



Speech By


David Lee

MEMBER FOR HERVEY BAY

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DEFAMATION AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

 **Mr LEE** (Hervey Bay—LNP) (4.52 pm): I rise to speak to the Defamation and Other Legislation Amendment Bill 2025. Over the last two decades there has been an explosion in digital technology and that has given rise to a lot of legal challenges, both new and emerging. At the outset let me congratulate the Attorney-General and Minister for Justice and Minister for Integrity on her hard work in bringing this important bill to the House and also my colleagues on the relevant committee. Hervey Bay is not immune from the problems with social media. It has community pages, neighbourhood pages, relevant sporting Facebook pages—

Mrs Poole: Yes, and they're volunteers.

Mr LEE: I take that interjection from the member for Mundingburra. Yes, we also have our fair share of trolls and keyboard warriors. This amendment to the Defamation Act 2005 will ensure that we have contemporary and fit-for-purpose defamation laws that address the digital age.

Mr Dalton: The modern age.

Mr LEE: The modern age; exactly. I take that interjection. This bill also makes amendments to the Criminal Code Act 1899—I will talk about the amendment to section 365—but it is about adopting the nationally agreed Model Defamation Provisions in relation to the liability of digital platforms and new and emerging issues in defamation law. We are trailing the rest of Australia—and have been for some time—and these amendments will bring Queensland into line with defamation laws in New South Wales, Victoria, the ACT, Tasmania and the Northern Territory. Our defamation laws have been harmonised on the basis that uniformity of defamation laws is desirable to prevent forum shopping and provide certainty when publications widen beyond jurisdictional boundaries.

This bill will enact the reforms agreed to by the Standing Council of Attorneys-General. Clause 5 of the bill provides for some conditional exemptions from liability for publication by digital intermediaries of digital matter in the following circumstances, and there are two exemptions. The first is where the digital intermediary's role is limited to providing a caching service, conduit service or storage service and did not take an active role in the publication, and examples of that will be Telstra, Microsoft, Outlook or Dropbox.

The second exemption is where the digital intermediary is a search engine provider—for example, Google—which simply provides an automated process for users to generate search results identifying or linking to a webpage on which the matter is located. This exemption arises from a High Court case in *Google v Deferos*. The proposition for that case was that a search engine provider is generally not liable for defamatory matters in which hyperlinks are generated organically by the search engine provider. A judicial officer will be required to determine whether a defendant has a digital intermediary exemption as soon as practicable before a trial for the proceedings commences unless

satisfied that there are good reasons to postpone the determination until a later stage in the trial. The contextual background that gave rise to these amendments was several problems in litigation, including difficulty in the current defence of innocent dissemination to contemporary digital intermediaries.

With regard to the digital intermediary defence, clause 9 of the bill provides a digital intermediary with a defence in relation to a digital matter posted by a third party if reasonable steps are taken, whether before the complaint is given or within seven days after the complaint is given, to remove or prevent access to the matter. To use the defence, the defendant must establish that they were a digital intermediary in relation to the publication of the digital matter at the time of the publication and had an accessible complaint mechanism for the plaintiff to use. However, the plaintiff may defeat that defence where they can establish that the defendant was motivated by malice in establishing or providing the online service by means of which the matter was published.

The bill also provides for offers to make amends in relation to the publication of digital matter by amending section 15 of the Defamation Act to include taking access prevention steps in relation to the digital matter or allowing a publisher to offer to take access prevention steps in addition to either or both of the remedial offers in sections 15(1)(d) and (e) of the Defamation Act.

Clause 20 of this bill will also amend the existing criminal defamation offence under section 365 of the Criminal Code to provide for a new section 31A defence for digital intermediaries and new statutory sections 10C and 10D exemptions from liability to operate as a lawful excuse in criminal defamation proceedings.

The bill also provides for a defence of absolute privilege to publications of defamatory matter to officials of Australian police forces or a service of an Australian jurisdiction while the official is acting in an official capacity—a very sensible amendment. This defence is on the basis that there has been anecdotal feedback that the threat of defamation proceedings has precluded some people from making complaints to our law enforcement agencies. Once established, the defence of absolute privilege is indefeasible.

In relation to giving notices and other documents, this bill provides some technical amendments to allow notices and other documents to be given or served by email, messaging or other electronic communication to an electronic address or location identified by the recipient.

In closing, this bill provides a contemporary fit-for-purpose defamation law that meets the new and emerging legal issues in the digital world. I commend the Defamation and Other Legislation Amendment Bill 2025 to the House.