




Speech By  
**Stephen Andrew**

**MEMBER FOR MIRANI**

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Record of Proceedings, 5 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**

 **Mr ANDREW** (Mirani—PHON) (5.11 pm): I rise to speak on the cognate debate with specific reference to the Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Bill 2023. The bill was introduced in response to the 2022 report by Walter Sofronoff KC following his inquiry in forensic DNA testing in Queensland. The commissioner made a number of observations and findings relevant to the consideration of any reform of chapters 67 and 68 of the Criminal Code. Importantly, it found that in many ways the methods, systems and processes used at the forensic DNA laboratory do not measure up to best practice.

The commissioner highlighted that, in large part, the laboratory's focus on turnaround times was driven by chronic underfunding. The commissioner commented that these issues of underfunding were well known at the highest levels of Queensland Health and the Queensland government as far back as early 2005. As the commissioner identified, the totality of these failings have had serious negative ramifications for the criminal justice system. There is no doubt that the failure to obtain all of the evidence available from samples has affected some cases. In most cases, it may have reduced the prospects of conviction by a failure to obtain evidence which could support a complaint. It is possible, but unlikely, that the failures could have resulted in a wrongful conviction. The number of cases actually affected and whether with different processes those cases would have resulted in different outcomes has never been properly quantified.

The bill introduces a subsequent right of appeal for convicted persons who have exhausted their original right of appeal. Under the new framework, a convicted person may make a subsequent appeal against their conviction if there is fresh and compelling evidence or new and compelling evidence relating to the offence. I strongly support the introduction of another legislative pathway for defendants who have already unsuccessfully appealed to the Court of Appeal but then come into possession of further evidence. Currently, the only remaining avenue available to a convicted person after exhausting the original appeal process is to petition the Governor for a pardon. A person cannot make a subsequent appeal against a conviction to the Court of Appeal even if evidence later emerges indicating the person is innocent. The bill also contains amendments enhancing the state's ability to respond to possible unjust acquittals by expanding the number of offences to which the fresh and compelling evidence double jeopardy exception applies.

The term double jeopardy refers to the longstanding criminal law principle that a person cannot be retried for an offence for which they have already been convicted or acquitted. The explanatory notes provide the following rationale for the rule against double jeopardy: a person should not be harassed by multiple prosecutions about the same issue; the need for finality in proceedings; the sanctity of a jury verdict; the prevention of wrongful convictions; and the need to encourage investigators and prosecutors to be efficient in putting forward their best case.

I am opposed to the bill's further watering down of the double jeopardy rule which would expand the offences to which the double jeopardy exception applies. The current exceptions are sufficient for maintaining public confidence in the state's criminal justice system whilst continuing to uphold fundamental legal principles. The bill's changes have been linked to the findings of the forensic lab inquiry; however, once enacted its effect will not be restricted to any cases emanating from the inquiry. The bill's changes will apply to all matters involving offences engaged by the new provisions. This is what is known as mission creep, and it is one reason I support the introduction of a further right of appeal for a defendant but oppose the relaxation of the rule for the Crown, because there is a different set of considerations at play.

Defendants can have defective trials and appeals which are effectively no fault of their own, whereas the Crown should be bound by its forensic decisions, its approach and its ethics at trial because it is in a better position and the other side is a single individual against the might of the Crown. Furthermore, it is also important to acknowledge that the current rule against double jeopardy does not affect the prosecution's ability to bring a charge in circumstances where charges against a person have never been laid or charges against a person were laid but then later discontinued.

The rule against double jeopardy works hand in hand with the principle of finality in criminal law, which is important to the proper and economic allocation of public resources. At its core, however, the rule against double jeopardy is also a fundamental control on state power, given that in every case the power and resources of the state will be greater than those of an individual accused of a crime. The fundamental nature of the rule against double jeopardy within Australia's criminal justice system is recognised by section 234 of the Human Rights Act 2019, which provides—

A person must not be punished more than once for an offence in relation to which the person has already been finally convicted or acquitted in accordance with law.

In this way, the rule against double jeopardy encourages efficient police investigations, safeguards against the use of prosecution as a tool of state oppression, and acts as a bulwark against repeated attempts to subject an accused to the criminal justice process. Double jeopardy serves to maintain confidence in the criminal justice system in a way that is too easily underestimated.

The state has many advantages over the defendant in a criminal trial, including possessing greater resources and powers to conduct investigations. In a criminal offence the prosecution starts with an advantage because many jurors will say, 'If there was nothing in this case, the police would never have brought it.' The criminal justice system rectifies those imbalances with the presumption of innocence and placing the burden on the prosecution to prove the offence beyond a reasonable doubt. In addition, this attempt to correct the imbalance is supported by the rule against double jeopardy. Once, an accused person could leave the courtroom with the prospect of rebuilding their life. That will no longer be the case if this bill is enacted. The prospect of their being charged again will hang over their head for the rest of their lives.