



Speech by

LEX BELL, MP

MEMBER FOR SURFERS PARADISE

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EVIDENCE [PROTECTION OF CHILDREN] AMENDMENT BILL

Mr BELL (Surfers Paradise—Ind) (12.13 p.m.): I rise to speak on one aspect of the Evidence (Protection of Children) Amendment Bill. Clause 56 seeks to amend the Evidence Act in a major way that goes far beyond anything to do with the protection of children. We say in this place and elsewhere that marriage is sacrosanct. We pay lip-service to the institution of marriage. However, I see the abolition of what has been the law for centuries—namely, that a person cannot be compelled against his or her will to give evidence against his or her spouse—as a straightforward attack on the sanctity of marriage and the fact that marriages are supposed not to be dissoluble. Worse, in this case it is being done under the guise of an amendment to the law that seeks to protect children.

It is dishonest to try to slip through a huge amendment to the whole law of evidence under the guise of something to protect children. Perhaps it may be possible to support an amendment to the Evidence Act abolishing the spousal privilege in the very limited case where it applies to the protection of children or evidence in cases involving children. Perhaps that would be supportable as a special case. It would be very easy for the Attorney-General to have said that this abolition applies only to that limited case and does not apply to other criminal cases. But he has not done that. I am astounded that the government has done this and has tried to slip it through in a bill dealing with the protection of children. It is a mammoth change to the criminal law and the Evidence Act of our state.

When I first read this bill I thought that the abolition of spousal privilege applied only to the protection of children in cases involving children. I then looked at it further and was astounded. I thought I must have been misreading the provisions. I asked a few questions and a few members of parliament were of the same view: 'No, it would apply only to the protection of children.' Then when I asked at ministerial level—though not of the Attorney; I did not see him at that time—I was informed that, no, it was intended to be exactly the way it appears, a total abolition in all criminal cases of the privilege of one spouse not being compelled to give evidence against another.

The only argument given for the total abolition of spousal privilege is that it does not apply to de facto cases. De facto situations are not marriages and they do not have that same sanctity that a marriage has. I am also concerned with the fact that this has retrospective application. Within the bond of marriage one spouse could well have two years ago said to the other spouse, 'I robbed a bank,' or, 'I held up a service station,' knowing full well that his or her spouse could not be compelled later on to give evidence because of the standing of the law at that time. Now, as I read these amendments, that is retrospectively abolished. A person who has incriminated himself or herself to a spouse two years ago on the basis of the law at that time could now find that that spouse could be compelled against his or her will to come forward and state the self-incrimination that was made within the bonds of marriage and in the knowledge that it could not be compelled. I believe that is very unfair and unjust.

There are a lot of things in this bill that are good and supportable. However, on the basis of the change to the Evidence Act that will take away another recognition of the sanctity of marriage, I cannot support the bill at all.