Speech By

Hon. Amanda Stoker

MEMBER FOR OODGEROO

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DEFAMATION AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. AJ STOKER (Oodgeroo—LNP) (4.22 pm): There has been a large amount of concern expressed by families about the role of social media, internet addiction and other matters arising from the predominance of the digital world in the lives of people young and old in this state. It affects all age ranges. There is a real concern about how to protect reputations online, whether that is because of untrue information being spread, to use an analogy, via old-fashioned rumours, or whether it is related to the advent of fake images being generated by AI or modified using digital means. There is a lot of anxiety around this field in the hearts and minds of Queenslanders, so having laws that clearly set the stage for fairness on this front really matters. It can seem like it is the stuff of lawyers until all of a sudden it is your image that is being used or misused online or it is a mistruth about you or someone you love that is happening online, so this is a bill that really matters to Queenslanders and Queensland families.

I can tell you that it does not matter to Labor. They must not think these concerns of Queenslanders matter because, to paraphrase a tourism slogan, where the bloody hell are they? They are not in the chamber, I can tell you that for sure.

Mr DEPUTY SPEAKER (Mr Furner): Member for Oodgeroo, you can withdraw that unparliamentary language.

Mrs STOKER: I withdraw. They are not here debating and refining—

Mr DEPUTY SPEAKER: Member for Oodgeroo, I gave you a direction to withdraw that unparliamentary language.

Mrs STOKER: I did. I will do it again: I withdraw.

A government member: I heard you twice.

Mrs STOKER: I did, yes. I have twice withdrawn and I absolutely do. They are not here defining, refining and debating this bill, that is for sure. Who knows where there are more important things to do. They are not fighting to have avenues for justice when the online world goes bad. In fact, that lack of care characterises their approach to this issue.

It was September 2023 when the Standing Council of Attorneys-General did all the work needed for a national agreement on these amendments and all bar South Australia got on board. They did not even bother finishing the job when they were in government. Now we are two years on from that point, and amongst all of the activity of getting a new government up and running there has been enough care and effort from the LNP to get the work done to get this bill before the parliament. While I am sad for the delay, at least under this government Queenslanders can see that someone cares.

Much of this bill deals with the scope of the liability of a digital intermediary for publications that are made online, particularly where that publication is effected by a person other than the intermediary. It all sounds a bit technical, but the definition of a digital intermediary encompasses a range of actors in the internet economy. It covers search engine providers, social media services, storage services and

internet service providers. It is probably best illustrated by an example like a community Facebook page, where various members of the community can make posts about local events, put out calls for help or share information. There are plenty of them in the Redlands. Those pages are a really important part of our community. Facebook as well as the internet service provider of an internet user would each be considered digital intermediaries in that situation.

The term 'digital intermediary' arose because of cases like Fairfax Media Publications Pty Ltd v Voller in the High Court—it became known as the Voller case—which held in a majority decision of five judges to two that a social media service provider like Facebook would be held liable for the comments made by users of the site as they post, even though the social media service Facebook did not post the words and did not have a moderation role in the administration of the page. Because of that case and a couple of others that followed on from it, the Standing Council of Attorneys-General—known as SCAG—produced some expert committees. They realised that a new framework was going to be needed that more reliably linked liability for these comments online with the person who actually made them, and that is just common sense.

Here is the solution put forward in this bill, which is the product of the expert committee's work and the subject of that national agreement. If a digital intermediary is a limited one that really just provides what is called a caching service, a conduit service or a storage service, and it does not play an active role in the publication—for example, internet service providers, Dropbox, a cloud storage service provider or simply a provider of communication software like Microsoft providing Outlook email software, even a search engine—it is exempt from liability under defamation law for the publication of digital matter.

That makes common sense because none of those types of services formulate, express or even moderate the words or images that could potentially constitute a defamatory communication. Those types of businesses should have clarity that they are not captured because of some of those very broad decisions over the last few years from the High Court. That clarity is really commercially important. Businesses need to know they are not going to be caught in the crossfire of actions taken by others over which they had no say, they had no role and they had no oversight. We cannot expect people to invest in this jurisdiction without having clarity over the behaviours for which they are going to be held liable.

That brings me back to something I say often in this place. Getting the unglamorous work of government right—making rights and responsibilities clear and providing simplicity in terms of legal obligations and red tape—really is essential to making Queensland an attractive place to invest. That matters because it is key to ensuring that Queenslanders have access to great jobs that pay well, that we have rising productivity and better living standards and that we are getting our state's books balanced. All of those things are the product of doing the unglamorous work of government well.

Where a digital intermediary is one where users are able to leave comments—like the example I gave earlier of a social media page on Facebook—the bill provides for a defence in limited circumstances. To be able to access the defence as a service provider, like a Facebook, that service has to have a clear and accessible complaints mechanism, and if a complaint is received they have to take reasonable steps to remove or prevent access to the matter within seven days of receiving the complaint. That is important to make sure there are fast, free and effective mechanisms for the removal of material that is defamatory. Quite frankly, that is the next best outcome to there being no defamation at all. Sorting these things out in court is notoriously expensive, so any avenues we can make available to nip it in the bud fast are really important.

I have been talking so far about the civil action of defamation, but the bill also provides that these defences apply to the offence of criminal defamation that is present in section 365 of the Criminal Code of Queensland. The bill also makes some changes to the processes for making an offer to make amends. That is a procedural step that is already part of the process for trying to resolve a dispute of this kind, but it makes it so that it is now possible to include an offer to take steps to remove or prevent access to the content that is alleged to be defamatory. Sometimes that is the desired result in itself; people just want the bad things to be gone. Other times it will be a remedy that is needed alongside other steps—like perhaps corrections, apologies, compensation or other measures.

There are amendments to make sure courts are doing the right thing when a party wants to get to the bottom of the identity or address of someone who is posting defamatory material online—like the kind of nasty trolling that has become all too familiar to us all. It needs to be easier, and this law helps to make it easier to pull the mask off gutless, anonymous trolls who behave online in ways we would never allow in a face-to-face interaction. It allows courts to make orders to digital intermediaries who are not party to court proceedings to nevertheless direct them to remove material or prevent access to it where that material is defamatory. We can then get more effective remedies even where those intermediaries are not a party to defamation proceedings.

The last measure I want to mention is in the amendments. It provides a narrow amendment to the law of evidence relating to fresh and compelling evidence to ensure that Queenslanders affected by Labor's DNA lab debacle get the benefit of the use of that evidence even where there has already been a trial of an accused and they were acquitted because of the absence of that reliable DNA evidence. This has to happen. It is vital to make right the incredible injustice that came from Labor's incompetence in their management of Queensland's DNA lab. It does not wash and it requires a remedy. In this amendment we are taking the steps needed to make sure that victims right across the state get justice in this field.