Speech by

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CRIMINAL CODE (TRUTH IN PARLIAMENT) AMENDMENT BILL

Mr LANGBROEK (Surfers Paradise—LNP) (10.10 pm): It is my pleasure to rise and speak to the Criminal Code (Truth in Parliament) Amendment Bill 2008. I know that many members have spoken this evening and we have gone over the circumstances of what happened on Friday, 9 December 2005 when we recalled the parliament. A Criminal Code amendment was moved by the then Leader of the Opposition, the honourable member for Callide, in November 2006 after the Criminal Code Amendment Bill had been introduced by the then Attorney-General, the member for Kurwongbah, in May 2006. I do not propose to canvass all of the issues that many other members have this evening relating to what happened with the former member for Sandgate, who we know lied to an estimates committee. My concerns are that we have reformed parliamentary privilege in Queensland and that we have altered the structures and mechanisms that historically have protected freedom of speech in parliament and have avoided institutional clashes between the courts and parliament.

While we might have avoided the immediate political crisis for the former premier, the underlying legal tensions that might result in a future crisis remain unaddressed, despite proposals for law reform. We note that the Criminal Code Amendment Act of 2006 amended the Queensland Criminal Code and repealed sections 56, 57 and 58. The statute inserts new section 717 into the Criminal Code, providing that after the commencement of the amending act 'a person can not be charged with, prosecuted for or further prosecuted for, or convicted of, an offence against s 56, 57 or 58 or punished for doing or omitting to do an act that constituted an offence.'

The amendments were precipitated by an investigation of the Crime and Misconduct Commission into a complaint that the minister had committed an offence against section 57. The fact that the CMC was, under its legislation, able to assume the power to conduct a preliminary investigation demonstrates that a fundamental constitutional principle had apparently been breached in Queensland, namely article 9 of the Bill of Rights, which is repeated in modern syntax in section 8 of the Parliament of Queensland Act. It states that the freedom of speech and debates or proceedings in the Assembly cannot be impeached or questioned in any court or place out of the Assembly. The amendments were apparently made with little awareness of the significance of such a change.

We are aware of what happened with the Nuttall crisis. The Leader of the Opposition took the unorthodox approach of writing to the officer in charge of the Brisbane Central Police Station requesting that the Queensland Police Service launch an investigation into whether the minister contravened section 58 of the Criminal Code through the evidence he gave to the committee. The police referred the matter to the CMC, which launched an investigation. Questions that were never judicially determined then arose as to whether that directive and the CMC investigation infringed parliamentary privilege and whether section 57 infringed parliamentary privilege. Counsel for the CMC were asked whether section 57 of the Criminal Code breached parliamentary privilege. That was answered uncontroversially but at length in the negative. They were also asked whether an investigation by the CMC would breach parliamentary privilege and concluded that it would not, with the proviso that privilege would prevent the coercive questioning by the CMC of Mr Nuttall in respect of the evidence that he gave.

We know that when the CMC presented its report it was recommended that the DPP not place charges but that the former minister should answer to the parliament. We know what happened on 9 December 2005 when the parliament was recalled. I will not refer to members opposite and the things they said. They stand condemned by the things that they said. After that, the Queensland government's response was to introduce the amending legislation already identified and to repeal those provisions in the Criminal Code.

The point that was missed in all of this was that the CMC proceeded to investigate proceedings before parliament in the Nuttall matter, which in itself was quite clearly a prima facie breach of article 9 of the Bill of Rights. The question of the validity of the legislation that permits such an investigation to occur is also a moot point, as the matter was never litigated. The crucial point is that if article 9 has, in fact, been abrogated by that legislation, that abrogation was a radical change to an accepted constitutional principle, apparently done without sufficient regard, or any regard at all, to the underlying constitutional structures and balances that might be disturbed.

The New South Wales Independent Commission Against Corruption and the Western Australian Anti-Corruption Commission had wider jurisdictions over elected officials than the CMC with respect to investigations of non-criminal behaviour of elected officials. These bodies are not responsible to parliament in the conventional way through ministerial responsibility to parliament. Since the demise of the Star Chamber in the seventeenth century, there has been no analogy in the Westminster system for a standing body that possesses such significant coercive powers over private and public citizens, especially in an organisation outside the familiar structures of responsible government.

The question is: should parliamentary privilege be codified? Despite the protestations during the debate on the Criminal Code amendments that the action was taken to protect freedom of speech in parliament, what none of the political figures seem to have recognised is that the fundamental protections of article 9 of the Bill of Rights had, on any view, already been infringed by the CMC legislation itself, and by the CMC conducting an investigation that clearly impeached or questioned the proceedings of parliament.

In terms of best practice legislative drafting, the approach of Sir Samuel Griffith in drafting the Criminal Code provisions to include parliamentary offences was almost a century ahead of its time. Even though the terms of those provisions were probably driven more by the restricted jurisdiction of colonial parliaments than by contemporary law reform considerations, Queensland had, by a quirk, enjoyed best practice legislative provisions that Westminster itself now proposes to adopt. Of course, the government, which will not normally change a word of the Criminal Code, came into this place and got rid of three sections of it with one fell swoop.

Because the Nuttall matter did not proceed in the usual way, lawyers have been deprived of the benefits of a test case and a precedent with respect to how contemporary local courts would have reacted. A prosecution could have been the catalyst for a judicial examination of some of the fundamental aspects of Queensland's constitutional structure, where a civil case involving what had seemed at first to be a fairly mundane privilege point developed into a significant constitutional case. It may well be that in any event Queensland and other Westminster style legislatures will be forced to recognise the coercive aspects of privilege, should they ever try to use them in the future.

We know that at the time many clearly partisan comments were made with high emotion. They were made in the context of a debate on a day when the parliament was specially recalled by the then Premier, who was a master at manipulating the media. Those comments underscore some of the difficulties that face a modern legislature dealing with contempt itself, especially with the modern requirements of procedural fairness and international human rights obligations. There is a political and legal imperative that justice has to be not only done but also seen to be done.

Rather than waiting for the next crisis to occur and relying on a hurried and ill-considered ad hoc response, a coherent response should be developed by Queensland and other Australian legislatures. The Griffith Criminal Code provisions that were repealed in Queensland provide a good starting point for the codification of criminal offences concerning parliaments, and that is what the Leader of the Opposition is proposing with this bill. I urge members opposite to support it. I urge them to look back on what they have done in years gone by and to listen to the passion with which members of the LNP speak about this. I urge them to recognise that what was done in December 2005 and May 2006 when the government brought in the amendments to the Criminal Code, which normally it will not change at all, undermined some of the fundamental tenets of our democracy and our whole Westminster system. I ask them to look deeply into what they are going to do when they vote and support the bill before the House.