




Speech By
Robert Skelton

MEMBER FOR NICKLIN

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JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

 **Mr SKELTON** (Nicklin—ALP) (6.21 pm): I rise to support the Justice and Other Legislation Amendment Bill 2023. This bill proposes miscellaneous amendments to multiple pieces of legislation across a diverse range of subject matter. The overarching focus of the bill is to clarify, strengthen and update legislation concerning the administration of justice, including legislation which relates to the operation of courts and tribunals, the regulation of the legal profession, the conduct of civil proceedings and electoral matters. This bill amends more than 30 different laws, so in the interests of brevity I will touch on some of its key reforms.

One of the key measures in this bill is delivering on the Palaszczuk government's commitment to consider reforms to better recognise the deaths of unborn children as a result of criminal conduct. The loss of an unborn child is devastating and to lose an unborn child as a result of another person's criminal conduct is profoundly distressing for the parents, their families and the wider community. Tragically, several families in Queensland have suffered this horrendous loss. In some cases, the criminal conduct has also resulted in the death of an expectant mother and others. Amendments in the bill will strengthen the recognition of the loss of an unborn child as a result of criminal conduct and improve the support available to families. The amendments do not displace recognition of the harm caused to the expectant mother as the primary victim of the criminal conduct, but they ensure independent recognition of the unique harm caused when the life of an unborn child is ended as a result of criminality.

Importantly, the amendments also do not affect a woman's ability to obtain a lawful termination of pregnancy and do not displace the born-alive rule, which deems legal personhood to apply when a child is born in a living state independently of its mother. This rule ensures that an unborn child does not have a legal personhood that can compete with the rights of the mother. The amendments in the bill provide a way to maintain this fundamental aspect of the law while creating better recognition of the death of an unborn child as a result of criminal conduct.

The bill also amends the Victims of Crime Assistance Act to expand the definition of 'victim' for the purpose of the Charter of Victims' Rights and how prescribed persons deal with victims. The expanded definition includes a person who suffers harm because they would, if an unborn child had been born alive, have been a family member of the child in circumstances where a crime is committed against a pregnant person and as a result of the crime the pregnant person dies or sustains a bodily injury resulting in the destruction of the life of the unborn child.

The bill also includes amendments to the Criminal Law (Sexual Offences) Act 1978 which remove the prohibition on identification of an adult defendant charged with a prescribed sexual offence prior to finalisation of committal proceedings. These amendments are made in response to the government's commitment to implement recommendation 83 of the second report of the Women's Safety and Justice Taskforce. The taskforce, led by the Hon. Margaret McMurdo AO, concluded there was no justification for the law to treat defendants who are charged with a prescribed sexual offence differently to those

who are charged with any other criminal offence. Under the current law, only defendants charged with rape, attempted rape, assault with intent to rape or sexual assault have their identity protected before committal. Other accused, even alleged murderers, defendants accused of indecently assaulting a child and accused drug traffickers do not have this protection.

The amendments in the bill mean that there will no longer be a distinction between those prescribed sexual offences and other offences. The amendments will mean that a defendant charged with rape, attempted rape, assault with intent to rape or sexual assault will be able to be identified before going to trial. The existing distinction in the law is based, at least in part, on a harmful myth that a complainant in a sexual defence case is somehow less reliable than a complainant for any other offence and that a magistrate must scrutinise the complaint before a defendant can be identified. These amendments ensure that the criminal justice system does not continue to perpetuate this myth and that complainants in prescribed sexual offences are treated with the same dignity as complainants for all other offences. The amendment also aligns Queensland with all other jurisdictions in Australia which permit identification of a defendant during committal proceedings. The amendment also promotes open justice, which is fundamental to the administration of justice.

The Women's Safety and Justice Taskforce heard that victims are reluctant to report sexual offences to police and that conviction rates for these offences are alarmingly low. It said that increased media reporting of sexual offences in a trauma informed way can result in more victims coming forward to report sexual offences. The taskforce said that, if handled sensitively, accurate public reporting may also contribute to positive community discussions about gender-based violence, challenge stereotypes and reduce the level of secrecy and stigma involved. Removing barriers to that reporting is essential if we are to hold perpetrators to account.

An application for a non-publication order can be brought by the defendant, the victim or the prosecution. The court has to take into account a broad range of circumstances in considering whether to make the non-publication order. Regardless of who makes the application, the court will be required to consider the view of the victim about identifying the defendant. This is in keeping with the recommendation made by the taskforce and ensures victims are given a voice when these applications are heard. To ensure open justice is promoted, the amendments also provide a right of appearance to accredited media entities or any other person who the court considers has sufficient interest in the question of whether the non-publication order should be made. The media has an important role to play in open justice. It serves the public and ensures people know what is happening in the courts. These amendments will help it to play that role.

Defendants charged with a prescribed sexual offence will be able to be identified when the amendments commence, irrespective of when they were charged. That approach provides for the greatest clarity and is most consistent with the underlying policy intent of the amendments to promote open justice and consistency with other offences. Finally, the amendments also provide for a right of review before the Magistrates Court and make it an offence if a person or corporation contravenes a non-publication order. Importantly, these amendments do not vary existing laws, which prohibit the identification of a victim of sexual offence without their consent or the identification of a child. Where identifying a defendant is likely to lead to the complainant being identified, this would still be prohibited.

Victim-survivors and those who support them have spoken. The government has heard their voices. I thank the community, especially those who have been victims and have advocated and submitted in the formulation of this bill. I thank both the former and current attorneys-general and their department, the members of the committee, the secretariat and Hansard. I commend the bill to the House.