




Speech By
Peter Russo
MEMBER FOR TOOHEY

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**CRIMINAL LAW (COERCIVE CONTROL AND AFFIRMATIVE CONSENT) AND
OTHER LEGISLATION AMENDMENT BILL; CRIMINAL CODE AND OTHER
LEGISLATION (DOUBLE JEOPARDY EXCEPTION AND SUBSEQUENT
APPEALS) AMENDMENT BILL**

 **Mr RUSSO** (Toohey—ALP) (3.41 pm): I rise to speak to the cognate bills being debated: the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill and the Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Bill. The Legal Affairs and Safety Committee, in its report No. 63 of the 57th Parliament, tabled in this Assembly on 19 January 2024, recommended to the Assembly that the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill be passed. The Community Safety and Legal Affairs Committee, in its report No. 1 of the 57th Parliament, tabled in this Assembly on 19 February 2024, recommended that the Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Bill be passed.

The objectives of the coercive control and affirmative consent bill are to: firstly, implement the government's response to the second tranche of reforms recommended by the taskforce in chapter 3.9 of the taskforce's first report, *Hear her voice: report one—Addressing coercive control and domestic and family violence in Queensland*, building on the groundwork established by the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act, including by introducing a new offence to criminalise coercive control; secondly, give effect to the government's response to a range of recommendations from the taskforce's second report, *Hear her voice: report two—Women and girls' experiences across the criminal justice system*, relating to domestic and family violence, sexual violence, publication restrictions and women and girls as accused persons and offenders, including amendments to create an affirmative model of consent in Queensland; thirdly, progress further amendments to abolish or reform particular jury directions, re-examining recommendations 65 and 66 of the *Criminal justice report* of the Royal Commission into Institutional Responses to Child Sexual Abuse, in light of report two; fourthly, implement the government's response to two related domestic and family violence recommendations from the Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence report, *A call for change*; and, fifthly, amend the Domestic and Family Violence Protection Act to allow a court to make an order to extend a police protection notice in exceptional circumstances.

The report tabled presents a summary of the Legal Affairs and Safety Committee's examination of the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill. The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles—that is, to consider whether the bill has sufficient regard to the rights and liberties of individuals and to the institution of parliament. This bill implements a host of

recommendations from multiple inquiries, including the *Hear her voice* reports from the Women's Safety and Justice Taskforce, the commission of inquiry into the Queensland Police Service and the Royal Commission into Institutional Responses to Child Sexual Abuse.

Years of investigations, reviews, hearings and submissions at both levels of government across Queensland have shown one thing: the need for change. This bill is about change, and that is good. We need change. We need to change how we think about and how we treat consent. We need to change how the criminal justice system responds to coercive or controlling behaviour. We need to change how juries are to be directed, how first-time domestic violence offenders can be channelled towards rehabilitation and what considerations exist when deciding bail and sentencing.

This is a considerable amount of needed change but, above all, this bill is about one thing. It is about changing the experience of girls and women who have had to journey through the police and court system—a system that is designed to protect them and give them justice. Sadly, this is a system that has let many of them down. It is not enough to call out the behaviour, draw attention to the statistics or have an awareness campaign. We have been there and done that but nothing changed. It is not enough to have White Ribbon Day or the International Day for the Elimination of Violence Against Women. What we do need is deep, structural reform.

The coercive control and affirmative consent bill achieves that and will amend over 10 pieces of legislation, including the Criminal Code, the Evidence Act, the Domestic and Family Violence Protection Act, the Penalties and Sentences Act and the Youth Justice Act. It is a privilege to be part of a government that is tackling one of the greatest social issues of our time head-on. Our government has sat down with stakeholders, listened to the experts, heard the stories of victim-survivors and examined the facts. This is a government that is carrying out major reform, rather than tinkering at the edges and failing. We are a government that is making things happen so that no-one is left behind.

The objectives of the double jeopardy exception and subsequent appeals bill are to enhance criminal justice system responses to possible wrongful convictions and unjust acquittals by: establishing a statutory framework to allow a person convicted on indictment or of a summary offence to make, with the leave of the Court of Appeal, a subsequent appeal against the conviction; and expanding the fresh and compelling evidence double jeopardy exception to 10 prescribed offences in addition to murder. In expanding exceptions to the double jeopardy rule and providing an avenue for subsequent appeals, this bill modernises core aspects of Queensland's criminal justice system by enhancing how we respond to unjust acquittals and wrongful convictions.

The rule of double jeopardy and the principle of finality provide important safeguards against procedural abuse and should undoubtedly be preserved. However, it is often necessary to update fundamental civic principles as community expectations evolve. I believe this bill strikes an appropriate balance between reform in the spirit of justice and the preservation of the protections enshrined in these long-established principles.

In every other Australian jurisdiction, double jeopardy exceptions encompass serious offences such as rape, attempted murder and certain sexual offences against children. In Queensland at the moment, the exception applies only to murder. This broad application of the principle of double jeopardy has perhaps resulted in the acquittal of those accused of the most abhorrent of crimes when the evidence indicated their guilt.

The bill's provision for a subsequent appeals framework is an equally significant reform for Queensland. Just as the community has an expectation that guilty parties are convicted of crimes when evidence points to their guilt, the community expects that those convicted of serious crimes are given the opportunity to have these convictions overturned when evidence emerges indicating their innocence.

The bill will not limit the number of subsequent appeals a convicted person may make under the new subsequent appeal framework; however, they must obtain the leave of the Court of Appeal. The Court of Appeal must be satisfied that a subsequent appeal has a reasonable prospect of success. The bill also provides that the right of subsequent appeal applies retrospectively to convictions, original appeals and applications for leave to appeal that have occurred prior to the bill's commencement on the ground that there is fresh and compelling evidence or new and compelling evidence.

The committee notes the broad support from stakeholders for a subsequent appeals framework that brings Queensland into alignment with other Australian jurisdictions. The committee believes that individuals who have been wrongfully convicted deserve as many opportunities as reasonable to have their case reheard, especially if it involves evidence that did not exist, or was not available, during the original trial.

Stakeholder feedback provided during the committee's investigation was supportive of the inclusion of another legislative pathway, with the Queensland Law Society stating support 'for the defendants who have already unsuccessfully appealed to the Court of Appeal but then come into possession of further evidence'. The Queensland Law Society added that 'defendants can have defective trials and appeals which are effectively no fault of their own'.

The Criminal Code provides two exceptions to the double jeopardy exception rule and allows the court to order a retrial if: the charge is murder and there is fresh and compelling evidence against the acquitted person—fresh and compelling evidence double jeopardy exception; or the charge is for a 25-year offence and acquittal is tainted. The bill proposes to amend the Criminal Code to expand the fresh and compelling evidence double jeopardy exceptions. I commend the bills to the House.