




Speech by  
**Bill Byrne**

**MEMBER FOR ROCKHAMPTON**

Hansard Wednesday, 1 August 2012

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**CRIMINAL LAW (FALSE EVIDENCE BEFORE PARLIAMENT)  
AMENDMENT BILL**

 **Mr BYRNE** (Rockhampton—ALP) (5.50 pm): I must say that I have really enjoyed the history lesson that predates my involvement here, but as usual this government is wallowing in the past. I rise to speak in favour—

**Government members** interjected.

**Mr BYRNE:** Maybe members should inform themselves about a few things first. I rise to speak in support of the Criminal Law (False Evidence Before Parliament) Amendment Bill 2012. However, my support is given with considerable reservation. My involvement to date suggests that once again this government is all about form rather than substance. It is really just about meeting a pre-election promise—a promise that is all about spin.

**Government members** interjected.

**Mr BYRNE:** If members hear me out, I will tell them why. The spin on this one is that only the LNP can be considered honest and ethical, underwritten by such a loose association suggesting that this amendment will deliver such. The facts are that the present rules under section 37 of the act already provide all of the mechanisms—if you like, the tools of trade—to deal with a person for contempt. This presently gives the parliament the power to impose fines and, if necessary, prison time in such circumstances. In the serious amount of evidence that was given in consideration of this amendment, I was particularly struck by comments from the Queensland Council for Civil Liberties in 2005 contained in the Legal Affairs and Community Safety Committee's report where Terry O'Gorman commented along these lines. He said—

To put any parliamentarian, including a Minister, on a criminal charge for an answer given in parliament or in answer to a chairman of committee's questioning is, in our view, unheard of, and it is unacceptable because it would chill free speech in parliament.

This is directly at odds with the LNP position as submitted to the committee. As we all know, this bill seeks to reintroduce section 57 into the Criminal Code. This government through this amendment is attempting to prosecute the view that by not having a section 57 the Queensland parliament is some sort of den of liars operating outside the norms of Westminster practice. This is just plain nonsense. In fact, reintroduction of this section introduces provisions that do not exist in the House of Commons or the federal houses of parliament.

This amendment was run up the flagpole by members of the government back in 2008 when in opposition. For the benefit of new members, I want to quote from a speech given by Kerry Shine within that debate. The central points of debate have not changed, and nor am I convinced by the arguments within some submissions to the committee suggesting that this bill does not threaten our rights as parliamentarians. All that has changed since 2008 is that the LNP now has the numbers to pass whatever it likes. This, however, does not change the facts as I see them. Kerry Shine was right on the money, as far as I am concerned, when he said at that time—

The prosecution of a person for an offence against a provision such as the one proposed—

that is, the reintroduction of section 57—

would conflict directly with the parliamentary privilege guaranteed by the Bill of Rights ... and the Parliament of Queensland Act 2001. Article 9 of the Bill of Rights provides that the freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament.

Later in the speech he said, and this section is revealing—

It is not permissible to question or impeach the motives or intentions of the member making the statement in parliament, or to question the truth of what was said. In *O'Chee v Rowley*, the Queensland Court of Appeal found that a senator was not obliged to produce documents during discovery in a legal proceedings if the documents had been used by him in the course of parliamentary business.

Members opposite would have us believe that, by repealing section 57, Queensland is out of step with everyone else. This is definitely not the situation. Repealing section 57 meant that, for members, Queensland was brought into line with the position of the House of Commons, and both federal houses of parliament and other states and territories.

In the article titled 'The origins of section 57 of the Criminal Code of Queensland' included in *Justice According to Law: A Festschrift for the Honourable Mr Justice BH McPherson CBE* published by the Supreme Court Library, the former Crown Solicitor, Mr Conrad Lohe, traced the history of section 57 back to Tasmania and South Australia before 1859 and its subsequent appearance in Queensland in 1861 and eventual incorporation in the Criminal Code. Having examined that history, including parliamentary debates, the former Crown Solicitor concluded that it had never been the intention of the law-makers in Queensland that the precursors to section 57 were to apply to members of parliament at all.

I am not across, and nor am I frankly interested in, the relationships between the removal of section 57, all subsequent debates and the ever-present influence of the disgraced Gordon Nuttall. What I can say is that this amendment achieves nothing constructive and I believe injects additional irrational complication. Despite the various assurances, I am concerned about this amendment and I believe it has the potential to threaten parliamentary privilege. There is the potential for destabilising conflict between the parliament and the courts, and in that sense this amendment offers the opportunity for further erosion of the separation of powers. Add to the equation the potential executive arm investigation by the CMC and there is the option for all elements of the separated powers to be directly in unhealthy conflict. The reintroduction of section 57 will have no bearing on grubs like Nuttall, should such a person ever be elected again.

The Bar Association in its submission to the committee said that it supports the reintroduction in principle. Read that to mean too much is open to interpretation. The Bar Association's support is conditional. What it does mean is that the bill is not sufficiently granular to be workable. The punchline from the Bar Association is—

It is important from a constitutional perspective that the parliament retains control of its own proceedings and affairs.

Why would it say this unless it held reservations about whether in fact this bill complements such? No. What it is really saying is, 'C minus. Resubmit.'

The CMC's submission raises similar practical concerns. These are not addressed sufficiently in any of the material provided by the government. This whole bill is really just so much wasted hot air from a government apparently only interested in governing by a checklist—tick, done, next! Of course nobody has ever been prosecuted under section 57, and nor are they ever likely to be with the government of the day holding the numbers to determine such issues in practice. That is why the practical concerns raised in a number of submissions are in fact irrelevant. Lucille Ball once said—

Just say the word politician and I think of chicanery.

Perhaps this amendment bill is some not-so-well-formed attempt by this government to raise the community's generally low regard for politicians. After all, we will never lie in parliament because it is a criminal offence and it is against the law. I wish the government very well with that! No, this amendment is froth and bubble—form over substance—which says much about a government that is supposed to be about removing unnecessary or unproductive regulatory burdens, but apparently not in this case.

This bill does little to enhance the standing of this parliament. In fact, it undermines privilege and freedom of speech while unnecessarily exposing this parliament to the invasion of the legal system. The bill undermines parliamentary democracy. I will be supporting the bill, but I do so with my eyes open—unlike most of the government members, of whom many think that this amendment has something to do with parliamentarians' integrity. Of course, it does not.