



Queensland

Criminal Code and Other Legislation Amendment Act 2011

Act No. 7 of 2011



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Act No. 7 of 2011

An Act to amend the Criminal Code, the Appeal Costs Fund Act 1973, the Appeal Costs Fund Regulation 2010, the Retail Shop Leases Act 1994 and the Summary Offences Act 2005 for particular purposes

[Assented to 4 April 2011]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Criminal Code and Other Legislation Amendment Act 2011*.

Part 2 Amendment of Criminal Code

2 Code amended

This part amends the Criminal Code.

3 Amendment of s 1 (Definitions)

Section 1—

insert—

‘crematorium includes the land or water where the crematorium is situated.

domestic relationship means a domestic relationship as defined under the *Domestic and Family Violence Protection Act 1989*, section 11A(1) and 12, 12A, 12B or 12C.’.

4 Amendment of s 23 (Intention—motive)

(1) Section 23(1)(b)—

omit, insert—

‘(b) an event that—

-
- (i) the person does not intend or foresee as a possible consequence; and
 - (ii) an ordinary person would not reasonably foresee as a possible consequence.’.
- (2) Section 23(1A), from ‘abnormality’—
omit, insert—
‘abnormality.’.

5 Amendment of s 304 (Killing on provocation)

Section 304—

insert—

- ‘(2) Subsection (1) does not apply if the sudden provocation is based on words alone, other than in circumstances of a most extreme and exceptional character.
- ‘(3) Also, subsection (1) does not apply, other than in circumstances of a most extreme and exceptional character, if—
- (a) a domestic relationship exists between 2 persons; and
 - (b) one person unlawfully kills the other person (the *deceased*); and
 - (c) the sudden provocation is based on anything done by the deceased or anything the person believes the deceased has done—
 - (i) to end the relationship; or
 - (ii) to change the nature of the relationship; or
 - (ii) to indicate in any way that the relationship may, should or will end, or that there may, should or will be a change to the nature of the relationship.
- ‘(4) For subsection (3)(a) a domestic relationship between 2 persons may be constituted by an intimate personal relationship as defined under the *Domestic and Family Violence Protection Act 1989*, section 12A(2), even if the

[s 6]

persons' lives are not enmeshed as mentioned in section 12A(2)(b) of the Act.

- '(5) Subsection (3)(c)(i) applies even if the relationship has ended before the sudden provocation and killing happens.
- '(6) For proof of circumstances of a most extreme and exceptional character mentioned in subsection (2) or (3) regard may be had to any history of violence that is relevant in all the circumstances.
- '(7) On a charge of murder, it is for the defence to prove that the person charged is, under this section, liable to be convicted of manslaughter only.
- '(8) When 2 or more persons unlawfully kill another, the fact that 1 of the persons is, under this section, guilty of manslaughter only does not affect the question whether the unlawful killing amounted to murder in the case of the other person or persons.'

6 Amendment of s 304B (Killing in an abusive domestic relationship)

- (1) Section 304B, heading, after 'Killing'—

insert—

'for preservation'.

- (2) Section 304B(2)—

omit.

- (3) Section 304B(3) to (7)—

renumber as section 304B(2) to (6).

- (4) Section 304B—

insert—

- '(7) In this section—

domestic violence means domestic violence as defined under the *Domestic and Family Violence Protection Act 1989*, section 11.'

7 Amendment of s 458 (Unlawful acts)

(1) Section 458—

insert—

‘(1A) For section 469, punishment in special cases, clause 11, the destruction or damage by a person of property fixed in a cemetery or at a crematorium is unlawful unless the person is acting—

- (a) with the owner’s consent; or
- (b) with the lawful consent of the entity (if any) responsible for managing and administering the cemetery or crematorium; or
- (c) in the reasonable belief that lawful consent mentioned in paragraph (b) has been given.’.

(2) Section 458(1A) to (3)—

renumber as section 458(2) to (4).

8 Amendment of s 469 (Wilful damage)

(1) Section 469—

insert—

‘(2) For this section, other than punishment in special cases, clause 11, the destruction or damage of property that is a thing mentioned in section 566(11) is presumed to be done without the owner’s consent until the contrary is proved.

‘(3) For this section, punishment in special cases, clause 11, the destruction or damage of property is, until the contrary is proved, presumed to be done—

- (a) without the owner’s consent; and
- (b) if the property is fixed in a cemetery or at a crematorium—
 - (i) without the lawful consent of the entity (if any) responsible for managing and administering the cemetery or crematorium; and

[s 9]

(ii) not in the reasonable belief that lawful consent mentioned in subparagraph (i) has been given.’.

(2) Section 469, punishment in special cases—

insert—

‘11 Cemeteries etc.

‘(1) If the property in question is—

(a) a grave, vault, niche or memorial in a cemetery or at a crematorium; or

(b) a war memorial; or

(c) at a place of religious worship;

the offender commits a crime and is liable to imprisonment for 7 years.

‘(2) In this clause—

memorial, in a cemetery or at a crematorium, includes the following—

(a) a headstone;

(b) an inscribed plaque or commemorative plate;

(c) a monumental, ornamental or other structure;

(d) another thing erected or placed—

(i) to mark the site where human remains have been buried or placed; or

(ii) to commemorate a deceased person.’.

9 Amendment of s 566 (Particular indictments)

Section 566(11), ‘or street’—

omit, insert—

‘, street or cemetery or at a crematorium’.

10 Amendment of s 568 (Cases in which several charges may be joined)

Section 568—

insert—

- ‘(5A) In an indictment against a person for obtaining or dealing with identification information under section 408D, the person may be charged and proceeded against on 1 charge even though—
- (a) the identification information relates to different entities; or
 - (b) the identification information was obtained or dealt with over a space of time; or
 - (c) different acts of obtaining or dealing with the identification information took place at different times, whether or not the different acts can be identified.’.

11 Insertion of new pt 9, ch 89

Part 9—

insert—

‘Chapter 89 Transitional provision for Criminal Code and Other Legislation Amendment Act 2011

‘728 Application of amendment Act

- ‘(1) This Code, as amended by the amendment Act, sections 4 and 6, applies to proceedings for an offence started after the commencement of the sections, whether the act or omission constituting the offence happened before or after the commencement of the sections.
- ‘(2) Subsection (1) does not apply to proceedings for an appeal from a conviction or sentence that happened before the commencement of the amendment Act, sections 4 and 6.

[s 12]

‘(3) This Code, as amended by the amendment Act, sections 5, 7 and 8, applies to proceedings for an offence only if the act or omission constituting the offence happened after the commencement of the sections.

‘(4) In this section—

amendment Act means the *Criminal Code and Other Legislation Amendment Act 2011*.’.

Part 3 **Amendment of Appeal Costs Fund Act 1973**

12 Act amended

This part amends the *Appeal Costs Fund Act 1973*.

13 Amendment of s 4 (Interpretation)

Section 4—

insert—

‘*guideline proceeding* see the *Penalties and Sentences Act 1992*, section 15AA.’.

14 Amendment of s 5 (Appeal Costs Fund)

Section 5(3), after ‘18,’—

insert—

‘20C, 20E.’.

15 Insertion of new pt 4, div 1, hdg

Before section 15—

insert—

‘Division 1 Generally’.

16 Insertion of new pt 4, div 2 and div 3, hdg

After section 20—

insert—

‘Division 2 Guideline proceeding

‘20A Definitions for div 2

‘In this division—

court means the Court of Appeal.

guideline judgment see the *Penalties and Sentences Act 1992*, section 15AA.

‘20B Grant of indemnity certificate to person on appeal after conviction

- ‘(1) This section applies if on an appeal after a person is convicted—
- (a) the person applies to the court for review of a guideline judgment under the *Penalties and Sentences Act 1992*, section 15AE(3); and
 - (b) if the person made the appeal—the appeal succeeds.
- ‘(2) The court may, on application by the person, grant to the person an indemnity certificate in respect of that part of the appeal relating to the review of the guideline judgment.
- ‘(3) The court may grant the certificate despite no order as to costs being made or allowed.

‘20C Effect of indemnity certificate under s 20B

- ‘(1) If a person is granted an indemnity certificate under section 20B in respect of that part of an appeal relating to a review of

[s 16]

a guideline judgement, the certificate entitles the person to be paid from the fund—

- (a) an amount equal to the additional costs incurred by the person on the appeal for which the certificate was granted, as assessed or agreed on by—
 - (i) the board; and
 - (ii) the respondent or the respondent’s solicitor; and
 - (iii) the appellant or the appellant’s solicitor; and
- (b) if the costs referred to in paragraph (a) are assessed—an amount equal to the costs incurred by the person, or on the person’s behalf, in having those costs assessed.

‘(2) Despite subsection (1), the amount payable from the fund to any 1 person under any 1 indemnity certificate must not be more than the amount prescribed under a regulation.

‘(3) In this section—

additional costs, incurred by a person on an appeal, means the costs beyond what the person would otherwise have incurred had the appeal not included a review of a guideline judgment.

‘20D Grant of indemnity certificate to convicted person

- ‘(1) This section applies if a convicted person appears in a guideline proceeding relevant to an appeal before the court against the sentence of the convicted person under the *Penalties and Sentences Act 1992*, section 15AF(2).
- ‘(2) The court may, on application by the convicted person, grant to the convicted person an indemnity certificate in respect of that part of the appeal relating to the guideline proceeding.
- ‘(3) The court may grant the certificate despite no order as to costs being made or allowed.

‘20E Effect of indemnity certificate under s 20D

- ‘(1) If a convicted person is granted an indemnity certificate under section 20D in respect of that part of an appeal relating to a

guideline proceeding, the certificate entitles the convicted person to be paid from the fund—

- (a) an amount equal to the additional costs incurred by the convicted person on the appeal for which the certificate was granted, as assessed or agreed on by—
 - (i) the board; and
 - (ii) the respondent or the respondent’s solicitor; and
 - (iii) the appellant or the appellant’s solicitor; and
- (b) if the costs referred to in paragraph (a) are assessed—an amount equal to the costs incurred by the convicted person, or on the convicted person’s behalf, in having those costs assessed.

‘(2) Despite subsection (1), the amount payable from the fund to any 1 person under any 1 indemnity certificate must not be more than the amount prescribed under a regulation.

‘(3) In this section—

additional costs, incurred by a convicted person on an appeal, means the costs beyond what the convicted person would otherwise have incurred had the appeal not included a guideline proceeding.

‘Division 3 Discretion’.

17 **Amendment of s 21 (Discretion as to indemnity certificate)**

Section 21(1), after ‘discretion of’—

insert—

‘the Court of Appeal,’.

18 **Amendment of s 22 (Abortive proceedings and new trials after proceedings discontinued)**

Section 22, before subsection (1)—

[s 19]

insert—

‘(1A) This section does not apply to a guideline proceeding.’.

19 Insertion of new s 29

Part 6—

insert—

‘29 Amendment of regulation—Criminal Code and Other Legislation Amendment Act 2011

‘The amendment of the *Appeal Costs Fund Regulation 2010* by the *Criminal Code and Other Legislation Amendment Act 2011* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’.

Part 4 Amendment of Appeal Costs Fund Regulation 2010

20 Regulation amended

This part amends the *Appeal Costs Fund Regulation 2010*.

21 Amendment of s 5 (How to claim payment out of the fund under an indemnity certificate)

(1) Section 5(b)(vii)—

renumber as section 5(b)(ix).

(2) Section 5(b)—

insert—

‘(vii)for an indemnity certificate granted to a person under section 20B of the Act—a copy of a receipt, or other documents, evidencing any payment of costs, by or on behalf of the person, relied on;

(viii) for an indemnity certificate granted to a convicted person under section 20D of the Act—a copy of a receipt, or other documents, evidencing any payment of costs, by or on behalf of the convicted person, relied on;’.

22 Amendment of s 14 (Prescribed limits on amounts payable)

(1) Section 14(3) and (4)—

renumber as section 14(5) and (6).

(2) Section 14—

insert—

‘(3) For section 20C(2) of the Act, the prescribed amount is \$15000.

‘(4) For section 20E(2) of the Act, the prescribed amount is \$15000.’.

Part 5 Amendment of Retail Shop Leases Act 1994

23 Act amended

This part amends the *Retail Shop Leases Act 1994*.

24 Insertion of new s 36A

Part 6, division 4, subdivision 3, after section 36—

insert—

‘36A Ratchet rent provision void

‘(1) Subsection (2) applies if a retail shop lease provides a basis for rent review under which the rent may be varied, including by a decrease, but the lease includes a ratchet rent provision.

[s 25]

- ‘(2) The ratchet rent provision is void.
- ‘(3) In this section—
- ratchet rent provision*** means any provision of a retail shop lease to the extent that it—
- (a) prevents, or enables the lessor or another person to prevent, the rent decreasing under a rent review; or
 - (b) limits or specifies, or allows the limitation or specification of, the amount by which the rent may decrease under a rent review; or
 - (c) prevents, or allows the avoidance of, the rent review by the lessor or another person for a purpose mentioned in paragraph (a) or (b).’.

25 Amendment of s 43 (When compensation is payable by lessor)

- (1) Section 43(2)(b), ‘to the lessee under section 22’—
- omit, insert—*
- ‘under section 22 or 22C’.
- (2) Section 43—
- insert—*
- ‘(4) A false or misleading statement or misrepresentation referred to in subsection (2)(a), if the lessee is an assignee, is a reference to a false or misleading statement or misrepresentation made by the lessor to the assignee that causes loss and damage to be suffered by the assignee.
- ‘(5) A reference in subsection (2)(a) to the lessee having entered into the lease includes, if the lessee is an assignee, a reference to the assignee having entered into the assignment of the lease.
- ‘(6) In this section—
- lessee*** includes an assignee of the lease.’.

26 Replacement of s 44 (Amount of compensation)

Section 44—

omit, insert—

‘44 Amount of compensation

- ‘(1) If parties cannot agree on the amount of compensation payable under this division, the amount is to be decided by way of the dispute resolution process.
- ‘(2) An agreement under the lease or an assignment of the lease about compensation payable under this division is void to the extent it limits the amount.’.

27 Insertion of new pt 12, div 5

Part 12—

insert—

‘Division 5 Provision for Criminal Code and Other Legislation Amendment Act 2011

‘134 Transitional provision for s 36A

‘Section 36A applies to a retail shop lease entered into after the commencement of this section.

‘135 Transitional provision for amendment of ss 43 and 44

‘The amendment of sections 43 and 44 by the *Criminal Code and Other Legislation Amendment Act 2011* applies to a retail shop lease assigned or entered into after the commencement of this section.’.

28 Amendment of schedule (Dictionary)

- (1) Schedule, definition *existing retail shop lease*, before ‘means’—

insert—

[s 29]

‘, for sections 13(2) and 14,’.

- (2) Schedule, definition *existing retail shop lease*, paragraphs (a), (b) and (c), ‘this section’—

omit, insert—

‘section 5, as originally enacted, on 28 October 1994’.

Part 6 **Amendment of Summary Offences Act 2005**

29 Act amended

This part amends the *Summary Offences Act 2005*.

30 Insertion of new s 26A

Part 2, division 5—

insert—

‘26A Interference with graves etc.

‘(1) A person must not interfere with—

- (a) a grave, vault, niche or memorial in a cemetery or at a crematorium; or
- (b) a war memorial; or
- (c) a thing fixed at a place of religious worship.

Maximum penalty—1 year’s imprisonment.

‘(2) It is a defence for the person to prove that the person was acting—

- (a) with lawful authority or in the reasonable belief that the person was acting with lawful authority; or
- (b) with any other reasonable excuse.

‘(3) In this section—

crematorium includes the land or water where the crematorium is situated.

interfere, with a thing, includes—

- (a) destroy, damage, move or mark it; and
- (b) otherwise deal with it in a way that is likely to cause offence to a reasonable person.

lawful authority means authority under an Act or given lawfully by either of the following—

- (a) the owner of the thing interfered with;
- (b) if the thing interfered with is in a cemetery or at a crematorium and there is an entity responsible for managing and administering the cemetery or crematorium—the entity.

memorial, in a cemetery or at a crematorium, includes the following—

- (a) a headstone;
- (b) an inscribed plaque or commemorative plate;
- (c) a monumental, ornamental or other structure;
- (d) another thing erected or placed—
 - (i) to mark the site where human remains have been buried or placed; or
 - (ii) to commemorate a deceased person.’.