

Your Ref:

Our Ref: Criminal Law Committee: 21000339/219

25 June 2012

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By Post and Email to: lacsc@parliament.qld.gov.au

Dear Research Director

CRIMINAL LAW (FALSE EVIDENCE BEFORE PARLIAMENT) AMENDMENT BILL 2012

Thank you for the opportunity for the Queensland Law Society to provide comments to the Inquiry into the *Criminal Law (False Evidence Before Parliament) Amendment Bill 2012* (the Bill).

The Society acknowledges that the Bill implements a pre-election commitment of the Government, but notes that the text of the Bill has not been the subject of previous consultation. We note that there is a severely truncated opportunity for review of the amending legislation and, as such, an in-depth analysis has not been conducted. It is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified.

We note that the Bill reintroduces s 57, *Criminal Code Act 1899* which makes it an offence to give a false answer to a lawful and relevant question put to the person during an examination before the Legislative Assembly or a committee. The Bill, in s 57(3), specifically provides that evidence of anything said or done during proceedings in the Assembly may be used in a proceeding against a person for an offence under the section, despite s 8, *Parliament of Queensland Act 2001*.

When s 57, *Criminal Code Act 1899* was repealed in 2006 the Explanatory Notes to the amending legislation stated at page 1:

The powers, rights and immunities which are collectively referred to as “parliamentary privilege” took centuries to evolve and were won incrementally by the English Parliament, in particular by the House of Commons, after numerous power struggles with the Crown and the courts. The *Bill of Rights (1688)* confirmed the paramountcy of Parliament over the Crown and Article 9 provided that “the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament”.

Section 8(1) of the *Parliament of Queensland Act 2001* states that the freedom of speech and debates or proceedings in the Assembly can not be impeached or questioned in any court or place out of the Assembly. To remove doubt, section 8(2) declares that subsection (1) is intended to have the same effect as Article 9 of the *Bill of Rights (1688)* had in relation to the Assembly immediately before the commencement of the subsection.

Section 57(3) therefore represents a departure from those well-established principles. Having said that, s 57 had been a part of the *Criminal Code Act 1899* for some time prior to its omission in 2006, but did not deal with the issue of privilege and evidence for a prosecution under the section.

We acknowledge that there is a compelling argument that the Assembly should be a place of the upmost integrity and be seen to be a place of the upmost integrity. Members of the Assembly and individuals appearing before committees should not be able to knowingly give false answers to questions. We note that the Bill explicitly does not limit the power of the Parliament to determine a matter of contempt.

Ultimately it is a matter for the Parliament to strike an appropriate balance between the freedom of speech and debates or proceedings in the Assembly and public confidence in the institution of the Parliament.

The Bill contemplates that an incidence of giving false evidence could be dealt with either as a contempt of Parliament or as an offence under s 57. The Bill does not appear to prevent an incidence of giving false evidence, which is dealt with as a contempt of Parliament, also being prosecuted as an offence. This does not appear to be an intended outcome of the drafting and could be remedied by the addition of a sub-clause to s 57 to that effect.

Thank you again for the opportunity to provide these comments. If you require any further information with respect to this submission, please contact our Principal Policy Solicitor, Mr Matt Dunn on 3842 5889 or via email on m.dunn@qls.com.au.

Yours faithfully

Dr John de Groot
President