



ELIZABETHAE SECUNDAE REGINAE

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No. 2 of 1979

**An Act to amend The Criminal Code in certain particulars;  
to amend the Evidence Act 1977 in a certain  
particular; and to amend the Justices Act 1886–1978  
in certain particulars**

[ASSENTED TO 6TH APRIL, 1979].

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

**1. Short title.** This Act may be cited as the *Criminal Law Amendment Act 1979*.

**2. Commencement of Act.** This Act or a provision thereof specified in the Proclamation shall come into operation on the date appointed by Proclamation for the coming into operation of this Act or, as the case may be, that provision.

**3. Arrangement of Act.** This Act is arranged in Parts as follows:—

PART I—PRELIMINARY (ss. 1–3);

PART II—AMENDMENT OF THE CRIMINAL CODE (ss. 4–8);

PART III—AMENDMENT OF EVIDENCE ACT (ss. 9–10);

PART IV—AMENDMENT OF JUSTICES ACT (ss. 11–13).

## PART II—AMENDMENT OF THE CRIMINAL CODE

**4. Repeal of s. 312.** *The Criminal Code* is amended by—

(a) repealing section 312; and

(b) omitting the words “*Attempting to Commit Suicide.*” appearing as a heading immediately above that section.

**5. New s. 408C.** *The Criminal Code* is amended by inserting after section 408B the following heading and section:—

“*Misappropriation of Property*”

**408C.** (1) Any person who dishonestly applies to his own use or to the use of any person—

(a) property belonging to another; or

(b) property belonging to him, which is in his possession or control (either solely or conjointly with any other person) subject to a trust, direction or condition or on account of any other person,

is guilty of the crime of misappropriation of property.

(2) An offender guilty of the crime of misappropriation of property is liable to imprisonment with hard labour for five years save in any of the following cases when he is liable to imprisonment with hard labour for ten years, that is to say:—

(a) if the offender is a director or member of the governing body of any corporation or company, and the property dishonestly applied belongs to that corporation or company or came into the possession or control of the offender on account of that corporation or company;

(b) if the offender is an employee of any other person, and the property dishonestly applied belongs to that other person or came into the possession or control of the offender on account of that other person;

(c) if the property dishonestly applied came into the possession or control of the offender subject to a trust, direction or condition that it should be applied to any purpose or be paid to any person specified in the terms of trust, direction or condition or came into his possession on account of any other person;

(d) if the property dishonestly applied or the yield to the offender from the dishonest application of the property dishonestly applied is of a value of \$2 000 or upwards.

(3) For the purposes of this section—

(a) the term “property” includes money and all other property real or personal, legal or equitable, including things in action and other intangible property;

(b) a person’s application of property may be dishonest notwithstanding that he is willing to pay for the property or that he intends to afterwards restore the property or to make restitution in respect thereof to the person to whom it belongs or to afterwards fulfil his obligations in relation to the property;

(c) a person’s application of property shall be taken not to be dishonest, save where the property came into his possession or control as trustee or personal

representative, if when he applies the property he does not know to whom the property belongs and believes on reasonable grounds that such person cannot be discovered by taking reasonable steps;

- (d) persons to whom property belongs include the owner, any part owner, any person having a legal or equitable interest in or claim to the property and any person who, immediately before the offender's application of the property, had control of it."

**6. Amendment of s. 566.** Section 566 of *The Criminal Code* is amended by in rule 15 inserting after the words "any property" the words "(whether within the meaning of section 1 or of section 408c)".

**7. Amendment of s. 568.** Section 568 of *The Criminal Code* is amended by inserting after subsection (1B) the following subsection:—

"(1C) In an indictment against a person for misappropriation of property he may be charged and proceeded against for the amount of a general deficiency notwithstanding that—

- (a) any number of specific applications of property has resulted in the general deficiency;
- (b) such applications of property have extended over any space of time; and
- (c) the property applied belongs to different persons, and has come into the possession or control of the accused person at different times and subject to different trusts, directions, conditions or duties to account."

**8. Amendment of s. 581.** Section 581 of *The Criminal Code* is amended by omitting all words from and including the words "(a) Stealing any property" to and including the words "trick or device;" and substituting the following words:—

- "(a) stealing, with or without a circumstance of aggravation;
- (b) obtaining goods by false pretences;
- (c) obtaining goods by a wilfully false promise;
- (d) obtaining goods partly by a false pretence and partly by a wilfully false promise;
- (e) cheating;
- (f) misappropriation of property;
- (g) procuring any other person to commit any of such offences;"

### PART III—AMENDMENT OF EVIDENCE ACT

**9. Citation.** (1) In this Part the *Evidence Act* 1977 is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Evidence Act* 1977–1979.

**10. Amendment of s. 95.** Section 95 is amended by, in subsection (1), omitting the expression "(not being a criminal proceeding)".

## PART IV—AMENDMENT OF JUSTICES ACT

**11. Citation.** (1) In this Part the *Justices Act* 1886–1978 is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Justices Act* 1886–1979.

**12. New ss. 102A to 102F.** The Principal Act is amended by inserting after section 102 the following heading and sections:—

*“ Procedure for Private Complaint*

**102A. Private complaint upon leave of Attorney-General.** Proceedings shall not be had upon a private complaint charging any person with an indictable offence, whether or not the charge is one that may be dealt with summarily, unless the complaint has been made by leave of the Attorney-General.

**102B. Security for costs of defence.** Upon application for leave of the Attorney-General to make a private complaint referred to in section 102A the person who is to make the complaint shall be required to give security, in such amount and in such manner as the Attorney-General may direct, that—

- (a) he will prosecute the matter of the charge proposed without delay; and
- (b) he will pay to the proposed defendant such costs incurred by the defendant in respect of his defence to the charge proposed as the justices before whom proceedings relating to the charge may be taken may order him to pay.

**102C. Grant of leave dependent on security for costs.** Leave of the Attorney-General to make a private complaint referred to in section 102A shall not be granted until the requirement of security made pursuant to section 102B has been satisfied.

**102D. Costs of defence.** In either of the following cases, that is to say—

- (a) if the defendant to a private complaint charging an indictable offence appears in answer to the complaint and further proceedings are not taken to conclusion on that complaint within a year after his so appearing; or
- (b) if the justices before whom proceedings upon a private complaint charging an indictable offence are taken refuse to commit the defendant for trial on any charge or, in the case of a charge of an indictable offence that is dealt with summarily, refuse to convict the defendant of any offence,

any justices to whom the defendant applies (in the case referred to in paragraph (a)) or the justices before whom proceedings upon the complaint are concluded (in any other case) may award costs to the defendant.

**102E. Proof of leave to make complaint.** A document issued by authority of the Attorney-General and purporting to embody leave to make a private complaint referred to in section 102A shall be produced to the justices before whom proceedings on such complaint are taken, shall be filed as part of the record of those proceedings, and thereupon shall be sufficient proof of the granting of such leave.

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**102F. Meaning of expression “private complaint”.** In sections 102A to 102E, both inclusive, the expression “private complaint” means a complaint made by a person other than—

- (a) a police officer, a member of the Commonwealth Police Force, an officer of the Public Service of Queensland or of the Commonwealth, in each case acting in the execution of his duty; or
- (b) a person who, in making the complaint, is acting in the execution of a duty, imposed on him by law or in the due administration of any Act or an Act of the Commonwealth.”.

**13. Amendment of s. 103A.** Section 103A of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:—

“(4) In this section and in section 103 the expression “private complaint” means a complaint made by a person other than—

- (a) a police officer, a member of the Commonwealth Police Force, an officer of the Public Service of Queensland or of the Commonwealth, in each case acting in the execution of his duty; or
- (b) a person who, in making the complaint, is acting in the execution of a duty, imposed on him by law or in the due administration of any Act or an Act of the Commonwealth.”.