




Speech By
Sandy Bolton

MEMBER FOR NOOSA

Record of Proceedings, 12 September 2023

JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

 **Ms BOLTON** (Noosa—Ind) (5.27 pm): The Justice and Other Legislation Amendment Bill 2023 contains a range of amendments, as we have heard, to 16 various acts, most of which are administrative changes to improve the operations of government. However, there are also substantive policy changes introduced.

The bill will remove restrictions currently in place in the Criminal Law (Sexual Offences) Act 1978 which prohibit identification of an adult defendant charged with a sexual offence until the completion of a committal proceeding, and only if they are then committed to trial can they be identified. The argument put forward by government is that it will promote open justice by bringing defendants of sexual offences in line with all other criminal offences in Queensland regarding publishing information about a person accused of an offence, as well as other states. It also implements recommendation 83 of report 2 of the Women's Safety and Justice Taskforce.

The amendment includes an ability to apply to the court for a non-publication order with a three-day notice period for the application. The vast majority of stakeholders supported the amendment. However, there were issues raised. DVConnect submitted that abusive partners may use courts to create a sense of ongoing insecurity and distress for their victims. This can involve repeatedly filing unfounded claims, making false accusations or engaging in aggressive litigation to maintain power and control, further traumatising their partners.

In addition, expanding the use of preliminary disclosure to lower courts broadens both the number of people and the types of cases that can seek to access information about the other party before court proceedings. The Women's Legal Service Queensland also noted that the change may increase the reluctance of some victim-survivors to report sexual assault due to the fear of retaliation by the defendant. The department in response to this said that the legislation will be reviewed as soon as practicable five years after the last of the relevant legislative amendments from both taskforce reports has commenced.

The committee report recommended that the government monitor whether the naming of offenders unintentionally creates barriers to women reporting sexual offences. Legal Aid Queensland submitted that the *Hear her voice* report identified these changes should be introduced in conjunction with a guide for the media to support the responsible reporting of sexual violence. The department stated they anticipate the development of the interim guide to be completed by January 2024—before the commencement of the amendments—and the committee recommended that the government prioritise this work to ensure this responsibility is understood.

The Queensland Law Society raised the time period of three days for an applicant seeking a non-publication order, stating that it creates a number of hurdles for the defendant and complainants. Other states and territories do not always have a time constraint on these applications, but where they do, as in Victoria, it is three days. The department argued that it is also consistent with other urgent applications in Queensland courts.

The bill also proposes to better acknowledge the deaths of unborn children due to criminal conduct. These changes come after a decade of advocacy by Sarah and Peter Milosevic, who were the victims of a criminal motor vehicle crash. They tragically lost their unborn daughter, Sophie, at 39 weeks and six days. My deepest sympathy and appreciation goes to them both and the member for Lockyer for his work. The three main changes regarding unborn deaths are as follows: (1) allows the death of an unborn child to be an aggravating factor in sentencing for serious offences such as murder, grievous bodily harm and dangerous operation of a motor vehicle; (2) enables an unborn child victim to be named on an indictment; and (3) expands the definition of victim to include an unborn child for the purpose of the Victims of Crime Assistance Act.

Legal Aid Queensland stated that the current law already appropriately addresses the death of an unborn child and expressed concerns that the changes are misguided and may cause injustice and even harm where a pregnant mother's self-regarding behaviours, particularly drug use, results in fetal harm. However, the department pointed out that complexities in the current law mean it is not equivalent to the proposed amendments and the bill does not create any new offences and thus cannot create new offences for when a pregnant mother's self-regarding behaviours result in fetal harm. They also confirmed that adding an unborn child's name to the indictment does not change the offence or criminal culpability. The committee also recommended that the bill be accompanied by trauma informed training for those who interact with victims in the criminal justice system, including legal services, victims' services and investigating and prosecution bodies. This is desperately needed.

Finally, the QLS raised the problems that can arise with these long and disjointed bills which contain many, many amendments and highlighted the previous comments of the Legal Affairs and Safety Committee back in report No. 18 of 2012, which noted that these types of bills may arguably breach the fundamental legislative principle in section 4(2)(b) of the Legislative Standards Act 1992. Even without reference to the Legislative Standards Act, it is detrimental to representative democracy when members of parliament must vote up or down on a bill containing wildly different provisions, making it difficult for their electorate to understand their position on any of them. This was also emphasised in the statement of reservation, and I wholeheartedly agree.

This bill has provided insights into the trauma inflicted every day in our communities by those who have little regard for others through their dangerous behaviours as well as concerns about disclosure. However, the number of Queenslanders who may be saved as a result of the publication of an identity is extremely relevant. There has not been any evidence in other jurisdictions of identity disclosure creating unintended consequences, including the tarnishing of reputations. This should mitigate these concerns.

I want to thank our chair, the member for Toohey, and my fellow members of the Legal Affairs and Community Safety Committee for their efforts on this bill, our secretariat for their incredible work and all Queenslanders who participated in this inquiry. To Sarah and Peter and all who have lost their children through acts of violence: our hearts go out to you every day. I commend the bill to the House.