

# **Criminal Code Amendment Bill 2006**

## **Explanatory Notes**

### **Objectives of the Bill**

To repeal sections 56, 57 and 58 of the Criminal Code.

### **Reasons for the Bill**

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 of the Criminal Code provides that any person who knowingly gives false evidence, in the course of an examination before the Legislative Assembly or a committee of the Legislative Assembly, is guilty of a crime and is liable to seven years imprisonment.

The *Parliament of Queensland Act 2001* provides that the same behaviour is contempt of Parliament, to be dealt with by the Parliament. The confusion caused by these contradictory processes needs to be rectified.

Section 57 of the Criminal Code is also inconsistent with the fundamental tenet of the Westminster system, embodied in section 8 of the *Parliament of Queensland Act 2001*, that debates or proceedings in Parliament can not be impeached or questioned in any court or place out of the Parliament. A criminal provision such as section 57, which allows the possibility of the prosecution of a Member for what the Member says in the House, is

inconsistent with the principle established by Article 9 of the *Bill of Rights (1688)*.

### **Achievement of the Objectives**

The Bill repeals section 57 of the Criminal Code to ensure that the principle inherent in Article 9 of the *Bill of Rights (1688)* is preserved and reinforced. For Members, this will bring Queensland into line with the position in the House of Commons, the Commonwealth Houses of Parliament and the Parliaments of other States and Territories. For non-Members, the position will be the same as for the Commonwealth Houses of Parliament.

Members and non-Members will remain liable to be dealt with for contempt of Parliament under the *Parliament of Queensland Act 2001*.

Section 56 of the Criminal Code provides that it is a misdemeanour to disturb the Assembly and section 58 of the Criminal Code relates to witnesses refusing to attend and give evidence before the Assembly. Having regard to the level of criminality and the fact that the conduct is able to be dealt with as contempt under the *Parliament of Queensland Act 2001*, these sections are also repealed.

Consequential amendments are also made to section 36 (2)(b) and (2)(c) of the *Parliament of Queensland Act 2001*. These sections refer in their footnotes to sections 57 and 58 of the Criminal Code.

### **Alternative Ways of Achieving Objectives**

Limiting the operation of section 57 to non-Members would preserve the principle inherent in Article 9 of the *Bill of Rights (1688)*, but this option is not supported because such a proposal is inherently unfair and inequitable. The result would be that a member of the public who has to attend and give evidence before the Parliament may be subject to a criminal offence carrying 7 years imprisonment whilst a Member of Parliament would not.

Limiting the application of section 57 to evidence given on oath does not address the fundamental issue of whether it is appropriate for section 57 to apply to Members.

Repealing section 57 ensures that Members and non-Members are treated equally.

**Estimated Cost for Government Implementation**

Nil.

**Consistency with Fundamental Legislative Principles**

The amendments are consistent with fundamental legislative principles.

**Consultation**

The Crown Solicitor provided advice on the proposed amendments. The Clerk of the Parliament and the Office of the Queensland Parliamentary Counsel were consulted in relation to technical issues.

**Notes on Provisions****Part 1                      Preliminary**

Clause 1 provides that the short title is the *Criminal Code Amendment Act 2006*.

**Part 2                      Amendment of the Criminal Code**

Clause 2 provides that this Part amends the Criminal Code.

Clause 3 omits section 56 (Disturbing the Legislature)

Clause 4 omits section 57 (False evidence before Parliament) and section 58 (Witnesses refusing to attend or give evidence before Parliament or parliamentary committee).

Clause 5 inserts a new Chapter 80 (Transitional provisions for *Criminal Code Amendment Act 2006*).

In order to put it beyond doubt that a person cannot be prosecuted for these repealed offences, new section 717 specifically provides that after commencement of the amending law, a person cannot be charged with, prosecuted for, convicted of or punished for any of the repealed offences.

However, a person may still be dealt with for contempt under the *Parliament of Queensland Act 2001*.

## **Part 3                      Amendment of Parliament of Queensland Act 2001**

Clause 6 provides that this part amends the *Parliament of Queensland Act 2001*.

Clause 7 amends section 36 (Inadmissibility of particular events before a committee) by omitting footnotes 4 and 5.