




Speech by  
**Ian Berry**

**MEMBER FOR IPSWICH**

Hansard Wednesday, 1 August 2012

---

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

 **Mr BERRY** (Ipswich—LNP) (8.00 pm): I rise to speak on the Criminal Law (False Evidence Before Parliament) Amendment Bill 2012. I support this bill and I will explain to this House the reasons for my support. To understand my reasons I will address a number of matters. I believe it is necessary to take into account the history of section 57. When I talk about section 57, of course I mean the complement of sections 56, 57 and 58, although the fundamental section is section 57. It is a matter of working out what is section 57, why it was deleted and why it ought to be reinstated. To give a little bit of history, Sir Samuel Griffith, an eminent jurist who became the Premier of this great state and served as a justice of the High Court of Australia, was a man of vision, determination and intellect who gave us the codification of the criminal law in Queensland. He was so successful in this endeavour that his work was made law in 1899 and, subsequently, his work was also adopted in other Australian states and in other jurisdictions of the Commonwealth.

So what is section 57? The annotations to Carter's Criminal Code are silent on the origins of section 57, yet Sir Samuel Griffith included it at a time when Queensland had been a state for 40 years and had the benefit of the upper house of review, namely the Legislative Council of Queensland. The inclusion of section 57 manifested a legislative commitment to take away from the Legislative Assembly and Council the obligation for a citizen—and I use the word 'citizen' advisedly at this point—to be dealt with in a partisan way, that is, at the whim of the government of the day. It is an enactment giving the criminal courts of Queensland the power to impose a criminal sanction on a person who knowingly gives a false answer to any lawful and relevant question. So the false answer must be deliberate and must be wrong and, of course, relevant. We colloquially call it a lie.

Why did Sir Samuel Griffith see the need for using an independent court system rather than leaving it in the hands of the government of the day? Keep in mind that before the pronouncement of this section in the Criminal Code it did not exist at common law. Perhaps he had the foresight to envisage that not only did a court have the means and expertise to determine the issues of fact and law but it also had a commitment to ensure that there was a hearing in a balanced forum, that is, that there was no malice on the part of the independent judge and jury, no political agenda. It is expected that legal experts would probe the evidence in order to find the facts upon which a jury on a question of fact and a judge on a question of law are left to make those decisions—the system that has underpinned our system of justice for a substantial number of years, hundreds of years. It was for legal counsel providing persuasive argument in a transparent and even way to assist both the judge and jury as opposed to a forum such as this House, which is combative and not necessarily transparent, which has political and personal motives entangled which probably are not revealed and where there is not a proper testing of the evidence; at the end of the day it would be decided upon party lines.

In summary on the meaning of section 57, there is only one forum capable of testing whether a lie is a lie, for a lie must not only be a wilful, wrongful statement of fact but also be told by a person in answer to a lawful and relevant question. The penalty for being found guilty under section 57 is a maximum of seven

years imprisonment. If section 57 is as great as I have espoused here, then why was it deleted from the Criminal Code on 1 June 2006? I remember that the Beattie Labor government was in power. The Attorney-General was Linda Lavarch and the minister for health was Gordon Nuttall. Before I venture on that historical occasion, I indicate that there has never been a prosecution under this provision. There has been a contempt proceeding against a member, but it is of little relevance to the argument as to whether or not section 57 ought to be reinstated.

Secondly, for reasons which will be explained, section 57 does not, I respectfully submit, have any effect upon a member of parliament, and reference has been made to section 8 of the Parliament of Queensland Act. The centre of the abolition of section 57 had as its centrepiece a lie told by the honourable Gordon Nuttall. In short, Mr Nuttall seemed to get into a spot of bother about statements he made on 8 July 2005 before a public hearing of a Queensland estimates committee. Unfortunately for Mr Nuttall, statements made by him as the then minister for health were wrong, wilful and were in response to relevant questions. So, clearly, he had a case to answer.

The net effect of Mr Nuttall's comments were that he lied to the committee. But why the crusade on the part of the Beattie Labor government to eliminate section 57? I said earlier that section 57 did not refer to lies by a member of Parliament. Section 6 of the Parliament of Queensland Act clearly states that nothing in the act derogates from any power, right or immunity of the Assembly or its members or committees. Section 8 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. Mr Nuttall had complete immunity from prosecution in a court of law. Put simply, he could not have been prosecuted under section 57. There was no reason for the Beattie Labor government to remove the section. It was unnecessary. If anything, it showed a lack of foresight and no clear vision as to what the section revealed. Mr Nuttall may have had his problems in relation to his false statements, but contempt was always open, but then that is the issue. The issue before this parliament is that he needed to be questioned before this parliament and then public opinion would have decided whether Mr Nuttall had erred.

Of course, that would have embarrassed the then government. Therefore, it took the view that it needed to create a mist over the proper provisions and what they really meant. I now look at the reasoning of the Beattie government. The players, of course, were the then Premier and the then Attorney-General. I understand that now ministers McArdle and Springborg were also involved in this debate. The then Attorney-General adopted the 'I don't know approach'. Her reasoning was based on there being no decided case in Queensland; therefore, it may apply or it may not apply to members of parliament. At the end of the day, the then Attorney adopted the view of 'what is right, correct and common sense'; therefore section 57 ought to be taken out. She said, 'We are supporting and strengthening the institution of parliament by choosing the jurisdiction of the contempt of parliament provision'—a clear case that the government of the day would rule on whether or not anybody lied. The then Attorney added weight to her reasoning by proclaiming—

A criminal provision such as section 57, which allows the possibility of the prosecution of a member for what that member says in the House, is inconsistent with the principle established by article 9 of the ... Bill of Rights of 1688 ...

Is this the law? Let me call on the words of the then Attorney, who in the discussion stated—

Another point of clarification asked by the member—

meaning Mr McArdle, the member for Caloundra—

was whether section 57 applies to members or nonmembers. We could have this debate all day. There are varying views about to whom it applies.

Even the Attorney at that point really was not sure.

So why was it removed? Very simply, because the government was not sure. Gordon Nuttall may have committed a criminal offence but the Beattie Labor government had a mate to protect and they were not prepared to make that decision. So the earth stopped spinning. And we lost Gordon Nuttall. He was demoted from his position as the then minister for health. Of course, we find ourselves in this place today reinstating the law as an eminent jurist had decided.