulated by the Attorney address the committee concern around the definitions in clause 37 and specifically new section 103B and I want to signal that the LNP will support this change and this amendment.

This change in the rules of evidence is significant. As the Attorney noted in her introductory speech, we do need to be careful about the consequences of this change. Understandably, there are some very real concerns raised by the Bar Association of Queensland and the Queensland Law Society.

The concerns are well canvassed in the committee report and in each of those associations' submissions to the committee. While a trial of the changes is sensible and appropriate, there is still little detail available of how the trial would be evaluated and by whom. I note the Attorney's comments in her speech a little while ago that the appointment of someone to evaluate the trial is still yet to be made.

There is little information on what might constitute a measure of success of the trial and whether the trial is effective in both reducing trauma for victims and improving access to justice as well as ensuring there are no miscarriages of justice all the while balancing the need to ensure a fair trial. It is important to note that there is a paucity of evidence available, especially from the most recent trial in Victoria, of a similar scheme to gauge the effectiveness of those changes. Again, this came out in the committee report.

Of course, one of the matters to be taken into account will also be future actions stemming from the just announced inquiry into the Queensland Police Service as part of the response to the first report on women's justice and safety. One matter of concern in this trial is the training of police who will be taking this evidence. This matter was canvassed widely in the committee. Clause 37 inserts new part 6A and new section 103E sets out the requirements for making recorded statements. It says, amongst other things, that a recorded statement must be taken by a trained police officer. The proposed definition of a 'trained police officer' does not specify what the training must be. Again, I note the committee's comments on the issue.

I also note the comments of the Women's Legal Service of Queensland about the areas that ought to be considered in the training and the extremely specialised area this part of the law involves. I also note the Women's Legal Service's comment that there must be adequate support for police to be trained including trauma informed work practices. Again, I note the Attorney's proposed amendments—and she mentioned them today in her speech and, again, we signal our support for that amendment—will insert in new section 103E(4) a clear direction that the training must be domestic and family violence training, but it does not include trauma informed work practices, as requested by the Women's Legal Service in their submission. I simply ask the Attorney to explain why this is so. There may be some other aspect of the training that the Attorney can inform the House on to satisfy this request.

It is fair to say that the Bar Association does not wholeheartedly support this change. The Bar Association in its submission points out some serious issues that will have to be carefully monitored during the trial if we are to have confidence that setting aside the hearsay rule that has served justice so well over the years is to be permanent and does ensure proper justice for all. One significant area of concern raised by the Bar Association is that police officers will take the recorded evidence-in-chief intended to be used as such in court when that is not primarily a police officer's role. Police are there to investigate offences, gather information and charge an accused.

Their primary role is not to record evidence and take evidence-in-chief. It is a very different role. Taking and delivering evidence-in-chief is, in fact, an area that requires some considerable skill. This is a matter that properly needs to be considered as part of the trial. I ask: can the Attorney in her reply advise whether some form of training in the eliciting of evidence-in-chief will be included in the training referred to in new section 103E(4)?

The Queensland Law Society makes a thoughtful and reasoned submission. It supports videorecorded statements in domestic and family violence proceedings in principle, subject to the interests of justice and a fair trial. Again, the society urges caution in a number of areas and addresses both the benefit and the pitfalls that may emerge from the trial. It is important that we do pay attention to these warnings from both the Bar Association and the Law Society, given their many years of experience, their day-to-day ongoing interactions with the system and their knowledge of the law.

Let me make this plain: that ought not to stop this parliament from seeking to make the experience of victims of domestic and family violence in the justice system less traumatic and less frightening than it otherwise might be. Indeed, the task force report makes this abundantly clear and I have spoken about the need for this to occur in recent debates, most recently on the issue of consent in the Criminal Code speech that I delivered in regard to that amendment last year.

The LNP will be supporting this part of the bill, and we will be looking to be kept informed of the results in a sensible and open manner. If the government expects support in making these changes, we would like to see the results of the trial provided to this House so that it can be informed. If we are to achieve the goal of a better response and a better system, we need proper and full debate. This can only be achieved with the provision of all of the information from the trial. Again I ask the Attorney to assure the House that the results will be tabled in a prompt and timely manner, allowing a full and considered evaluation of the success or otherwise of the trial.

I turn to the so-called shield laws. This is a complicated matter, as anyone looking at pages 25 to 41 of the bill will quickly conclude. I do not intend to repeat the information provided in the explanatory notes. The method of operation of the section, though, is thorough and the definitions seem to

contemplate the modern take on journalistic activity, including the use of social media. Critically, the definitions in proposed section 14R appear to reflect the current understanding of who a journalist or a publisher is. This was extensively discussed in the High Court case of Fairfax Media Publications Pty Ltd v Voller.

Submitters to the committee were mostly positive about the way the laws should work and their practical effect. Where there was a concern about section 14ZF, the Attorney has signalled that amendments are to be made and they have been circulated. One thing, however, remains clear: there is no compelling reason advanced as to why the shield laws should not apply to hearings before the Crime and Corruption Commission. The consultation report showed that 94 per cent of survey respondents and 56 per cent of submitters supported the application of shield laws for journalists appearing before the CCC. When the bill was introduced last year, the Attorney said in her speech—

I can assure stakeholders that further consultation will be undertaken in relation to this work and that we will be in a position to determine the most appropriate course of action in the first half of next year.

It is almost the end of 'the first half of next year'. In fact, we only have a couple more weeks before it will be the end of the first half of this year. Indeed, we only have the budget sitting to go before this parliament will not be sitting again for the first half of this year and will not be sitting again properly until August. We are still waiting for a statement from the Attorney about whether the shield laws will apply to matters before the CCC.

Earlier this afternoon the Attorney-General again said that the application of the shield laws is being reviewed, but she made no statement as to how the consultation will make it any more clear that people believe that the shield laws should apply to the CCC. The consultation has been done and the submissions have been made. The committee report makes it clear.

As I said, the LNP believes there is no compelling reason why shield laws cannot apply to the CCC, so I will be moving amendments in consideration in detail to give effect to this. This is a position clearly supported by the Queensland Law Society when it says in its submission—

Our members are of the view that if shield laws are to be introduced, their coverage should extend to CCC proceedings where witnesses can be compelled to give evidence …

QLS believes that a qualified privilege will allow the CCC to advocate why the shield should be overridden in a particular matter …

The Bar Association supports the extension, saying in its submission—

… it considers the same shield laws should apply in matters before the Crime and Corruption Commission.

The Bar Association also noted—

It would require only relatively minor amendment to the provisions as they currently stand.

I say to the Attorney: for the benefit of ALP members—in fact, all members—I have circulated a simple and relatively minor amendment.

Australia's Right to Know coalition also urged that the shield laws apply to the CCC. In response to the Attorney's introductory speech last year, the ARTK says—

We argue that the time is now to ensure the shield law applies in all circumstances without exception.

The LNP supports these and other calls to extend the shield laws to the CCC and will be moving amendments, as I have foreshadowed.

The remaining provisions of the bill are not controversial, although I do want to specifically acknowledge the implementation of the changes following the coronial inquest into the death of Daniel Morcombe. This change is as a result of the lengthy delay the Morcombes experienced in having Daniel's remains returned to them. The State Coroner's report details the circumstances of that delay, including the need to retain evidence for the trial in circumstances where the prosecution and defence could not agree on certain steps to be taken. The amendment balances the need to ensure a fair trial for the accused with the desire of families to finally lay loved ones to rest. The LNP will be supporting the bill and we do look forward to debate on the amendment.

I urge all members to think carefully on the amendment that I am proposing to include the CCC in coverage of the shield laws. I say this in light of all we have learned in the last few months about the CCC. Let's not forget the reports we have had from the parliamentary committee. When considering the amendment I have proposed, I remind members that the journalist privilege, the so-called shield law, is not absolute. It is not the privilege of an MP in this House; it is a qualified privilege. It is subject to the review of a Supreme Court judge.

Ultimately, we place our faith in those superior courts and their judges to uphold our laws and strike the right balance. In fact, those courts often adjudicate matters involving the exercise by the CCC of their powers. We already provide them with those powers. This might be boring to some, or it may

be above their ability to understand, but it is vitally important to consider serious matters in a serious way. Some people have a blind adherence to the party line without a consideration of the rationale and the reason before it and some people think that listening to a reasoned debate has no place in democracy. I am not one of those people. I listen to other people in this place, pay attention to what they say and try to make a reasoned comment. I think I have done that with the Attorney-General's contribution. I acknowledge the amendments that she has made. I listened to her speech this afternoon and I have responded to the comments she made in her speech this afternoon in a reasoned way.

Mrs Frecklington: That is what debate is about.

Mr NICHOLLS: I take the interjection from the member for Nanango: that is what debate is about. You do not all have to agree—I certainly would not expect it or want it—but you do need to listen to a debate that puts forward an alternative point of view and makes a point in relation to something so important as journalistic shield laws. If they are not important, that is fine, but they obviously are because the government has introduced the legislation to deal with the issue. They must be important to someone on the government benches.

I say to members: think carefully on the amendment to include the CCC in the coverage of the shield laws, because of what we have learned about how the CCC operates and what has occurred in the past. We place our faith in the superior courts to uphold our laws and strike the right balance. There is absolutely no evidence that they cannot do exactly the same thing with a claim for privilege by a journalist appearing before the CCC.

In our role as parliamentarians we are well aware of the existence of sources, anonymous sources and leaks. In this place, subject to our rules, we enjoy an absolute privilege. Imagine if a member was compelled to reveal their sources of information. How would that member feel? That is the position that journalists appearing before the CCC are placed in without an amendment that provides them with a qualified privilege subject to review by a superior court judge and subject to challenge by the CCC.

In conclusion, the LNP will be supporting the bill. We will be supporting the amendments made. We support the changes made in relation to the video recording of evidence and think the trial is a worthy trial and should be undertaken. However, we think the bill can be made better. The protections for journalists can be made better in respect to their appearances before the CCC. I urge all members, especially government members, to give some thought to the proposal and to support the amendments when they are debated.