

**CRIMES AMENDMENT (PROTECTION OF INNOCENT ACCUSED)  
BILL**

**Second Reading**

**The Hon. DAVID OLDFIELD** [3.31 p.m.]: I move:

That this bill be now read a second time.

The bill relates specifically to those who find themselves in the position of being tried by media, and hence are found guilty before having ever had the opportunity of a trial.

**Debate adjourned on motion by Hon. David Oldfield.**

**Second Reading**

**Debate resumed from 4 September.**

**The Hon. DAVID OLDFIELD** [11.17 a.m.]: The Crimes Amendment (Protection of Innocent Accused) Bill seeks to protect the identity of those who ultimately will be acquitted of accusations or charges. Such acquittal may occur through accusations that never proceed to charges, the dropping of charges, or being found innocent by the court process. It is not the intention of this bill to provide protection of any kind for those shown to be guilty through conviction resulting from the court process. It is fair and reasonable that those who have been found guilty of a crime have their identity disclosed to the public at large. However, it is not fair that a person found not guilty by a court should have their life destroyed by the notion of guilt established merely by the media. There is an unfortunate widespread public acceptance that where there is smoke there is fire. I imagine most people in this place have been the subject at some time of totally unfounded gossip, and accusations in some cases, where matters were so serious that the media speculated on corrupt conduct or the possibility of criminal charges. Anyone who has ever had a dirty little story invented by an enemy knows full well there can be lots of smoke without so much as the smallest flame.

If we believe that one is presumed innocent until proven guilty, then why should those who are innocent suffer the horrendous penalty of public humiliation and vilification as a consequence of widespread media coverage? Is there anyone here who denies that the general rule is that accusations are found on the front page yet any acquittal or related finding of innocence will often not rate a mention? Is there anyone here who believes that is right or fair? This bill in no way attacks freedom of speech. It will, however, protect the innocent from having their identity disclosed. Crime can be reported. The victim can be interviewed. The apprehension of the suspect and details of the charges can be made public. The only thing the bill prohibits is the identification of the accused until that person's status is changed from accused to convicted. I would hope the bill might also prohibit the several conversations currently going on that perhaps should not be taking place.

Until that person's status is changed from presumed innocent to proven guilty, widespread knowledge of the identity of the accused has no more public value than gossip. The public gains nothing from knowing such a person's identity, but accused persons may lose almost everything by having their identity publicly known, despite their complete innocence. If the accusations are found ultimately to be true and the accused is shown ultimately to be guilty then after the fact one can excuse and consider appropriate any public condemnation as a result of such criminals having their identity known. But the same cannot be said of an innocent person wrongly accused, or in some cases intentionally accused, despite their innocence for reasons of perverse pleasure or possible financial gain by others. A report on the bill by the Legislation Review Committee is so demonstrably flawed that it was written either from a position of extreme bias or those responsible do not understand the issue or the bill. One section states:

This Bill further restricts the public's right to openness of criminal proceedings with a view to protecting accused persons by making it an offence to reveal the identity of an accused person unless they are convicted. Clearly, the impact of this kind of public exposure on people's personal and professional lives can be devastating and may be seen to undermine the fairness of their trial. Where issues of fairness are raised by the accused counsel, the court will make appropriate directions to the jury and, in some cases, change the trial venue.

What a nonsense is that? How do directions to the jury or changing the trial venue stop an innocent person's life from being destroyed in the media? Another section states:

In creating this new offence, the Bill diminishes the public's ability to be informed of the apprehension of suspects and any subsequent proceedings. The public has a genuine interest in knowing that those who allegedly endanger the community have been apprehended and that they will face a fair trial. They have an interest in knowing the identity of the accused in many, if not all, cases. This interest may relate to public safety and confidence in law enforcement and the legal system itself.

Such errors diminish your faith in the realistic approach of the assessor. Did these people read the bill? The bill does not preclude the public from knowing that a suspect or suspects have been apprehended. The bill does not preclude the public from knowing that those who have been apprehended will face a fair trial. No-one need know who the accused are to feel safe or have confidence in law enforcement and the legal system. All they need to know is that a person or persons have been apprehended and will face justice. The bill does not in any way prohibit that information from being made public. The flawed material states further:

Proposed subsection 583 (2) (ii) of the Bill makes it an offence to publish matter that is likely to lead to the identification of the accused. In circumstances where the alleged facts of the offence are unlikely to indicate the identity of the accused, it could become an offence to merely publish the nature of the matter being proceeded with. This could greatly restrict the public's ability to know whether or how a matter was being dealt with, particularly in cases of general public notoriety.

Nothing in the bill relates to the publication of the nature of the alleged offences. Nothing in the bill stops the publication of reports that the matter is being dealt with. The report also contains this drivel:

This Bill clearly trespass on the right to free speech. However, while the right to free speech may be considered essential for democratic society, it is not absolute and it has been long accepted that, in certain circumstances, freedom of speech needs to be limited to protect the reputation of individuals.

This point is just plain contradictory. It wrongly states that the bill trespasses on freedom of speech and then goes on to state the need to protect the reputation of individuals. The report also states:

Proposed subsection 583 (2) also makes it an offence for the accused to publish his or her own identity as an accused person. This would appear to restrict an accused person's ability to use any kind of publicity in aid of their defence, whether in order to seek information or for other means. This also appears anomalous given that the intention of the Bill is to protect, rather than control, the accused person.

In the vast majority of cases it is exceedingly unlikely that accused persons would wish to publicise themselves as a person accused of crimes, but suitable amendment would erase any concern without affecting the bill's intention to protect the innocent accused. The bill does not hinder the safety of the community or justice in relation to the apprehension of suspects for criminal proceedings, as it does not apply to the publication authorised by the Commissioner of Police for the purpose of apprehending a person who is accused of having committed an offence; a publication in the course of criminal proceedings relating to the offence by a witness or an officer of the court; an official law report of the criminal proceedings or any official publication in the course of, and for the purpose of, criminal

proceedings relating to the offence concerned; the supply of transcripts of criminal proceedings to persons with a genuine interest in those proceedings or for genuine research purposes; and a publication made after the accused person's death.

Nefarious people make false allegations for all manner of reasons. They are motivated by misplaced notions of vengeance, personal gain financial or otherwise, different beliefs, opposing views and sometimes political persuasion. If the unfortunate target of allegations happens to have a public or, perhaps, industry profile then the media attention on them skyrockets proportionally. Many decent law-abiding citizens have had their lives devastated by allegations given widespread media attention. One such example is Kilner Mason, who was enjoying a successful career as a film director. He was respected by his peers and those who sought his expertise, but like all successful people he had his enemies. There were those who were all too happy to make sure public allegations made against him would get maximum airing among his clients in Australia and throughout South-East Asia.

Mr Mason suffered the terrible public shame of being prominently featured in his local newspaper as a rapist. If Mr Mason had been a rapist he would have received no sympathy from me. I would have been happy to assist in spreading the word, as most certainly would many others, especially the victims and families of victims of this most atrocious and violent crime. Except that Mr Mason was not a rapist. He had not been convicted. Despite the accusations and although he was charged, ultimately he never went to trial because the Director of Public Prosecutions dropped the case. There was evidence that his accuser was lying. Even more so, police informed Mr Mason that his accuser had admitted the accusation was not true.

In between time Mr Mason had been shunned by people he thought were friends and abused by people in his industry, and had lost millions of dollars in business from customers who considered such media reports to be expressions of fact rather than unsubstantiated allegations. It is often said that people do not believe what they read in newspapers, but I put it to honourable members that what people believe or disbelieve about what they read in newspapers is dictated entirely by who the story is about and what that person is alleged to have done. Although what was suffered by Mr Mason should be enough evidence to prove just how such reports are believed and how dreadful their impact can be on the innocent accused. Perhaps we could step out onto Macquarie Street and take a poll on other such matters.

This House should remember the terrible treatment received by Joe Tripodi, member of Parliament. The difficulties he must have had in getting on with his life after the disgraceful public assault made on him will, I hope, always be a matter that the rest of us can only imagine. Mr Tripodi was never charged, but if we were to step out onto Macquarie Street and ask a few passers-by, or visit his electorate and speak to a few constituents, what impression do honourable members think they have been left with: suspicion, or thoughts of innocence or guilt? The Hon. Eddie Obeid also was publicly dragged to and past the point of humiliation, but no charges were ever laid nor were there any adverse findings. Yet if we were to ask talkback radio callers about the Hon. Eddie Obeid would they say innocent, highly suspicious, or guilty?

Members of this House should not delude themselves into thinking that such public disclosures aid one side or the other at any given time. All politicians are brought into disrepute by such allegations, so no side should think it will be advantaged by being able to slur the other at any given moment through the media's willingness to jump on a so-called good story. I have not raised these specific incidents to relive those events for those members; they have my sympathy. Indeed, I am on the public record as defending Joe Tripodi on previous occasions, not because I know him—I do not, really—but just because what was done to him was unfair, and, I believe, distorted and not based in truth. I simply use these matters to highlight for the benefit of other honourable members that they are far from immune from the matters that this bill seeks to rectify. This bill is not really about politicians. Many would say we are fair game. But should that be extended to us being unfair game?

I come back to Kilner Mason, who is a proven talent and is reasonably trying to make a dollar

in a competitive industry. Where there is smoke, is there always fire? Will it be your life and the lives of your loved ones that are one day destroyed by false allegations? Why the female involved in the Kilner Mason case made the allegations is unclear and may never be known, but whatever her reasons—vengefulness, or to seek compensation—they are irrelevant because the public humiliation and loss of businesses suffered by Mr Mason would not have been alleviated by knowing why she had chosen to falsely accuse him so terribly. Some may consider existing defamation laws provide adequate address, but the damage has already been done. Such action is often not realistic. Action takes years, and the expense excludes most people from even trying, especially against the billions of dollars at the fingertips of the media.

Successful defamation under such circumstances is to be applauded, but the compensation only helps to ease the pain of what this bill seeks to avoid. A recent case in the United Kingdom brought against television personality John Leslie has sparked the Ministers to consider a bill similar to the one I suggest. A British Broadcasting Corporation [BBC] report of 31 July 2003 states:

Labour's convener of the parliament's justice committee, Pauline McNeill, MSP for Glasgow Kelvin, said the case against John Leslie raises serious questions about the current system. You have to consider the consequences of all sides when anonymity is not granted. I think you would have to consider what the specific reasons would be that you would not be granting anonymity.

The Commons Home Affairs Committee has recommended that suspects should not be named at the point of charge, though the members of Parliament could not agree on whether such protection should extend to the trial itself. It was quoted after charges were dropped that the Leslie scandal was "the latest example of the evil consequences of publicity, police and prosecutors combining to trial by media". After charges against Leslie were dropped, the prosecutor, Richard Howell, said in court:

The prosecution gladly acknowledges that he will leave this court without a stain on his character from this investigation.

This statement has been made in complete denial of the damage that has already been done to Leslie's character and to his career. Leslie was arrested on 5 December 2002 and charged in June 2003 with two counts of indecent assault. During this time, he was sacked from his \$250,000 a year job before charges were finally dropped in July 2003. In an interview with the *Daily Express* newspaper in the UK, Leslie told how his weight seesawed as he stopped eating and then binged on poor quality food. He no longer felt like playing the piano, or tennis, or football. Leslie said:

From successful TV celebrity, I had suddenly become portrayed as a vile monster and I could not defend myself. I thought the best thing to do would be to do away with myself.

Show business manager Jonathon Shalit said:

He [Leslie] has been tried by the media and a whispering campaign, and by people who could not substantiate the claims.

Madam Deputy-President, will you ask the honourable members of the National Party who are seated behind me to carry on their affairs or their conversation elsewhere?

**The Hon. Duncan Gay:** At least we turn up to Parliament occasionally.

**The Hon. DAVID OLDFIELD:** That is not to anybody's benefit, from what I have seen.

**The DEPUTY-PRESIDENT (The Hon. Amanda Fazio):** Order! Members are reminded that interjections are disorderly at all times. I ask them to please reduce the level of background noise.

**The Hon. DAVID OLDFIELD:** Especially from the Hon. Greg Pearce.

**The Hon. Greg Pearce:** You are a sensitive little sweetness, aren't you.

**The Hon. DAVID OLDFIELD:** I have acute hearing.

**The Hon. Greg Pearce:** Did you say you have a cute earring?

**The Hon. DAVID OLDFIELD:** I am sure the Hon. Greg Pearce has one. He probably wears one in each ear. After all charges were dropped against Mr Leslie, publicist Max Clifford agreed:

He's got to win the hearts and minds of the British public again, and that's going to be an uphill struggle.

After all charges were dropped, Leslie's solicitor, Paul Fox, said:

His life has been really a nightmare. His job is being in the media in the public eye, and yet he's almost had to become a sort of monk. He's had to retire from public life whilst these police investigations went on. He's lived his life under a cloud.

And Mr Leslie still does. One of the most glaring matters of double standards in public identification of the accused is the law in regard to the treatment of juveniles, as opposed to adults. Juveniles are not named. I understand that this is to protect them. Why does the law fail to protect adults? Is it because society has determined that young people are entitled to make mistakes that will not be held against them for the rest of their lives? Do we say, "Well, they are young and can be excused". By doing that, is not society recognising the lifelong damage done by being associated with crime? In the case of juveniles, we do not just protect the innocent accused; we protect the guilty as well. It does not matter how often they are proven to be guilty, we just keep on saying, "It is okay. We understand you are young. We understand you have been convicted 50 times of stealing cars. We understand you have been convicted a dozen times of robbery, or a few times of assault, or a couple of times of rape, or maybe you have murdered only one other human being. It is because you are young and young people make mistakes, so we will make sure the media never get to tell anyone you are a dangerous, violent offender."

We keep secret the identity of convicted teenage murderers, but we broadcast the names of adults who later turn out to have been the innocent accused. Does anyone here see the hypocrisy and inconceivable double standard that is applied in law? Protect the guilty children. Expose the innocent adults. I am not saying that the rules regarding the protection of juvenile offenders need amendment. I am simply making the point that innocent adults should at least be afforded the same type of protection that is enjoyed forever by criminal juveniles. Many people have described to me how they have been tried, convicted and executed by the media, only to later have the accusations go nowhere or to have charges dropped, or for them to be cleared by a court.

They come from all walks of life—the famous, the unknown, the professionals such as doctors, and workers such as security personnel or others—and though innocent have been accused through vindictiveness or being in the wrong place at the wrong time. Until a person is convicted there is no justifiable public interest in their identity. There is no issue of freedom of speech. If we truly uphold the presumption of innocence until guilt is proven, then we must accept allegations as little more than gossip until a person is found guilty. It will be argued that without naming the accused the public will be denied due process, including knowledge of the accused being apprehended. Such arguments are wrong. It will be argued that without naming the accused the media will not be able to report the story. That notion is also plainly wrong. Yesterday the *Sydney Morning Herald* reported:

Judges upbraid 'little thug' over sentence appeal

Because some of the little thugs mentioned were juveniles, they were not identified. Yet these

were criminals who had already been found guilty by the court. These criminal kids were not named, but the media was still able to inform the public all about the trial. Why not allow adults who are the innocent accused to have the same protection? The Crimes Amendment (Protection of Innocent Accused) Bill will not prevent public awareness of crimes and of those who are sought by police for committing them. The bill will not prevent television shows such as *Australia's Most Wanted* from being telecast. This bill is not to protect the guilty, or those who are seeking to avoid prosecution, by not being identified. Such suggestions are farcical. The innocent accused are just that—innocent accused—and they deserve the fundamental right of being reasonably presumed innocent until proven otherwise.

I return again to Mr Mason. The reports on him were lies; the truth barely saw the light of day. And despite spending over \$100,000 to clear his name, he tells me that today there are those who still think he was convicted of rape. Is that even remotely fair? Comments including that Kilner Mason and John Leslie, who were innocent accused, are now okay because they have a job and are back on their way in their chosen careers, are offensive at best. How many of you would suffer so and just write it off as a bit of bad luck on life's journey? Kilner Mason, John Leslie or, for that matter, Scott Volkens, are just a few real examples, and there are many like them. Might one of your family or friends be next? Might it be you who is next? This really is a matter of "But for the grace of God go I."

I implore members to seriously consider the free reign of the press to pick and choose whom they destroy. I am not stuck hard and fast on this bill in its present form. I am open to amendments. I expect others will have suggestions for improving the bill and I welcome any such amendments that do so while still preserving the principle of protection for the innocent accused. If the time comes that those who choose not to support this bill find themselves the innocent accused, I hope that as they loudly profess their innocence they will remember that they were warned.