



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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The Research Director
Legal Affairs and Community Safety Committee

Criminal Law - False
Evidence Before
Parliament
Submission 005

By Email: lacsc@Parliament.qld.gov.au

Dear Madam

The Council is asked to comment on the reintroduction of Section 57 of the *Criminal Code*. This was repealed after then Minister Nuttall was dealt with for contempt by Parliament for misleading an estimates committee.

In 2005 when the previous government decided to amend the *Criminal Code* to remove Section 57 the Council's Vice-President, Terry O'Gorman, made the following comment:

“To put any Parliamentarian, including a Minister, on a criminal charge for an answer given in Parliament or in answer to a chairman of a committee's questioning is, in our view, unheard of, and it's unacceptable because it would chill free speech in Parliament.”

This remains the Council's view.

One of the cornerstones of the Westminster system is Parliamentary privilege. The *Bill of Rights* and in particular Article 9, are almost 400 years old and remain a part of our system.

Whilst Section 57 was in place for almost 100 years, during that time we understand no one was ever prosecuted for a breach of it. Misleading or deceptive answers to questions were dealt with by the Parliament in accordance with its own privileges.

It remains our view that these matters, which are quite often inherently political, should continue to be dealt with by the political process. To do otherwise runs the risk of involving the courts in disputes about political matters in a way which would threaten their independence.

In addition, as noted by Mr O'Gorman the threat of criminal proceeding might deter members of Parliament from using their Parliamentary privilege. Whilst that privilege is occasionally abused, it is this Council's view that the benefits which come to society from the freedom of Parliamentarians to speak without fear or favour outweighs those occasional abuses.

In the end Parliamentarians who abuse these privileges face the ultimate sanction of dismissal at the ballot box.

To assist the committee we would make these comments on the draft.

The section is a little unclear about what is an 'examination', an 'answer' and what makes the answers 'lawful and relevant'. These matters were discussed in the CMC report on Mr Nuttall.

Old Section 57 had the following form:

57 False evidence before Parliament

(1) Any person who in the course of an examination before the Legislative Assembly, or before a committee of the Legislative Assembly, knowingly gives a false answer to any lawful and relevant question put to the person in the course of the examination is guilty of a crime, and is liable to imprisonment for 7 years.

(2) The offender cannot be arrested without warrant.

(3) A person cannot be convicted of the offence defined in this section upon the uncorroborated testimony of 1 witness.

Its history was researched and widely commented on in several opinions from esteemed silks in the Nuttall matter.

It is now proposed to be reinserted in a slightly different form:

57 False evidence before Parliament

'(1) A person who, during an examination before the Legislative Assembly or a committee, knowingly gives a false answer to a lawful and relevant question put to the person during the examination commits a crime.

Maximum penalty—7 years imprisonment.

'(2) A person can not be arrested without warrant.

'(3) Despite the Parliament of Queensland Act 2001, section 8, evidence of anything said or done during proceedings in the Assembly may be given in a proceeding against a person for an offence under this section to the extent necessary to prosecute the person for the offence

'(4) Subsection (3) does not limit the Parliament of Queensland Act 2001, section 36.

'(5) A person can not be convicted of an offence under this section on the uncorroborated testimony of 1 witness.

'(6) In this section—

Committee see the Parliament of Queensland Act 2001, schedule.

Person includes a member of the Legislative Assembly.

Proceedings in the Assembly see the Parliament of Queensland Act 2001, section 9 and schedule.'

The changes appear to relate to modern drafting expression and to preserving Parliamentary choice of how the matter proceeds.

Western Australia has near identical provisions for false answers given to Parliament or a Royal Commission as well as perjury.

Unlike perjury, there is no requirement of materiality of the question, the subject matter or the answer: only that the question is lawful and relevant.

There is no requirement in section 57 that the answer be given on oath. What is required is that a question is 'put to him'.

'Examination' is also not defined in WA or the old or proposed version of the Qld Act.

Consider whether a Minister's answer to a question without notice on a matter of their portfolio is 'an examination'. This section would then make 'knowingly false' answers criminal offences.

Moreover it is not that the Minister must lie or say something that is wrong to commit the offence.

Various dictionaries use definitions of "false" such as

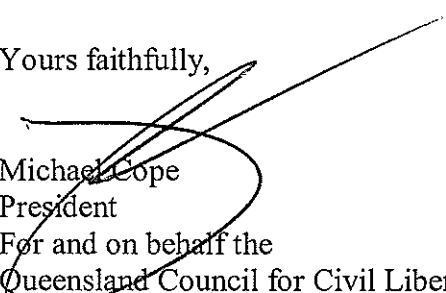
1. Contrary to fact or truth: false tales of bravery.
2. Deliberately untrue: delivered false testimony under oath.
3. Arising from mistaken ideas: false hopes of writing a successful novel.
4. Intentionally deceptive: a suitcase with a false bottom; false promises.
5. Not keeping faith; treacherous: a false friend. See Synonyms at faithless.
6. Not genuine or real: false teeth; false documents.
7. Erected temporarily, as for support during construction.
8. Resembling but not accurately or properly designated as such: a false thaw in January; the false dawn peculiar to the tropics.
9. Music Of incorrect pitch.
10. Unwise; imprudent: Don't make a false move or I'll shoot.
11. Computer Science indicating one of two possible values taken by a variable in Boolean logic or a binary device.

Therefore the Section appears wide enough to cover an answer that misleads the listener by deliberately not answering it or by providing any information which, while truthful, is designed and calculated to be a 'false answer' to the question put. The degree of 'falseness' is derived from the question, not from the answer. Therefore a completely true statement could be a false answer to a question which it did not answer.

We ask does Parliament intend the offence to be so wide?

We trust this is of assistance to you in your deliberations. I thank the Council Vice President Andrew Sinclair for his contribution to this submission.

Yours faithfully,



Michael Cope
President
For and on behalf the
Queensland Council for Civil Liberties
27 June 2012