




Speech By
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MEMBER FOR NOOSA

Record of Proceedings, 6 March 2024

**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**

 **Ms BOLTON** (Noosa—Ind) (11.53 am): I rise to make a short contribution to this cognate debate to ensure others will have time to speak, and I thank those members who cut down their speech times. First I will comment on the Criminal Law (Coercive and Affirmative Consent) and Other Legislation Amendment Bill, which will amend multiple pieces of legislation, with the centrepiece to the Criminal Code to insert a new affirmative model of consent. In this, consent must be freely and voluntarily given, as we have heard, with the bill setting out circumstances when consent cannot be freely given such as if the person does not have cognitive capability or if the person is asleep.

Like most laws, the devil is in the detail. The committee's inquiry produced a large report on the myriad issues raised by stakeholders. One of those concerned consent and serious disease. The bill establishes that consent cannot be provided where a person makes a false representation about having a serious disease and then transmits that disease. The Queensland Council of Unions stated that this form of criminalisation shifts the model of public health for sexually transmitted diseases to one of criminalisation, stigmatisation and discrimination. That was also supported by Queensland Positive People, the HIV/AIDS Legal Centre and the National Association of People with HIV Australia, who stated that they do not support applying criminal law to the transmission of STIs. The department responded that, despite the public health issue, the consent issue is also of prime importance.

There are some serious trade-offs here. There are half a dozen equally serious issues in the report. Despite this, the committee made only one recommendation—to amend a very minor administrative provision. The committee made no recommendations regarding what was in the statement of reservation, issues raised in debate of previous coercion bills around community education to avoid any confusion, or policing and court resourcing. I think these are vital. As I have said before, the committee system needs a full, independent review to effectively fulfil its role in examining legislation as it does not appear to be currently working as it should.

The issues in this bill are complex. The committee inquiry could have provided a review of the issues from a broad range of viewpoints to get to a consensus, yet it appears to have been a rushed process that could have been dominated by our current system of the confidentiality of committee meetings and chairs with a casting vote. We do not know whether that has affected the outcomes, because minutes are not made public.

The Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Bill establishes a framework to reopen criminal cases when new evidence becomes available. When applied to prosecution, this is referred to as double jeopardy—retrying people for the same crime even when a decision has already been made. This is the principle of finality, that decisions made by the court should not be reopened, and is a fundamental principle of the legal system; however,

it has been put aside in exceptional circumstances. Currently, only murder cases be retried when new evidence emerges. This bill will expand that to 10 additional offences—four relate to unlawful killing and six to sex offences. Some stakeholders were against these changes, with the Queensland Law Society supporting the existing balance in the system, which only provides for the exception of murder. On the other hand, the Bar Association of Queensland noted that the bill largely reflects the position taken in other jurisdictions across Australia.

The bill also amends the criminal justice system to provide a right of subsequent appeal. Currently, a person may only appeal their conviction once, and after the appeal is determined the matter is closed. This bill creates a right to make another appeal if evidence later emerges that has the potential to exonerate the convicted person. In its submissions the Queensland Law Society was supportive of allowing subsequent appeals; however, it highlighted the risk that expanded appeal rights may lead to endless attempts by self-represented prisoners claiming new evidence. Legal Aid Queensland thought the bill would likely to lead to increased litigants in the court but thought it would be not too significant, given the experience of other jurisdictions. In response, the department noted that the bill addresses these concerns by only allowing appeals with the prior approval of the Court of Appeal.

We know why this bill has been introduced. The forensic science lab debacle of not testing certain forensic samples, which now need to be tested, will require an ability to reopen the associated criminal cases. Hopefully, the changes in this bill will bring more justice, especially for our victims. I thank the ministers, departmental staff, committees and submitters for their contributions and scrutiny of both bills.