



Queensland

Criminal Code and Jury and Another Act Amendment Act 2008

Act No. 50 of 2008



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Criminal Code and Jury and Another Act Amendment Act 2008

Act No. 50 of 2008

An Act to amend the Criminal Code, the Jury Act 1995 and the Crime and Misconduct Act 2001 for particular purposes

[Assented to 19 September 2008]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Criminal Code and Jury and Another Act Amendment Act 2008*.

Part 2 Amendment of Criminal Code

2 Act amended in pt 2

This part amends the Criminal Code.

3 Amendment of s 590AA (Pre-trial directions and rulings)

Section 590AA(2)—

insert—

‘(da) an application for trial by a judge sitting without a jury;
or’.

4 Amendment of s 604 (Trial by jury)

Section 604(1), after ‘Subject to’—

insert—

‘chapter division 9A and’.

5 Insertion of new ch 62, ch div 9A

Chapter 62—

insert—

‘Chapter division 9A Trial by judge alone

‘614 Application for order

- ‘(1) If an accused person is committed for trial on a charge of an offence or charged on indictment of an offence, the prosecutor or the accused person may apply to the court for an order (***no jury order***) that the accused person be tried by a judge sitting without a jury.
- ‘(2) The application must be made under section 590AA before the trial begins.
- ‘(3) If the identity of the trial judge is known to the parties when the application is decided, a no jury order may be made only if the court is satisfied there are special reasons for making it.
- ‘(4) Subsection (3) does not limit section 615 or any other restriction on making a no jury order imposed by this chapter division.
- ‘(5) The court may inform itself in any way it considers appropriate in relation to the application.
- ‘(6) For subsection (2), the trial begins when the jury panel attends before the court.

‘615 Making a no jury order

- ‘(1) The court may make a no jury order if it considers it is in the interests of justice to do so.
- ‘(2) However, if the prosecutor applies for the no jury order, the court may only make the no jury order if the accused person consents to it.
- ‘(3) If the accused person is not represented by a lawyer, the court must be satisfied that the accused person properly understands the nature of the application.

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- ‘(4) Without limiting subsection (1), (2) or (3), the court may make a no jury order if it considers that any of the following apply—
- (a) the trial, because of its complexity or length or both, is likely to be unreasonably burdensome to a jury;
 - (b) there is a real possibility that acts that may constitute an offence under section 119B would be committed in relation to a member of a jury;
 - (c) there has been significant pre-trial publicity that may affect jury deliberations.
- ‘(5) Without limiting subsection (1), the court may refuse to make a no jury order if it considers the trial will involve a factual issue that requires the application of objective community standards including, for example, an issue of reasonableness, negligence, indecency, obscenity or dangerousness.

‘615A More than 1 charge or accused person

- ‘(1) If an accused person is charged with 2 or more charges that are to be tried together, the court must not make a no jury order in relation to 1 of the charges unless the court also makes a no jury order in relation to each other charge.
- ‘(2) If 2 or more accused persons are to be tried together, the court must not make a no jury order in relation to 1 of the accused persons unless the court also makes a no jury order in relation to each other accused person.
- ‘(3) To remove any doubt, it is declared that—
- (a) each of the accused persons must consent to the making of the no jury order; and
 - (b) the making of an order for a separate trial under section 597A or a the giving of a direction about the separate trial of an accused person under section 597B does not prevent the making of a no jury order.

‘615B Law and procedure to be applied

- ‘(1) In a trial by a judge sitting without a jury, the judge must apply, so far as is practicable, the same principles of law and procedure as would be applied in a trial before a jury.
- ‘(2) In a trial by a judge sitting without a jury, the judge may view a place or thing.
- ‘(3) If an Act or the common law—
 - (a) requires information or a warning or instruction to be given to the jury in particular circumstances; or
 - (b) prohibits a warning from being given to a jury in particular circumstances;

the judge in a trial by a judge sitting without a jury must take the requirement or prohibition into account if the circumstances arise in the course of the trial.

‘615C Judge’s verdict and judgment

- ‘(1) In a trial by a judge sitting without a jury—
 - (a) the judge may make any findings and give any verdict that a jury could have made or given if the trial had been before a jury; and
 - (b) any finding or verdict of the judge has, for all purposes, the same effect as a finding or verdict of a jury.
- ‘(2) Without limiting subsection (1), chapter 67 applies with all necessary changes in relation to a person to be tried, being tried, or tried by a judge sitting without a jury in the same way as it applies to persons tried by a judge sitting with a jury.
- ‘(3) The judgment of the judge in a trial by a judge sitting without a jury must include the principles of law that he or she has applied and the findings of fact on which he or she has relied.
- ‘(4) The validity of the proceeding is not affected by a trial judge’s failure to comply with subsection (3).

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‘615D Particular proceedings excluded from application

‘This chapter division does not apply to—

- (a) a trial on indictment before a Childrens Court judge; or

Note—

See also *Juvenile Justice Act 1992*, part 6.

- (b) a trial on indictment of any offence against a law of the Commonwealth.

‘615E References to trial by jury

‘(1) In an Act, a reference to the trial of a person by jury, however expressed, includes, unless the contrary intention appears, a reference to the trial of the person by a judge sitting without a jury under this chapter division.

‘(2) In an Act, a reference to a jury in the trial of a person, however expressed, includes, unless the contrary intention appears, a reference to a judge sitting without a jury under this chapter division.’.

6 Insertion of new ch 83

Part 9—

insert—

‘Chapter 83 Transitional provision for Criminal Code and Jury and Another Act Amendment Act 2008

‘720 Trial by judge alone

‘(1) Chapter 62, chapter division 9A applies in relation to a trial begun after the commencement whether the offence was committed before or after the commencement.

‘(2) For subsection (1), the trial has begun when the jury panel attends before the court.

‘(3) In this section—

commencement means the commencement of the *Criminal Code and Jury and Another Act Amendment Act 2008*, part 2.

Part 3 Amendment of Jury Act 1995

7 Act amended in pt 3

This part amends the *Jury Act 1995*.

8 Replacement of s 59 (Unanimous verdict in criminal cases)

Section 59—

omit, insert—

‘59 Verdict in criminal cases for particular offences must be unanimous

‘(1) This section applies to the following criminal trials on indictment—

(a) a trial for any of the following offences—

(i) murder;

(ii) an offence against the Criminal Code, section 54A(1) if, because of the circumstances of the offence, the offender is liable to imprisonment for life, which can not be mitigated or varied under the Criminal Code or any other law;

(iii) an offence against a law of the Commonwealth; or

(b) a trial before a jury consisting of only 10 jurors when it gives its verdict.

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- ‘(2) For subsection (1)(b), it does not matter that at any time before its verdict was given the jury consisted of more than 10 jurors.
- ‘(3) The verdict of the jury must be unanimous.
- ‘(4) However, if on the trial of an offence mentioned in subsection (1)(a)(i) or (ii)—
 - (a) the jury is unable to reach a unanimous verdict; and
 - (b) the defendant is liable to be convicted of another offence not mentioned in subsection (1)(a)(i) or (ii);in relation to the conviction for the other offence, section 59A applies as if the defendant were originally charged with the other offence.

‘59A Verdict in criminal cases for other offences

- ‘(1) This section applies to a criminal trial on indictment other than the following trials—
 - (a) a trial for an offence mentioned in section 59(1)(a); or
 - (b) a trial before a jury as mentioned in section 59(1)(b).
- ‘(2) If, after the prescribed period, the judge is satisfied that the jury is unlikely to reach a unanimous verdict after further deliberation, the judge may ask the jury to reach a majority verdict.
- ‘(3) If the jury can reach a majority verdict, the verdict of the jury is the majority verdict.
- ‘(4) For the definition in subsection (6), *prescribed period*, paragraph (a), the periods mentioned in subparagraphs (i), (ii) and (iii) are the periods reasonably calculated by the judge.
- ‘(5) A decision of the judge under subsection (4) is not subject to appeal.

‘(6) In this section—

majority verdict means—

- (a) if the jury consists of 12 jurors—a verdict on which at least 11 jurors agree; or
- (b) if the jury consists of 11 jurors—a verdict on which at least 10 jurors agree.

prescribed period means—

- (a) a period of at least 8 hours after the jury retires to consider its verdict, not including any of the following periods—
 - (i) a period allowed for meals or refreshments;
 - (ii) a period during which the judge allows the jury to separate, or an individual juror to separate from the jury;
 - (iii) a period provided for the purpose of the jury being accommodated overnight; or
- (b) the further period the judge considers reasonable having regard to the complexity of the trial.’.

9 Insertion of new s 79

Part 9—

insert—

‘79 Transitional provision for Criminal Code and Jury and Another Act Amendment Act 2008—majority verdicts

- ‘(1) Section 59 as in force before the commencement continues to apply to a criminal trial begun but not completed before the commencement as if the amending Act had not been enacted.
- ‘(2) For subsection (1), a trial has begun when all the members of the jury have been sworn.
- ‘(3) Sections 59 and 59A as in force after the commencement apply to a criminal trial that begins after the commencement

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whether the offence was committed before or after the commencement.

‘(4) In this section—

amending Act means the *Criminal Code and Jury and Another Act Amendment Act 2008*, part 3.

commencement means the commencement of the amending Act.’.

Part 4 **Amendment of Crime And Misconduct Act 2001**

10 **Act amended in pt 4**

This part amends the *Crime and Misconduct Act 2001*.

11 **Amendment of 192 (Refusal to answer question)**

Section 192(2)—

omit, insert—

‘(2) The person is not entitled—

- (a) to remain silent; or
- (b) to refuse to answer the question on the ground of the self incrimination privilege or the ground of confidentiality.

‘(2A) The person is entitled to refuse to answer the question on the following grounds of privilege—

- (a) legal professional privilege;
- (b) public interest immunity;
- (c) parliamentary privilege.’.

12 Insertion of new ch 8, pt 6—

Chapter 8—

insert—

**‘Part 6 Criminal Code and Jury and
Another Act Amendment Act 2008**

‘385 Declaration

- ‘(1) It is declared that, from the commencement, a witness at a misconduct hearing was not entitled to refuse to answer a question on the ground of the self incrimination privilege or on the ground of confidentiality.
- ‘(2) Without limiting subsection (1), it is declared that from the commencement—
- (a) it has always been and continues to be lawful for the presiding officer at a misconduct hearing to require an individual to answer a question after that individual has made a claim on the ground of the self incrimination privilege in relation to an answer; and
 - (b) it has always been and continues to be lawful for the presiding officer at a misconduct hearing, in response to a claim on the ground of the self incrimination privilege made by an individual in relation to an answer, to make an order that all answers or a class of answer given by the individual are to be regarded as having been given or produced on objection on the ground of the self incrimination privilege; and
 - (c) it has always been and continues to be lawful for the presiding officer at a misconduct hearing to require an individual to answer all questions or a class of question after the presiding officer has made an order that all answers or a class of answer given by the individual are to be regarded as having been given or produced on objection on the ground of the self incrimination privilege; and

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- (d) any answer given by an individual giving evidence at a misconduct hearing who has been directed to answer a question after a claim been made on the ground of the self incrimination privilege in relation to that answer, has always been and continues to be admissible in any proceeding about—
 - (i) the falsity or misleading nature of an answer, document, thing or statement given or produced by the individual; or
 - (ii) an offence against this Act; or
 - (iii) a contempt of a person conducting the hearing.

‘(3) In this section—

commencement means the commencement of section 192 on 1 January 2002.

misconduct hearing means a commission hearing in the context of a misconduct investigation.’.

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