

Criminal Law (False Evidence Before Parliament) Amendment Bill 2012

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Jarrod Bleijie MP Attorney-General and Minister for Justice

Title of the Bill

Criminal Law (False Evidence Before Parliament) Amendment Bill 2012

Objectives of the Amendments

The objective of the amendments is to amend the Criminal Law (False Evidence Before Parliament) Amendment Bill 2012 (the Bill) to:

- expressly provide that despite the operation of section 8 of the *Parliament of Queensland Act 2001*, evidence of anything said or done during proceedings in the Assembly may be given in a proceeding against a person for an offence under Chapter 8 of the Criminal Code to the extent necessary to prosecute the person for the offence;
- re-introduce the repealed section 56 which prohibited disturbing the Legislative Assembly while in session, with amendment, and the repealed section 58 which applied to witnesses refusing to attend or give evidence before Parliament or a parliamentary committee, with amendment, into the Criminal Code;
- insert a provision to clarify that a member of the Legislative Assembly does not give an answer during an examination before the Legislative Assembly only because the member answers a question during Question Time, a debate or the conduct of other daily business of the Legislative Assembly;
- make an amendment to the *Crime and Misconduct Act 2001* to insert a provision that if the Commission decides that prosecution proceedings for an offence under the Criminal Code, section 57 should be

considered, the Commission must report on the investigation to the Attorney-General; and

- amend the long title of the Bill to include the *Crime and Misconduct Act 2001*.

Achievement of the Objectives

The objectives are achieved by way of an amendment to the Bill as described below.

Alternative Ways of Achieving Objectives

There is no alternative way to achieve the policy objective.

Estimated Cost for Government Implementation

Any costs in relation to the amendments will be met from existing agency resources.

Consistency with Fundamental Legislative Principles

While the creation of new criminal offences affects the rights and liberties of individuals, the offences criminalise conduct that is currently prohibited and punished by the rules of Parliament and the *Parliament of Queensland Act 2001*. Further, the amendment re-introduces offences that existed in the Criminal Code for over 100 years.

The creation of the new offences is justified to give effect to the need to provide adequate deterrence from disturbing the Legislative Assembly while it is in session and ensure compliance with orders of the Legislative Assembly to attend before the Legislative Assembly or an authorised committee and answer questions or produce documents as outlined in the relevant sections of the *Parliament of Queensland Act 2001*.

In considering whether the Bill has sufficient regard to the institution of Parliament, the amendments ensure that the Legislative Assembly will retain the right to decide whether particular conduct should be dealt with as contempt of Parliament or whether it should be prosecuted under the new offence.

Consultation

These amendments principally stem from the accepted recommendations of the Legal Affairs and Community Safety Committee Report (Report No.1) into the Criminal Law (False Evidence Before Parliament) Amendment Bill 2012.

Notes on Provisions

Amendment 1 inserts new clauses 2A and 2B into the Bill.

Clause 2A inserts new section 53 into Chapter 8 of the Criminal Code which expressly provides that despite the operation of section 8 of the *Parliament of Queensland Act 2001*, evidence of anything said or done during proceedings in the Assembly may be given in a proceeding against a person for an offence under Chapter 8 of the Criminal Code to the extent necessary to prosecute the person for the offence. The approach is consistent with clause 3 of the Bill, new subsections 57(3) and 57(4). As a consequence of the insertion of new sections 56 and 58 of the Criminal Code, new subsections 57(3) and 57(4) (clause 3) have been omitted and are now consolidated within clause 2A.

Subsection (2) provides that subsection (1) does not limit the *Parliament of Queensland Act 2001*, section 36 (Inadmissibility of particular events before ‘*the Assembly or*’ a committee).

Subsection (3) contains the definition of ‘proceedings in the Assembly’ relevant to new section 53. The term is as per the definition in the *Parliament of Queensland Act 2001*.

Clause 2B inserts new section 56 (Disturbing the Legislature) into the Criminal Code which makes it an offence to disturb the Legislative Assembly while the Legislative Assembly is in session.

New section 56 in effect re-inserts former section 56, which was repealed in 2006 by the *Criminal Code Amendment Act 2006*, but with minor changes to the language of the original section to reflect modern drafting practices.

The offence applies where a person, while the Legislative Assembly is in session, intentionally disturbs the Assembly or intentionally commits any disorderly conduct in the immediate view and presence of the Assembly, tending to interrupt its proceedings or to impair the respect due to its authority.

Amendment 2 amends clause 3 (Insertion of new s 57) of the Bill consequential to the insertion of new section 58.

Amendment 3 amends clause 3 of the Bill to insert a provision to clarify that a member of the Legislative Assembly does not give an answer during an examination before the Legislative Assembly only because the member answers a question during Question Time, a debate or the conduct of other daily business of the Legislative Assembly.

Amendment 4 amends clause 3 of the Bill to renumber new section 57 as a consequence of subsections (3) and (4) being removed and included in new section 53.

Amendment 5 amends clause 3 of the Bill to renumber new section 57 as a consequence of subsections (3) and (4) being removed and included in new section 53.

Amendment 6 amends clause 3 of the Bill to insert new section 58 (Witness refusing to attend, answer question or produce a thing before Legislative Assembly or authorised committee) into the Criminal Code.

The *Parliament of Queensland Act 2001*, Chapter 3, Part 1 specifically contains the powers of the Legislative Assembly or authorised committee to require attendance and the production of any document or other thing. This Part also sets out the relevant process to require attendance before the Legislative Assembly or authorised committee, to produce to the Legislative Assembly or authorised committee any document or thing and answer a question asked by the Legislative Assembly or an authorised committee.

New section 58 has been redrafted to take into account the operation of the scheme provided for in Chapter 3, Part 1 of the *Parliament of Queensland Act 2001*.

New section 58 applies where a person fails to attend before the Legislative Assembly as required under the *Parliament of Queensland Act 2001*, section 29; or fails to attend before an authorised committee as required under the *Parliament of Queensland Act 2001*, section 30(4); or fails to answer a question asked by the Legislative Assembly

or to produce a document or other thing to the Legislative Assembly, as required under the *Parliament of Queensland Act 2001*, section 32(6); or fails to answer a question asked by an authorised committee, or to produce a document or thing to an authorised committee, as required under the *Parliament of Queensland Act 2001*, section 33(8).

Subsection (2) provides that a person cannot be convicted of an offence against subsection 58 (1) (a) or (b), if the Legislative Assembly has excused the person for the failure mentioned in the subsection.

Subsection (3) contains the definition of ‘authorised committee’ relevant to new section 58. The term is as per the definition in the *Parliament of Queensland Act 2001*.

Amendment 7 inserts new clauses 6 and 7 into the Bill to amend the *Crime and Misconduct Act 2001*.

Clause 6 provides that Part 4 of the Bill amends the *Crime and Misconduct Act 2001*.

Clause 7 amends section 49 of the *Crime and Misconduct Act 2001* by inserting a new provision that if the Commission decides that prosecution proceedings for an offence under the Criminal Code, section 57 should be considered, the Commission must report on the investigation to the Attorney-General. The amendment also provides for what such a report must contain consistent with the existing requirements specified in section 49.

Amendment 8 amends the long title of the Bill to insert the ‘*Crime and Misconduct Act 2001*’ to reflect that this is a Bill for an Act to amend the Criminal Code, the *Parliament of Queensland Act 2001* and the *Crime and Misconduct Act 2001* for particular purposes.