


Speech by

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MEMBER FOR INALA

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CRIMINAL LAW (FALSE EVIDENCE BEFORE PARLIAMENT) AMENDMENT BILL

 **Ms PALASZCZUK** (Inala—ALP) (Leader of the Opposition) (5.00 pm): I rise to contribute to the debate on the Criminal Code (False Evidence Before Parliament) Amendment Bill 2012. From the outset, let me advise that the opposition will not be opposing this bill. However, we do have some reservations about it, particularly in respect of the breach of the doctrine of separation of powers.

The Labor Party has generally not been in favour of having this provision in the criminal law of this state. However, there are other adequate provisions in the standing orders and rules governing this parliament to punish anyone who deliberately misleads the parliament or any of its committees or hearings. As the report of the committee states—

*While the reintroduction of this offence affects the rights and liberties of individuals, the proposed amendment criminalises conduct that is currently prohibited and punishable under the Standing Orders and Rules of the Queensland Legislative Assembly and the *Parliament of Queensland Act 2001*.*

I have a real concern that ministers will use this provision as an excuse to not answer questions in case they are charged. We have already seen the Premier use this as a reason for refusing to answer a question in question time. On 29 May he said in response to a question from the member for Woodridge—

I say today to all members that I will not stand up here and give detailed answers to questions like that unless I can be 100 per cent confident that the information I provide is 100 per cent correct.

Members of this House should not be hampered in their ability to speak freely by the threat of criminal prosecution. This may well result in stifling of debate, with everyone so cautious that they are not prepared to say anything of substance at all.

I believe in our parliamentary system. I am concerned about any provision that seeks to impose the judgement of the courts on the proceedings of parliament. The real judges of anything that is said in this House are the Queensland people, and they make that judgement on election day.

One of my other concerns is that this new section could well allow for private prosecutions of members of parliament by members of the public under chapter 70 of the Criminal Code, and I would like the Attorney-General to address this in his speech in reply. My concern here is that, if a prosecution is undertaken by the DPP or the Attorney-General, they would be acting on sound legal advice and the proper considerations about instigating prosecutions. A member of the public might be able to launch a vexatious prosecution against a member of parliament and that member would have to incur their own personal legal costs to defend themselves. The indemnity provisions for the provision of legal advice to members of parliament and public servants do not extend to criminal prosecutions. So I would appreciate the Attorney-General's feedback on that matter.

Clause 3 of the bill inserts new section 57 into the Criminal Code which in effect reintroduces the section that was repealed in 2006, with some small amendments made to take account of more modern language. The explanatory notes explain that the Assembly will retain the right to decide whether particular conduct should be dealt with as a contempt of the parliament or whether it should be prosecuted under the

new offence. Section 37 of the Parliament of Queensland Act 2001 defines what constitutes a contempt of the parliament, and section 38 provides that whether particular conduct is contempt of the Assembly as defined under section 37 is a matter for the Assembly to decide, acting on any advice it considers appropriate.

Section 40 of the bill provides that proceedings for punishment by the Assembly or contempt are to be taken in the way stated in the standing rules and orders. Section 47 of the act then goes on to provide that, where a person's conduct might be both a contempt of the Assembly and an offence under another act of parliament, the Assembly can direct the Attorney-General to prosecute the person. However, a person cannot be punished twice for the same matter. So they cannot be punished for both contempt and the criminal offence. This issue caused some concern for several of the stakeholders who provided submissions to the committee.

As the CMC pointed out in its submission, this leaves the CMC in a very difficult position. These matters have the potential to be highly politically charged, and members may be tempted to make complaints to the CMC for whatever reason, either principled or political. The CMC, when investigating these matters, sees the potential to fall foul of the laws if it takes action against a member for a breach of this offence provision, because the Assembly may determine that it should proceed for contempt. However, if it takes no action, it could be accused of doing nothing.

There is also potential for conflict if the CMC and the Assembly both take action unaware of the other's actions. This is of particular concern where there might be conflicting views on the prospect of conviction if a prosecution were mounted. Because of the nature of parliamentary democracy being what it is, there will almost always be a government majority in the Assembly. This means that decisions about prosecutions and whether they should be taken or not have the potential to be political.

An Attorney-General of a particular political persuasion might decide not to prosecute a member of their own government but might decide that a non-government member should be prosecuted in similar circumstances. That is not meant to be a reflection in any way on the current Attorney-General, but hypothetically it is a possibility. I would ask the Attorney-General to please clarify in his address in reply how the possible conflict between these provisions is to be resolved.

There were also some concerns raised about the definition of certain terms in the bill. There is uncertainty about the term 'examination', and I would ask the Attorney to explain what would be covered by that term and whether it requires a person to have taken an oath or an affirmation. The Queensland Council for Civil Liberties made an interesting point in their submission. As they pointed out, an answer to a question may be a truthful statement but it may be a false answer to a particular question. Would a person therefore have given false evidence, even though they told the truth? I ask the Attorney-General to clarify this point raised by the Queensland Council for Civil Liberties during his address in reply.

There are some very complex issues that are raised by this bill. It is not as straightforward as the political posturing of the government would have us believe. The complexities run throughout the whole bill. For instance, section 8(1) of the Parliament of Queensland Act 2001 provides—

The freedom of speech and debates or proceedings in the Assembly can not be impeached or questioned in any court or place out of the Assembly.

Subsection (3) of the new section 57 expressly provides that, despite the operation of section 8 of the Parliament of Queensland Act 2001, evidence of anything said or done during proceedings in the Legislative Assembly may be given in a proceeding against a person for an offence under new section 57 to the extent necessary to prosecute the person for that offence.

This is a new provision which was not contained in the old section 57. If this subsection is considered necessary for a prosecution to be successful, what would have happened if any person had been prosecuted under the old section 57? Evidence as to what they had said in parliament would not have been admissible. It is difficult to see how a prosecution could therefore have been brought against anyone under the old section 57.

These questions are quite complex—the submissions make this very clear—and there is the potential for this section to be used politically. With those reservations in mind, we view this bill as a symbolic gesture by this government to the people of Queensland that the parliament and all of its members will act honestly and with integrity in all their dealings. As the opposition, we will be keeping an eye on the government to make sure that it does so and that its dealings are transparent and honest.

The bill requires members to be honest in everything they say in this parliament. That should not be an unusual expectation. In fact, it should be the very minimum of what every member strives for both in this parliament and outside it. We have already seen the first ministerial scalp of this parliament when the former minister for police and community safety was forced to resign after just 14 days in the job. He was charged with unlicensed driving and claimed he had never seen notices sent by SPER cancelling his

licence, but even the Premier did not accept that, saying he accepts he must have seen at least one letter. I hope this is not a sign of things to come. The opposition will be keeping a very close eye on the government to ensure accountability.

The Premier set a high bar in that instance, as was only right, and we were hoping to see him keep the same high standards for ministers throughout the whole term of government. Unfortunately, this was not the case. The next stumble at the first hurdle was by Minister Flegg. It was in fact more a tumble than a stumble. The minister engaged his friend the Liberal National Party state treasurer, Barry O'Sullivan, to conduct an audit of Goprint and GoPlants. These decisions had no regard to propriety, commercial-in-confidence considerations and privacy.

Mr Crandon: What have you got against Barry?

Mr Malone interjected.

Ms PALASZCZUK: If you have issues with this, you should talk to the Premier about it because these issues were not transparent. One minute we were hearing there was a report and the next minute we were not. I understand that this issue is being canvassed in the Draft Ministerial Code of Conduct, which was tabled in this House by the Premier earlier today. A high-profile businessman was given access to the records of government business units that have the potential to become privatised, and the minister responsible could not see anything wrong with this. The Premier certainly did and told him he thought that decision was not appropriate.

We know there are cases, however, involving honesty and integrity in the parliament where this has not been the case. In fact, there will be some people who are pleased that this offence is not being made retrospective. The member for Callide, who famously told a tactical lie about the brother of former Premier Peter Beattie, may well find that tactical lies result in prosecution under this law. Similarly, Jack Paff, a former member for Ipswich West and member of the Parliamentary Crime and Misconduct Committee who was found by the Members' Ethics and Parliamentary Privileges Committee to have deliberately misled parliament, would also be shaking in his boots.

The Premier himself was asked to apologise to the House for the misleading statement he made about removing the sustainability declaration on houses put up for sale. This week we have seen a procession of apologies from LNP members who were less than truthful in this chamber about the size of the state debt.

Mr Malone: You tell them then.

Mr Crandon: How truthful were you!

Government members interjected.

Ms PALASZCZUK: But accountability is not just about whether someone lies to parliament or not. There is much more to accountability.

Mr Hopper: So what is it?

Mr Driscoll: It is your debt.

Ms PALASZCZUK: Mr Deputy Speaker, everybody in this House has the opportunity to participate in this debate. If they have something to say, I urge them to put their name down on the speaking list and say it.

We do not expect the government to forget the lessons of the Fitzgerald inquiry and go back to the days of the Bjelke-Petersen era. Yet we have already seen a number of instances in this parliament where the spectre of Sir Joh has raised his head and left many Queenslanders feeling disappointed. I have had a call to my office—

Mr Bleijie: You repealed this section. That is why are we doing it. Don't go back and talk about Fitzgerald; talk about Nuttall. Why are we doing this? Because you repealed it in the first place.

Mr DEPUTY SPEAKER: Order! Attorney-General!

Ms PALASZCZUK: I have had a call to my office from an 80-year-old woman from Bribie who was extremely upset by the actions of police in ejecting Aboriginal protesters from Musgrave Park back in May. We have seen public servant jobs terminated, and the Premier will not tell the people of Queensland how many more are yet to go. We had the police minister, Jack Dempsey, saying he would be recruiting police officers straight out of school—

Mr BLEIJIE: Mr Deputy Speaker, I rise to a point of order. I put to you that I fail to understand how the police minister or a lady at Bribie Island concerned about protesters in Musgrave Park has any relevance to this bill about reintroducing section 57 to deal with the Labor Party's Gordon Nuttall. I ask you to rule on relevance and get the Leader of the Opposition back on track.

Mr DEPUTY SPEAKER: Order! The point of order is on relevance. I would ask the Leader of the Opposition to remain relevant to the long title of the bill.

Ms PALASZCZUK: In talking about the majority of this government, I quote Griffith University political scientist Dr Paul Williams, who said that Mr Newman's early approach appears to renege on his election night promise not to overflex a majority that gives him almost 90 per cent of the seats. In conclusion, Dr Williams said, 'If Mr Newman continued to marginalise the parliament and to control Queensland from the Premier's office, no-one could blame people for drawing comparisons to Sir Joh.' Dr Williams said that Mr Newman used his first day in the new parliament to make a statement about being a strong leader, but in the post Fitzgerald era Queenslanders also demand due process to be followed. Dr Williams noted they might wonder what on earth the parliament is even there for. We know what the parliament is here for, and we as an opposition will be calling on the government to act in accordance with the principles of Westminster democracy and to practise the openness, transparency and accountability that they have pledged to offer.