



Speech by

Phil Weightman

MEMBER FOR CLEVELAND

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CRIMINAL CODE (DOUBLE JEOPARDY) AMENDMENT BILL

Mr WEIGHTMAN (Cleveland—ALP) (9.22 pm): I rise to support the Criminal Code (Double Jeopardy) Amendment Bill introduced by the honourable member for Nicklin. This is a most controversial issue and I admire his drive to pass the amendments. The right to the finality of legal decisions is a fundamental human right. Indeed, in times gone by it may have been viewed as an irrefutable right within Australia. However, in the 21st century the law must take stock of technological developments.

Some 20 years ago the use of DNA technology was unheard of. However, today it is primarily responsible for numerous convictions right across the world. Taking this vast increase in criminal technology into account, the law too must adapt. Where is the justice in acquitting a person and later finding indisputable evidence that they did, in fact, commit the crime? Does such an acquittal uphold notions of justice? No, for if guilty persons are free to roam the streets then justice is not done.

Granted, the state cannot be given unfettered discretion to retry acquitted persons. However, there will be extenuating circumstances where the interests of the community in pursuing justice and the liberties of a person do not neatly juxtapose. Indeed, such circumstances should be rare indeed. If we as a body politic are to take our civic responsibility seriously then we must ensure that justice is done. This is not only for the sake of consistency but also for community safety and reflects the public sentiments.

Criminals should not be walking the streets. It would be a failure of the law to allow them to continue to do so when new evidence emerges. Times have changed and so must the laws with respect to double jeopardy. In such situations, it is imperative that justice prevail. Thus this amendment lays down a set of criteria upon which, if satisfied, a person can be retried for an offence. The standard is set high with only sentences of 25 years or greater being subject to a rehearing. Furthermore, the criterion of fresh and compelling evidence that was not and could not be adduced at trial sets a high standard. Moreover, evidence must be reliable and substantial.

Hence, it can be observed that the amendment makes every effort to balance the individual's interests with that of society. Overarching the entirety of the new powers of rehearing is the requirement that the accused be able to receive a fair trial. The fetter of only one application of a rehearing per committal ensures that the amendment is a redefinition of the word 'finality' and not a licence for continued prosecutions.

Over the past few years numerous jurisdictions have decided to amend their laws with respect to double jeopardy. Queensland has waited until now only because it was agreed that there should be a common and uniform approach across the states. In September last year New South Wales passed a bill closely modelled on the UK version and today we envisage doing the same. I commend the bill to the House.