



Speech by

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MEMBER FOR INALA

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CRIMINAL CODE (DOUBLE JEOPARDY) AMENDMENT BILL

Ms PALASZCZUK (Inala—ALP) (9.37 pm): I rise to support the private member's bill introduced into parliament by the member for Nicklin. I note that this current bill replaces the bill introduced by the honourable member in November last year, and I welcome the shadow Attorney-General's support for the bill. This revised bill recognises the importance of the principle of double jeopardy in the criminal law of this state. This principle states that no-one should be tried or punished twice for the same offence. The rule against double jeopardy has long been held as an important tenet of our justice system. In an article by K Pennington published in the *University of Chicago Law Review* 1997, he points out that the principle can be found in the ancient Roman statute of the Emperor Honorius. The Bible also rendered support. St Jerome interpreted an opaque passage in the prophecy of Nahum that God will not judge a defendant twice.

In Queensland the concept of double jeopardy is embodied in the Criminal Code. Section 16 is the rule against double punishment for the same act or omission. Section 17 provides a defence where the person has previously been acquitted or convicted of the offence for which they are charged. The policy which underpins this fundamental principle can be found in two obvious facts: without safeguards the power to prosecute could readily be used by the executive as an instrument of oppression; further, finality is an important aspect of any system of justice. Advances in science and technology have put this principle in the spotlight over recent years. As new evidence becomes available through these advances, the public is understandably increasingly uncomfortable about allowing persons guilty of serious crimes to escape punishment.

It is interesting to note that the 800-year-old law was overhauled in England in 2005. In 2006, Billy Dunlop pleaded guilty to the murder in 1989 of a 22-year-old woman, Julie Hogg. He had previously been acquitted of the case. In this case Julie Hogg, a mother, was murdered and her body hidden behind a bath panel. Her mother found her body 80 days afterwards. In April, the changes to the 800-year-old double jeopardy law, which prevented someone who had been acquitted by a jury being tried again on the same charge, opened the door for the Cleveland police to revisit the case.

At the time a Home Office spokesman is quoted as saying in relation to the changes—

It is important the public should have full confidence in the ability of the criminal justice system to deliver justice.

In England, the Court of Appeal can now quash an acquittal and order a retrial when new and compelling evidence is produced. Professor Adrian Keane, Dean of the Inns of Court School of Law in London, spoke of the equivalent changes to the law in Britain in an article published in the *Times* on 20 May 2003 in which he stated—

Abrogation of the rule against double jeopardy is not some first step on a road to loss of individual freedom. The rule is an anachronistic obstacle to justice. The safeguards of the new proposal will make retrial an exceptional remedy in rare cases in which there is new and compelling evidence of guilt.

This bill before the parliament seeks to balance these two very important considerations by proposing some exceptional circumstances in which the rule against double jeopardy applies. It seeks not

to abandon the principle of double jeopardy but to define those limited circumstances in which a retrial will be permitted.

There are, in fact, two exceptions to this rule created by this bill. The first relates to the situation where fresh and compelling evidence becomes available, as the member for Cleveland mentioned in his speech. This exception will apply only in the case of murder. The second is in situations where a verdict is tainted. In recognition of the significance that any departure from the double jeopardy rules will have on the criminal law of this state, the fresh and compelling evidence conception will apply only to murder.

In Queensland, the issue of double jeopardy has been widely debated in legal circles. Justice Roslyn Atkinson, in a speech given to the Australian Law Students Association double jeopardy forum in July 2003, put forward her views discussing the proposed amendments to the law. I recall several years ago attending a Labor Lawyers seminar at which we discussed the law as it surrounds double jeopardy. Even at that forum the lawyers in the room were equally divided on this issue.

Safeguards are in place in the bill that will require an application to be made to the Court of Criminal Appeal for a verdict of an acquittal to be quashed and a retrial ordered if fresh and compelling evidence becomes available. In order to satisfy this requirement, this new evidence must not have been adduced at the original trial and could not have been so adduced with the exercise of reasonable diligence.

There is a further requirement that the evidence be compelling. That means that it is reliable and it is substantial and in the context of the issues in dispute in the proceedings in which the person was acquitted, it is highly probative of the case against the accused person. I feel confident that no-one in this chamber would argue that a person should remain in jail if convicted of a serious offence if fresh and compelling evidence came to light subsequently which indicated their innocence. The same principle should also apply to acquittals.

The second exception relates to a case where a verdict is tainted by an administration of justice offence. It is a requirement that before this exception will operate a person must have been convicted of an administration of justice offence. These offences include witness tampering, bribing a juror or judge and perverting the course of justice. The sound policy reason behind this exception is that a person should not be able to benefit from such an act. The exception applies only to offences for which the maximum penalty is 25 years or more and there are various requirements which have to be met first.

The DPP must make application to the Court of Appeal and must prove to the satisfaction of the court that the acquittal was a tainted acquittal and that in the interests of justice an order for retrial be made. The requirement for a conviction of the administration offence is an important safeguard against oppressive conduct by prosecuting authorities.

David Blunkett, who as Home Secretary oversaw the double jeopardy reform in Britain, commented in 2006, after the sentencing of William Dunlop—the case I mentioned earlier—the first person to be convicted under the new laws—

... people argued about the medieval right not to be tried twice, as though fraudulently getting off was some sort of game in which, if you've fooled the justice system once, you have got away with it forever.

The other important feature of this bill is that, unlike the English position, it is not to have retrospective operation. The underlying principle that legislation should not, except in exceptional circumstances, have a negative retrospective effect on citizens is what might be called one variation of the social contract, that is, a citizen is prepared to accept the legal consequences of any act he or she may commit on the condition that the government has done its part by duly proclaiming beforehand all laws that relate to the actions of its citizens. As the Attorney-General has said, it is a fundamental legal principle that legislation should not adversely affect citizens' rights and liberties or, conversely, impose obligations in a retrospective manner. This principle should not be departed from lightly.

Not only would such a departure have significant legal consequence, it would also have significant resource implications for various bodies within the criminal justice system. There is an inherent conflict between these two important principles, but this bill strikes the right balance between the interests of justice and the rights of the citizens in this state.

Public agitation for change to the double jeopardy rule followed high-profile acquittals for murder in a number of cases, to which the member for Lockyer also alluded. I congratulate the member for Nicklin on his preparedness to negotiate with the government to ensure that he was in a position to present a bill to the House that looks like it will be accepted by the majority of members. I understand his deep commitment to this issue. The outcome of this amended bill will now mean that Queensland is in line with contemporary legal thinking and community thinking in relation to this issue. As the member for Nicklin and I discussed earlier today, Queensland might lead the way for other states to follow. I commend the bill to the House.