Speech By

Hon. Meaghan Scanlon

MEMBER FOR GAVEN

Record of Proceedings, 11 December 2025

DEFAMATION AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. MAJ SCANLON (Gaven—ALP) (11.53 am): I rise to speak on the Defamation and Other Legislation Amendment Bill. The Queensland Labor opposition supports this bill that implements the Standing Council of Attorneys-General approved stage 2 amendments to the Model Defamation Provisions, modernising Queensland's defamation laws and ensuring they remain both fair and fit for purpose, particularly in an evolving digital landscape. I will come to the substantive principles of the bill in a second, but I think we need to take a moment to address the circumstances requiring this bill to be deemed as urgent.

When a non-contentious bill suddenly attracts a queue of no doubt government speakers with a newfound enthusiasm for defamation law, I think it is abundantly clear that the real reason is not actually to debate this legislation but to justify guillotining the debate on the health bill, the Energy Roadmap bill and the greenhouse gas storage bill. Just like it was hard to ignore all of those government members who suddenly had a keen interest in the urgent Trusts Bill—which was urgent but then it was not urgent—

Mrs FRECKLINGTON: Mr Deputy Speaker, I rise to a point of order on relevance.

Mr DEPUTY SPEAKER (Mr Krause): I will seek some advice on the point of order. Member for Gaven, I understand the point you have been making and I would encourage you to come back to the bill.

Ms SCANLON: Thank you, Mr Deputy Speaker. I am just talking through the circumstances in which this bill is being debated in the House today. I suspect this was a deliberate ploy by the government to try to eat up time and avoid scrutiny and questions on topics that they do not want to answer. I will turn to the bill itself.

Our defamation framework has long played an important role in balancing two fundamental values: the protection of individual reputation and the protection of freedom of expression. The Model Defamation Provisions adopted across jurisdictions in the early 2000s were originally designed when publishing was the domain of traditional media. Of course, what we face today is profoundly different. The pace of technological change, the rise of social media and the growth of digital platforms have transformed how people communicate, how information spreads and, importantly, how harm can occur.

In recent years the High Court has handed down several significant decisions on the liability of digital intermediaries. Those decisions—such as Fairfax Media Publications Pty Ltd and Others v Voller in 2021 and a range of other cases—have shaped case law and have informed the amendments before us. In Voller the High Court confirmed that those who maintain Facebook pages or other online forums can be considered publishers for the purposes of defamation law, even when the defamatory material

was posted by a third party. This decision had major implications for community groups, local organisations, media outlets and everyday Queenslanders who manage online spaces, including those of us in this room.

In another case, the court found that Google had not acted as a publisher when its search engine automatically generated hyperlinks to defamatory content. The court recognised the difference between active publishing and the passive, automated functions that underpin much of the digital world. These decisions highlight the need to update our laws so they can properly reflect the different roles and responsibilities of digital platforms, search providers and content hosts.

The part A amendments contained in this bill do exactly that. They clarify when a digital intermediary should and should not be held liable for defamatory material posted by others by providing certain limited protections. Under these amendments, digital intermediaries are exempt from defamation liability where their role is limited to providing a caching, conduit or storage service and where they have not taken any active steps to initiate, promote or edit the material. This change further helps balance those two fundamental values by providing digital intermediaries a new defence to liability if the intermediary can demonstrate they have an accessible complaints mechanism. This defence also provides for clear timeframes of seven days to action a complaint after it was given. This timeframe both addresses the complainant's need for a prompt outcome and provides sufficient time for a digital intermediary to take action where necessary.

Search engine providers are also similarly exempt from defamation liability where their role is limited to an automated process that simply produces search results identifying or linking to a page where the content appears. These targeted measures ensure that passive intermediaries are not unfairly held liable, while still ensuring that individuals can seek redress when genuine harm occurs. The bill amends section 365 of the Criminal Code to ensure that this new defence and these statutory exemptions from liability operate as a lawful excuse in criminal defamation proceedings.

The bill also strengthens the approach to resolving disputes early and without unnecessary litigation. Currently, the Defamation Act 2005 encourages parties to resolve matters through mechanisms like an offer to make amends. The amendments will now allow those offers to include access prevention steps such as removing content, blocking it or restricting access to it. This gives parties a practical, proportionate way to address harm before matters escalate to court and reflects the reality that online harm often spreads quickly and needs rapid resolution.

We also know that one of the most challenging aspects of defamation matters involving digital platforms is identifying the person responsible for the publication. Posters may use pseudonyms, temporary accounts or platforms that do not readily disclose identifying information. In Queensland, our Uniform Civil Procedure Rules, specifically rules 208C and 208D, already allow the courts to make orders to help ascertain the identity or whereabouts of a prospective defendant or to enable preliminary disclosure in certain circumstances.

The bill builds on these existing provisions by requiring courts, when making orders for preliminary discovery, to consider the objects of the Defamation Act and any relevant privacy, safety and public interest concerns. This is a careful and necessary safeguard. It ensures that, while plaintiffs may seek the information they need to pursue a claim, courts must also consider whether disclosing a person's identity or address may put them at risk. The bill specifically contemplates situations such as domestic violence, where an alleged perpetrator may seek disclosure of a victim-survivor's location. The amendments ensure that courts must consider the potential for harm before making such an order. This is a thoughtful balance, protecting the rights of applicants by safeguarding vulnerable individuals whose safety may be jeopardised by disclosure.

The bill also empowers courts to make orders requiring digital intermediaries, whether or not they are parties to proceedings, to remove or block access to defamatory digital matter. This reflects the reality that digital spaces are interconnected and that platforms often hold the technical ability to restrict or remove content more effectively than individuals.

Finally, the bill modernises how notices and documents can be given or served under the Defamation Act. Currently, the act allows notices, such as concerns notices, to be emailed to an address nominated by the recipient, but in many cases today communication occurs through a range of digital channels. The amendments, therefore, allow for these notices to be served through an electronic communication method, including direct messaging, where the recipient has indicated an electronic address or location for receiving documents. This is a practical reform that reflects modern communication habits and ensures legal processes remain accessible and efficient. It also helps parties communicate quickly, which is essential in resolving disputes early and limiting the spread of harm.

Part B amendments address a gap in the current defamation framework concerning the defence of absolute privilege. It is a defence under both general law and section 27 or the Defamation Act if the defendant in proceedings for the publication of defamatory matter proves the publication occurred on an occasion of absolute privilege. At present, neither the general law nor the act extend the absolute privilege to publications made to police forces or services. This gap has created circumstances where individuals may be deterred from reporting alleged unlawful conduct out of fear that disclosure could expose them to defamation proceedings. To address this, the bill amends section 27 of the Defamation Act to extend the defence of absolute privilege to publications made to officials of Australian police forces or services when those officials are acting in an official capacity. This will ensure people can provide information, make complaints or raise concerns with police without risk of defamation liability for the act of reporting. I do note, though, that the Crime and Corruption Commission submission also sought for this protection to apply to CCC officials as a complaints-handling body, as allowed for by the Model Defamation Provisions. However, as both the CCC and the department have noted during the committee process, the CCC does already have an equivalent protection under its governing legislation.

Notably, the CCC submission also referred to the consultation process. While the CCC were consulted during the Standing Council of Attorneys-General process review of the model provisions, the CCC did note that they had requested further consultation with the Queensland government ahead of the implementation of this legislation. The CCC was rather blunt that that never happened. When the department were asked about this during the public briefing, they acknowledged the consultation that was already undertaken during, as I said, that SCAG review.

Effectively, the government have washed their hands of doing what I think was a pretty reasonable request by the CCC and engaging with them in good faith in the introduction of this bill. We all know that those opposite have long grandstanded about the CCC for political pointscoring purposes and we all know they have made many promises—the Premier and his cabinet ministers—about listening to experts. However, just like we consistently see, they have continued to disregard those experts. The CCC asked the LNP government to be consulted and evidently, based on the evidence that was provided during the committee process, that did not occur.

Collectively, these amendments strike the right balance. They modernise our defamation laws to reflect the digital environment in which Queenslanders live and communicate; they clarify responsibilities, provide appropriate protections and strengthen pathways for early and fair dispute resolution; they recognise the important role of digital platforms in our daily lives without imposing unfair or reasonable burdens; and they protect vulnerable people by ensuring safety considerations are central to the court's decision-making and by removing barriers to report complaints to police.

Queenslanders should be able to interact online, express their views and participate in community life without fear that digital platforms will become places of unchecked harm. That is why the Labor opposition will be supporting this bill.