




Speech By
Patrick Weir

MEMBER FOR CONDAMINE

Record of Proceedings, 13 September 2023

JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

 **Mr WEIR** (Condamine—LNP) (12.16 pm): I rise to speak to the Justice and Other Legislation Amendment Bill 2023. Overall, the bill amends 30 acts and four regulations, and repeals the Court Funds Act 1973. The bill will also enable recognition of the deaths of unborn children as a result of criminal conduct.

The bill proposes to remove restrictions in the Criminal Law (Sexual Offences) Act 1978 prohibiting the identification of an adult defendant charged with a prescribed sexual offence prior to the finalisation of committal proceedings. Under the CL(SO) Act, prescribed sexual offences are defined as rape, attempt to commit rape, assault with intent to commit rape and sexual assault. Other than the Northern Territory, Queensland is the only state or territory that currently maintains a defendant's anonymity in those cases. Under the proposed amendment, applicants are required to give three business days notice of a non-publication order. The court must consider several factors when hearing the application, including the primacy of the principle of open justice, public interest, special vulnerabilities of the complainant or defendant, cultural considerations and the effect of publication in a rural or remote community.

The amendments are made in response to the government's commitment to implementing recommendation 83 of the Women's Safety and Justice Taskforce report, *Hear her voice* report 2. Given the experiences of women and girls across the criminal justice system, the taskforce concluded that there was no justification for the law to treat defendants who are charged with a prescribing sexual offence differently to those who are charged with any other criminal offence. DVConnect stated that they believe that this amendment would help identify defendants and support other victim-survivors in coming forward to report sexual violence. We would hope that that is the case.

The committee recommended that the Queensland government prioritise the development of a guide for the media to support the responsible reporting of sexual violence, in accordance with recommendation 84 of the *Hear her voice* report 2. This is important as, unfortunately, we have seen high-profile cases fall victim to trial by media, with less than satisfactory outcomes for both the victim and the defendant.

The bill proposes to better recognise the deaths of unborn children that have occurred due to criminal conduct. Queensland law does not give an unborn child legal status as a person. The bill proposes amendments to the Criminal Code Act 1899, the Penalties and Sentences Act 1992, the Youth Justice Act 1992 and the Victims of Crime Assistance Act 2009 to better recognise the destruction of the life of an unborn child as a result of offences committed in relation to a pregnant person.

These amendments include: changes to the sentencing principles in the Penalties and Sentences Act 1992 and the Youth Justice Act 1992 that require the court to treat the destruction of an unborn child as an aggravating factor, unless the court considers it is not reasonable because of exceptional circumstances, for relevant serious offences such as murder, manslaughter, grievous bodily harm, wounding, assault occasioning bodily harm and careless driving; providing that a person is eligible for

funeral expense assistance of up to \$8,000 for the cost of the funeral of an unborn child who dies as a result of an act of violence; and changes to the Criminal Code to clarify and enable the name of an unborn child or a description of an unborn child to be stated in an indictment for an offence committed in relation to a pregnant person that allegedly results in the destruction of the life of an unborn child.

Sarah and Peter Milosevic support the recognition of an unborn child who has been killed due to criminal conduct, stating in their submission—

... the court at the time acknowledged that ... caused the Death of Sophie Ella. But there was no law that he could be charged under.

...

The impact on a family that loses a child because of someone else actions adds another layer of grief, there was no justice for us. He lost his licence for 5 months and a \$950.00 fine for the cost of a life, this law reform while it doesn't bring your child back at least you know that your baby counted. She received a birth Certificate, death certificate and was count as a death on the road toll, the only place she wasn't counted was in a court ...

Sarah said at the hearing—

... having your child acknowledged as an unborn child and not a fetus, which is not a very nice term when you are going through what we have been through, gives a sense of healing. I talk to a lot of women who have lost children.

...

... having that acknowledgment of your child helps in the healing process. It helps you to heal and grieve and to know that your child mattered, just as much as they mattered to you.

The bill introduces an aggravating factor. An aggravating factor only comes into play after the person has been convicted of the offence. After conviction, the bill will require the court to consider the fact that the offence for which the person has been convicted in relation to the pregnant person also resulted in the death of an unborn child. I would like to take the opportunity to acknowledge the work of the member for Lockyer, Jim McDonald, in his support of the Milosevic family in bringing about this amendment. The member for Lockyer just made his contribution to this House. Every now and then we hear a contribution in this House that touches everybody. That was such a moment.

The bill also proposes to allow a law practice, QLS and community legal centres to destroy or dispose of any client documents if seven years have passed since the completion of the matter and the law practice has been unable to obtain instructions for a client despite making reasonable efforts to do so. That is a good amendment.

The bill proposes to: increase the prescribed amount under section 311 of the LP Act which triggers cost disclosure obligations for a law practice from \$1,500 to \$3,000; provide that an abbreviated cost disclosure obligation will apply if the total legal costs in a matter, excluding disbursements, are not likely to exceed \$3,000; and provide that no cost disclosure obligations will apply if the total legal costs in a matter, excluding disbursements, are not likely to exceed \$750.

The QLS broadly welcomed the proposal to amend the LP Act to increase the detailed disclosure threshold from \$1,500 to 3,000, however expressed concern that the amendments will result in practices needing to provide abbreviated cost disclosure for legal costs between \$750 and \$1,500, something not currently required. The QLS recommended that the Queensland government impose a \$5,000 upper threshold for the use of abbreviated cost disclosure. Such excessive regulatory burden results in solicitors having to spend more of their time on attending to cost disclosure requirements, and this is ultimately against the interests of the clients. DJAG noted stakeholders' concerns and stated that it would give further consideration to suggestions regarding the cost disclosure thresholds.

The bill also proposes to amend the Oaths Act 1867 to: change what information witnesses are required to provide in affidavits and statutory declarations, including removing the requirement for justices of the peace and commissioners for declarations to include their places of employment; and better reflect the relevant offences in the Criminal Code that apply to knowingly making a false affidavit or statutory declaration. Disclosing a witness's place of unemployment could inadvertently disclose the location of a domestic and family violence victim and could pose a safety risk to the victim, children and other affected persons as well as the witness and other employees at the witness's place of employment.

The amendments to the Electoral Act 1992 include: allowing completed postal votes that are not inside the reply-paid envelopes supplied by the Electoral Commission of Queensland to be counted; and expanding the definition of 'special postal voter' to include electors who are patients in a hospital that is not a polling place or who are ill or infirm and unable to travel to a polling place. The Electoral Commission of Queensland stated that it is particularly supportive of the amendments to save postal votes that are not enclosed in ECQ supplied envelopes. ECQ estimates that, based on figures from the 2020 state election, up to 30 per cent of the 57,000 rejected postal votes could have been saved under

this provision. ECQ submitted that the amendment would bring Queensland into alignment with other jurisdictions around postal votes. We would support that amendment. What a difference that may have made in the seat of Bundaberg!