



Speech by

Mr L. SPRINGBORG

MEMBER FOR WARWICK

Hansard 5 October 2000

EVIDENCE AMENDMENT BILL

Mr SPRINGBORG (Warwick—NPA) (Deputy Leader of the Opposition) (3.17 p.m.): The Opposition will be supporting this piece of legislation before the Parliament, because it seeks to preserve what was effectively the status quo until a recent decision of the Queensland Court of Appeal.

For the benefit of honourable members, I will explain the standard of proof that is expected when a person is being sentenced by a court, the way that it existed previously and the way that it exists post the decision in the Queensland Court of Appeal. We are all aware that two different standards must be considered by our courts, depending on whether it is a criminal trial or a civil trial. If it is a criminal trial, that standard has to be beyond reasonable doubt. If it is a civil trial, that standard has to be on the balance of probabilities.

The situation that existed for those people who were faced with a criminal trial in court has been that the prosecution has had to establish beyond reasonable doubt that the accused committed the crime that was being considered by the court. That is fair enough because, when dealing with criminal matters, the accused person could potentially lose their liberty and have their life affected for a very, very long time indeed, particularly when the offence being considered is a serious offence, such as arson, manslaughter, rape, murder or a drug-related offence. So making sure that we have a standard of proof that is beyond reasonable doubt is extremely important. However, once that has been established by the court it has been the practice, up until this particular case in the Court of Appeal, that the sentencing judge had to be satisfied on each of the sentencing points only on the balance of probabilities. Of course, the judge might also consider the gravity of the offence and the length of sentence.

Following this decision of the Court of Appeal in Queensland, it would appear that the sentencing judge now must also have to be satisfied on each of the points of sentence to the standard of beyond reasonable doubt. The real concern with that is that it has the potential to take up court time, add to the costs of court cases and unfairly delay the speedy resolution of court business. I do not believe any reasonable benefit to the accused can come from the Parliament supporting this judgment of the Court of Appeal. At the end of the day, that person still has a paramount protection in law in that they are being accused and tried in a criminal court and, as such, as I said earlier, the prosecution has had to establish that that person is guilty beyond reasonable doubt. That is what has happened in those cases. It is only semantics then to have a situation where, on each point for sentencing deliberation, the judge has to consider beyond reasonable doubt all of those issues at hand when on the balance of probabilities is a fair enough test. Again, I think the most important test is establishing the guilt or otherwise of the accused person to start with.

It is extremely important for the Parliament to pass this legislation. I commend the Attorney-General for bringing it before the Parliament. It is very important that we maintain the status quo. For a long time we have found that we as members of Parliament have to come in here to clarify matters of law and things that we have always thought to have been the case following decisions of courts in Queensland and, in more recent times, in Commonwealth courts. That is something that we will have to continue to do.

In conclusion, we need to be looking at other issues of evidence. Certain matters are before the Law Reform Commission that have been recommended or will subsequently be recommended, such

as the evidence of child witnesses. It is important that in the not-too-distant future we see the necessary legislation coming into the Parliament that ensures the protection of child witnesses. That and no doubt other issues will be the subject of ongoing debate in this place.

By and large this legislation is worthy of the wholehearted support and endorsement of the Parliament because it seeks to preserve the status quo that existed prior to the decision of the Court of Appeal only some months ago.
