Speech by

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CRIMINAL CODE AND JURY AND ANOTHER ACT AMENDMENT BILL

Mr LANGBROEK (Surfers Paradise—Lib) (6.15 pm): I am pleased to contribute to the Criminal Code and Jury and Another Act Amendment Bill 2008. At the outset, I note the contribution made by my LNP colleague the shadow Attorney-General, the member for Cunningham, and note our opposition to this bill. My opposition is for a number of reasons which I will elaborate on, but it is primarily because of what this bill represents. I am only going to address the amendments as made to the Jury Act 1995. I will not be addressing the amendments to the Criminal Code or the Crime and Misconduct Act 2001, as I believe the shadow Attorney-General has sufficiently addressed the other aspects of the bill. However, we will not support the amendments that would introduce majority verdicts into the Queensland criminal justice system.

This bill represents an attack on the foundations upon which our legal system is built. The proposed amendments to the Jury Act 1995, contained in part 3 of the bill, seek to abandon the long-held doctrine of nemine contradicente—that is, 'without objection' or unanimous verdicts. The proposed section 59A seeks to replace this underlying tenet of the modern legal system by allowing majority verdicts in some criminal cases. Proposed section 59A(2) states—

If, after the prescribed period, the judge is satisfied that the jury is unlikely to reach a unanimous verdict after further deliberation, the judge may ask the jury to reach a majority verdict.

Subsection (3) goes on to state, 'If the jury can reach a majority verdict'—which for our purposes is 11 jurors to one—'the verdict of the jury is the majority verdict.' These two subsections will effect a monumental shift in Queensland's legal system. Unanimous verdicts have long been synonymous with the very concept of natural justice in a democracy—that is, everybody has the right to a free and fair trial. These are the 'self-evident' truths enshrined in the United States Declaration of Independence—'self-evident' because of their enduring influence on the common law legal system.

The concept of unanimous verdicts, as the shadow Attorney-General mentioned, can be traced back to the 14th century. In an English Common Bench judgement in an anonymous case, Chief Justice Thorpe finally settled any uncertainty over the requirement of unanimity: 'The verdict,' he said, 'must be unanimous.' To borrow a quote from the Mason High Court—

Regardless of the origins of the requirement that the verdict of a criminal jury be unanimous, the common law's unwavering insistence upon the requirement ... has endowed it with the authority of settled doctrine.

This bill seeks to strip away that authority in some criminal trials. One of the justifications for this attack on an entrenched principle of the criminal justice system, according to the Attorney-General, is that 'majority verdicts bring Queensland into line with nearly all other Australian states and territories'. That may well be the case, and sadly so—

Mr Rickuss interjected.

Mr LANGBROEK: That is true; there are differences in all of those as well. But majority verdicts are repugnant to our federal system. That is because the Constitution of the Commonwealth of Australia expressly precluded it from matters of federal adjudication. Inherent in chapter 3 of the Constitution, which

established the judicature, is the notion of unanimous verdicts. Section 80 contains one of the few constitutionally guaranteed rights: 'The trial on indictment of any offence against any law of the Commonwealth shall be by jury.' The right to trial by jury encompasses the doctrine of unanimous verdicts. This was confirmed by the High Court in the 1993 case of Cheatle v The Queen, which the member for Kurwongbah referred to. The unanimous decision of the High Court held that majority verdicts with respect to Commonwealth prosecutions was unconstitutional and, as such, the South Australian act that purported to apply majority verdicts to criminal matters against the Commonwealth was read down so as to not apply.

While this bill is lawful, it is clearly wrong. The views of some of this country's most brilliant legal minds support the LNP's position that 'majority verdicts are not a practice we should accept in Queensland'. Just because majority verdicts are accepted practice in other states, it does not give us an imprimatur to erode our own system of law.

Of course, there are a number of arguments advanced by those who are intent on watering down our legal system. Many of these are the very arguments the Bligh government has used to justify such a dramatic shift in policy, despite having undertaken no consultation with the legal fraternity and the wider community. I submit that some of these arguments are in fact reasons as to why we should accept a lower standard of justice in Queensland. But when you go to the heart of the issue and consider what is at stake, none of these arguments—even when taken as a whole—can justify the risk of degrading our justice system to this extent.

The utilitarian argument advanced by the Attorney-General has no basis in fact. The object of these amendments is to avoid deadlocked juries. On paper, the instance of hung juries has purportedly increased. I note that the shadow Attorney-General asked for statistics. Recent statistics suggest there have been 19 hung juries in criminal trials since 1 July, representing around 12 per cent of trials. The problem with these figures is that they do not necessarily reflect reality. They do not support the hypothesis that the number of deadlocked juries is on the rise because one cannot account for the results of future trials. Even if we could compare the number of hung juries in 2007-08 with previous years, the contrast will be skewed by any number of variables, such as the total number of trials and other circumstances which make it difficult to evaluate whether or not there has been an increase in real terms.

The practical considerations supporting majority verdicts—such as the amount of time and resources and the high cost of retrying cases where a verdict is unable to be reached—may have some merit but it would be impossible to quantify the benefit of majority verdicts because of the nature of the jury. The honourable the Attorney-General suggests that this bill, which abandons the unanimous 12-nil verdict in favour of an 11-1 majority, will save taxpayers money. Again, this argument is baseless in fact. The Attorney-General cannot substantiate the utilitarian argument by suggesting the number of deadlocked juries will decrease as a result of majority verdicts because the minister is not privy to jury deliberations. Rules in evidence and laws on jury procedure prevent jury notes from being made public. We simply cannot argue with a degree of certainty that most juries are hung by only one vote. Whilst it is often the perception that justice can be frustrated by one perverse juror, in reality I think it would be very rare that a jury is deadlocked by a sole vote. It is far more probable that there are a number of dissenters from the majority view.

The New South Wales Law Reform Commission considered the practice of trying to resolve deadlocks in its 1986 report into the unanimity requirement. Our system has come a long way from the days where jurors were deprived of food, sleep and water until they could agree on a verdict, but the law does allow a small measure of coercion to achieve unanimity. According to the commission—

> The law allows considerable pressure to be placed on juries to encourage them to reach a unanimous verdict ... the judge may keep the jury deliberating for days if there is any prospect of a verdict being reached.

Clearly it would be ideal if each of the 12 members of a jury agreed on the finding in the first instance. It would save a considerable amount of the court's time and allow more matters to be settled. However, the very purpose of having the requirement of unanimity is to ensure that each juror is given the opportunity to be heard.

No doubt many in this House would be familiar with the story in the movie *12 Angry Men*. Recognised as one of the most culturally significant films of all time, it follows the deliberations of a jury in a murder case. If we were to rewrite the plot to accommodate majority verdicts—and I know that does not apply in a murder trial but I will come back to that later—surely 11 of the 12 angry men would have been very pleased indeed that they did not have to spend the next 95 minutes of the film trying to reach a unanimous verdict. That is because under the majority verdict rule, 11 out of 12 would be sufficient to convict the accused. As we know, a unanimous verdict was eventually secured.

Mr Lawlor interjected.

Mr LANGBROEK: It would have been an extremely short movie in that case. It would have been a trailer for the movie that came after it. However, it was the initial minority view—that one vote in 12—that

won out. That one juryman was able to convince the majority that there was sufficient reasonable doubt to save a man from capital punishment.

More than half a century later, there is no doubt things have changed. Capital punishment, for one, has been illegal in this country since the 1960s. However, the unanimous verdict is still seen as a cornerstone of the criminal justice system. This is because it serves to protect the innocent from unjust conviction. I cannot illustrate this point with more authority or eloquence than Justices Mason, Brennan, Deane, Dawson, Toohey, Gaudron and McHugh, the seven justices of the High Court who settled that the rule of unanimity was entrenched in the constitutional right to trial by jury. They said—

The requirement of a unanimous verdict ensures that the representative character and the collective nature of the jury are carried forward into any ultimate verdict. A majority verdict, on the other hand, is analogous to an electoral process in that jurors cast their votes relying on their individual convictions.

At this point, I do not wish to question or deliberate on the wisdom of some voters, but I would think every member of this parliament would be rightly concerned with a criminal justice system that ruled on the guilt or innocence of a person based on a ballot. The High Court went on—

The necessity of a consensus of all jurors, which flows from the requirement of unanimity, promotes deliberation and provides some insurance that the opinions of each of the jurors will be heard and discussed. Thereby, it reduces the danger of "hasty and unjust verdicts."

There is a strong perception that reducing the requirement of unanimity to one of majority verdict would provide enough momentum to spark a 'slippery slope'—that is, the government's assault on one of the system's safeguards will lead to an assault on other fundamental principles of law, such as standards of proof. 'Majority verdicts' and the concept of 'beyond reasonable doubt' are mutually exclusive terms. The whole notion of a majority verdict does violence to that of 'beyond reasonable doubt' because, if the verdict is not unanimous, then obviously doubt exists. If we start incorporating degrees of rationality into 'reasonable doubt', again we start to erode the principles upon which our entire legal system is built.

I return to the example of *12 Angry Men.* Under the provisions of the bill currently before the House, the court would not have accepted a majority verdict on the charge of murder because clause 8 prevents conviction by majority verdict for murder. The proposed section 59(1) is interesting. The Attorney-General stated in his second reading speech that 'majority verdicts will not apply to the most serious offences in Queensland'. What we see, however, is that there are only three categories of offences that majority verdicts will not apply to: the first is murder, as the Attorney stated; the second is Commonwealth offences, for Constitutional reasons; and the third, however, is section 54A(1) of the Criminal Code.

Interestingly, section 54A(1) deals with demands with menaces upon agencies of government. Basically, this section states that any person who demands that anything be done or omitted to be done or procured by the government of Queensland or its employees, the Governor, ministers or government owned corporations with threats of injury or detriment of any kind if the demand is not complied with is liable to life imprisonment. Yet a conviction under this section cannot be secured by majority verdict by virtue of clause 59(1). I find it somewhat concerning that the Attorney-General thinks that people who are charged with extorting the Crown should have the benefit of the higher standard of unanimous verdict. I would have thought a charge of rape, for example, would come under the banner of a 'serious offence' for the purposes of determining the verdict threshold.

I am also interested in the fact that the Attorney thought it appropriate to make exceptions to the majority verdict rule. There is an argument to be made that the exceptions undermine the argument that majority verdicts do not represent a decline in judicial standards for convictions because it creates a double standard. The Queensland Law Society's criminal law section chairman Sean Reidy made the point, 'If they believe in the system, why don't they take it to all crimes, including very serious crimes?' Whilst this may be a cautious approach, perhaps it could also be a statement against the ultimate safety of majority verdicts.

Perhaps the strongest argument in favour of majority verdicts is the view held by Queensland Chief Justice Paul de Jersey. He says the primary benefit of majority verdicts is in avoiding retrials, not because they are expensive and time-consuming—but certainly those are advantages—but to avoid putting witnesses back in the box. He argues that it would save victims, witnesses, families and the accused a lot of anguish if courts were able to convict on majority verdicts.

Whilst I am certainly not disagreeing with the Chief Justice in his view that majority verdicts could save the trauma of a retrial, I return to the argument about hung jury statistics. We cannot know how many retrials may be avoided without going into jury room deliberations. This is because we simply do not know where the stalemate lies. It may well be an 11-1 result, in which case a majority verdict would suffice under these new rules. It may also be a 10-2 result, or 9-3, or 6-6. As such, we cannot measure the number of people who will be spared from the anguish of retrial if the majority verdict rule was in place.

It is my unwavering view that majority verdicts do not serve the best interests of justice. Against a background of similar arguments, the High Court stated that it was not a matter for them to decide whether majority verdicts should suffice for Commonwealth offences. Any change to the Constitution to allow

majority verdicts is a matter for the people of Australia to decide. Whilst the states do not have the same bar to get over to change, it can be argued that the state has a duty to act in the best interest of its subjects. Eroding judicial standards of jury verdicts is not in the best interests of Queenslanders or Australians. For this reason, I will not support the bill.