Speech by

Hon. Jarrod Bleijie

MEMBER FOR KAWANA

Hansard Wednesday, 1 August 2012

CRIMINAL LAW (FALSE EVIDENCE BEFORE PARLIAMENT) AMENDMENT BILL

Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (4.52 pm): I move—

That the bill now be read a second time.

I thank the Legal Affairs and Community Safety Committee for its prompt consideration of the Criminal Law (False Evidence Before Parliament) Amendment Bill 2012. I note the committee tabled its report on the bill on 2 July 2012. I table a copy of the government's response to that report.

Tabled paper: Legal Affairs and Community Safety Committee: Report No. 1—Criminal Law (False Evidence Before Parliament) Amendment Bill 2012, government response [646].

The committee made four recommendations about the bill and I will address those recommendations in detail. Recommendation 1 is, of course, that the bill be passed subject to the following terms being defined: 'examination', 'answer', and 'lawful and relevant'. The rationale given was that providing definitions for these terms would avoid ambiguity. With respect to the committee, except for an amendment to provide assistance with what is not an examination, the terms will remain undefined in the bill. There are sound reasons for not defining these terms. The absence of a definition is not fatal to the operation of the section. Simply because the legislation does not contain a definition does not mean the term is ambiguous or uncertain. The terms carry their everyday meaning. Providing definitions for these terms, especially 'answer', has the potential to make the section more complex than it needs to be.

The phrase 'lawful and relevant' has no particular mystery to it and has its everyday meaning. Whether a question is lawful and relevant to the examination is a matter best resolved by the court having regard to the available evidence and the particular circumstances of the case. It is not uncommon for key terms in the Criminal Code not to be defined in the legislation. An example is the term 'exceptional circumstance'. As it is difficult to predict in a definition the infinite variations that could occur, the circumstances that may amount to exceptional are best assessed on a case-by-case basis. For similar reasons, this should be the approach adopted for the term 'lawful and relevant'. What is an examination will also be a matter for the tribunal of fact to determine, having regard to all of the evidence before it. This is clearly indicated in the explanatory notes. The concept of examination is not one that is unfamiliar to the Assembly or its committees. Indeed, part 8 of the standing rules and orders of the Assembly is entitled 'Examination of Witnesses'.

Let me clarify some concerns raised in the submissions to the committee regarding whether the term 'examination' carries with it a requirement for evidence to be given on oath. The concept of examination is not restricted to evidence given only on oath or affirmation. This is specifically addressed in the explanatory notes, as examination under oath or affirmation before the Legislative Assembly or a committee is not mandatorily required by the Parliament of Queensland Act 2001, section 31. However, in order to provide greater clarity to the offence, I propose to amend the bill to clearly state what conduct does not fall within the ambit of the term 'examination'. An examination is not meant to capture the everyday operations of parliament.

Recommendation 2 was that an amendment to the bill be made to prevent an incidence of a contempt also being prosecuted under section 57 of the code. No such amendment is necessary because of existing provisions. Firstly, section 47(1) of the Parliament of Queensland Act 2001 already adequately deals with preventing double punishment from occurring. Moreover, section 16 of the Criminal Code already contains a relevant provision that guards against a person being twice punished for the same offence. It appears that the application of section 16 of the Criminal Code may not have been considered by the committee.

The committee's third recommendation was that the bill be amended to clarify that the Crime and Misconduct Commission must report findings regarding breaches of section 57 to the Attorney-General. I agree that if the CMC investigates an alleged breach of new section 57 of the Criminal Code, an amendment of the type recommended has merit. This would be an amendment to relevant sections of the Crime and Misconduct Act 2001. It is advantageous in two respects. The amendment would clearly outline that any such report should be furnished to the Attorney-General. This avoids the uncertainty and the conjecture that existed in 2005 surrounding the CMC's investigation report into allegations concerning Gordon Nuttall. In supporting this recommendation, we are also guided by the CMC's own submission on the bill, forwarded to the committee, which sought resolution of this issue. The other benefit of this amendment, as alluded to in the committee's report, is that it embeds that it is the role of the parliament to decide whether particular conduct should be dealt with as a contempt of parliament or prosecuted in the criminal courts. Such safeguards are welcome and can only be an asset to our processes.

Finally, recommendation 4 proposes that I as Attorney-General investigate reinstating repealed sections 56, disturbing the legislature, and section 58, witness refusing to attend and give evidence of the Criminal Code. These sections were also repealed in 2006 when section 57 was repealed by the Criminal Code Amendment Act 2006. I thank the committee and the chair for drawing to my attention the merit in considering the re-enactment of both section 56 and section 58. I have formed the view that these sections should be reinstated into the Criminal Code. To this end I am grateful to the Clerk of the Parliament who offered his valuable insights on the matter in his submission to the committee. I am particularly persuaded to reinsert section 56 as it cures the anomaly that the Criminal Code only presently contains a criminal offence of creating a disturbance in Parliament House when parliament is not sitting. It is appropriate for the Criminal Code to contain a corresponding offence that deals with disturbing the legislature when parliament is sitting. It is my intention to move that these sections be re-enacted and I will move such amendments to the bill in consideration in detail.

As I outlined at the time of the introduction of this bill to the Legislative Assembly, the bill fulfils the Queensland government's pre-election pledge that within our first 100 days of forming government we would start drafting legislation to again make it illegal to lie to parliament—that is, that we would re-enact repealed section 57 of the Criminal Code which contained the offence of false evidence before parliament. The bill signifies the government's intention to bring back accountability in government and integrity in our system of democracy in Queensland.

I am particularly pleased to accept the committee's recommendation to reinsert repealed sections 56 and 58—section 56 dealing with disturbances in the Assembly in the public gallery and section 58 dealing with bringing people before a committee and compelling people without lawful excuse to attend committees to give evidence. I commend the bill to the House.