



Queensland

# **Criminal Law (Domestic Violence) Amendment Act 2015**

**Act No. 17 of 2015**





Queensland

# Criminal Law (Domestic Violence) Amendment Act 2015

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## **Criminal Law (Domestic Violence) Amendment Act 2015**

**Act No. 17 of 2015**

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**An Act to amend the Criminal Code, the Domestic and Family Violence Protection Act 2012, the Evidence Act 1977, the Justices Act 1886 and the Penalties and Sentences Act 1992 to implement a number of criminal law reforms recommended by the Special Taskforce on Domestic and Family Violence in Queensland**

**[Assented to 22 October 2015]**

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Criminal Law (Domestic Violence) Amendment Act 2015*.

### **1A Commencement**

Sections 4 and 5 and parts 5 and 6 commence on 1 December 2015.

## **Part 2 Amendment of Criminal Code**

### **2 Act amended**

This part amends the Criminal Code.

### **3 Amendment of s 1 (Definitions)**

Section 1—

*insert—*

*domestic violence offence* means an offence against an Act, other than the *Domestic and Family Violence Protection Act 2012*, committed by a person where the act done, or omission made, which constitutes the offence is also—

- (a) domestic violence or associated domestic violence, under the *Domestic and Family*

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*Violence Protection Act 2012*, committed by the person; or

- (b) a contravention of the *Domestic and Family Violence Protection Act 2012*, section 177(2).

*Note—*

Under the *Domestic and Family Violence Protection Act 2012*, section 177(2), a respondent against whom a domestic violence order has been made under that Act must not contravene the order.

#### **4 Amendment of s 564 (Form of indictment)**

Section 564—

*insert—*

- (3A) An indictment for an offence may also state the offence is a domestic violence offence.

*Note—*

Under the *Penalties and Sentences Act 1992*, section 12A, if a person is convicted of an offence that the court is satisfied is also a domestic violence offence, the court must order the conviction also be recorded as being for a domestic violence offence or, if no conviction is recorded, entered in the person's criminal history as a domestic violence offence.

#### **5 Amendment of s 572 (Amendment of indictments)**

Section 572—

*insert—*

- (1A) Without limiting subsection (1), if the court considers the offence charged in the indictment is also a domestic violence offence, the court may order that the indictment be amended to state the offence is also a domestic violence offence.

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## **Part 3**                      **Amendment of Domestic and Family Violence Protection Act 2012**

### **6**      **Act amended**

This part amends the *Domestic and Family Violence Protection Act 2012*.

### **7**      **Amendment of s 177 (Contravention of domestic violence order)**

(1) Section 177(2), penalty—

*omit, insert—*

Maximum penalty—

- (a) if, within 5 years before the commission of an offence against this subsection, the respondent has been previously convicted of a domestic violence offence—240 penalty units or 5 years imprisonment; or
- (b) otherwise—120 penalty units or 3 years imprisonment.

(2) Section 177—

*insert—*

(7) In this section—

***domestic violence offence*** means—

- (a) a domestic violence offence within the meaning of the Criminal Code, section 1; or
- (b) an offence under this part.

### **8**      **Replacement of s 181 (Prosecution of offences)**

Section 181—



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*omit, insert—*

### **181 Prosecution of offences**

- (1) This section applies to offences against this Act.
- (2) An offence that has a maximum penalty of more than 3 years imprisonment is an indictable offence.
- (3) A proceeding for an offence that is not an indictable offence is by way of summary proceedings under the *Justices Act 1886*.
- (4) Subject to subsection (6), a proceeding on a charge for an indictable offence must be heard and decided summarily.
- (5) The maximum term of imprisonment that may be imposed on a summary conviction of an indictable offence is 3 years imprisonment.
- (6) A Magistrates Court must abstain from dealing summarily with a charge for an indictable offence—
  - (a) if satisfied, at any stage, and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction; or
  - (b) if satisfied, on an application made by the defence, that because of exceptional circumstances the charge should not be heard and decided summarily.
- (7) If the court abstains from jurisdiction—
  - (a) the court must stop treating the proceeding as a proceeding to hear and decide the charge summarily; and

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- (b) the proceeding for the charge must be conducted as a committal proceeding; and
  - (c) the defendant's plea at the start of the hearing must be disregarded; and
  - (d) the evidence already heard by the court must be taken to be evidence in the committal proceeding.
- (8) The *Justices Act 1886*, section 104 must be complied with for the committal proceeding.

**9 Amendment of s 182 (When proceeding for offence may start)**

- (1) Section 182, heading, 'may start'—

*omit, insert—*

to be heard summarily may be started

- (2) Section 182, after 'this Act'—

*insert—*

that is to be heard in a summary way under the *Justices Act 1886*

## **Part 4 Amendment of Evidence Act 1977**

**10 Act amended**

This part amends the *Evidence Act 1977*.

**11 Amendment of s 21A (Evidence of special witnesses)**

- (1) Section 21A(1)—

*insert—*

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*domestic violence* see the *Domestic and Family Violence Protection Act 2012*, section 8.

(2) Section 21A(1), definition *special witness*—

*insert*—

(d) a person—

- (i) against whom domestic violence has been or is alleged to have been committed by another person; and
- (ii) who is to give evidence about the commission of an offence by the other person.

## **Part 5**                      **Amendment of Justices Act 1886**

### **12**      **Act amended**

This part amends the *Justices Act 1886*.

### **13**      **Amendment of s 4 (Definitions)**

Section 4—

*insert*—

*domestic violence offence* see the Criminal Code, section 1.

### **14**      **Amendment of s 47 (What is sufficient description of offence)**

Section 47—

*insert*—

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- (9) A complaint for an offence may state the offence is also a domestic violence offence.

*Note—*

Under the *Penalties and Sentences Act 1992*, section 12A, if a person is convicted of an offence that the court is satisfied is also a domestic violence offence, the court must order the conviction also be recorded as being for a domestic violence offence or, if no conviction is recorded, entered in the person's criminal history as a domestic violence offence.

## 15 Amendment of s 48 (Amendment of complaint)

Section 48—

*insert—*

- (2) Without limiting subsection (1), if the justices consider the offence charged in the complaint is also a domestic violence offence but the complaint does not include a statement to that effect, the court may order that the complaint be amended to state the offence is also a domestic violence offence.

## Part 6 Amendment of Penalties and Sentences Act 1992

### 16 Act amended

This part amends the *Penalties and Sentences Act 1992*.

### 17 Amendment of s 4 (Definitions)

- (1) Section 4—

*insert—*

*domestic violence offence* see the Criminal Code, section 1.

- (2) Section 4, definition *prosecutor*, before ‘parts 3A’—  
*insert—*  
section 12A and

## 18 Insertion of new s 12A

After section 12—

*insert—*

### **12A Convictions for offences relating to domestic violence**

- (1) Subsection (2) applies if—
- (a) a complaint or an indictment for a charge for an offence states the offence is also a domestic violence offence; and
  - (b) the offender is convicted of the offence; and
  - (c) a court is satisfied the offence is also a domestic violence offence.

*Note—*

See the *Evidence Act 1977*, section 132C which provides for the sentencing judge or magistrate in any sentencing procedure in a criminal proceeding to act on allegations of fact.

- (2) The court must order—
- (a) for an offence for which a conviction is recorded—that the conviction also be recorded as a conviction for a domestic violence offence; or
  - (b) otherwise—that the offence be entered in the offender’s criminal history as a domestic violence offence.
- (3) If a court makes an order under subsection (2) or convicts an offender of an offence against the

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*Domestic and Family Violence Protection Act 2012*, part 7, the prosecution may apply to the court for an order that an offence, stated in the application, of which the offender has previously been convicted (a *previous offence*)—

- (a) for a previous offence for which a conviction was recorded—also be recorded as a conviction for a domestic violence offence; or
  - (b) otherwise—be entered in the offender’s criminal history as a domestic violence offence.
- (4) The application—
- (a) may be made in writing or orally; and
  - (b) must include enough information to allow the court to make a decision about whether it is appropriate to make the order.
- (5) The court may ask the prosecutor for further information for it to decide whether to make an order under subsection (6).
- (6) If, after considering the application, the court is satisfied a previous offence is a domestic violence offence, the court must order that the offence—
- (a) for a previous offence for which a conviction was recorded—also be recorded as a conviction for a domestic violence offence; or
  - (b) otherwise—be entered in the offender’s criminal history as a domestic violence offence.
- (7) A person against whom the domestic violence offence was committed is not compellable as a witness in proceedings before the court to decide the application.

- (8) If a court is satisfied an error has been made in recording or entering an offence as a domestic violence offence, the court may, on an application or its own initiative, correct the error.

## **19 Amendment of s 196 (Regulation-making power)**

Section 196—

*insert—*

- (2) A regulation may prescribe matters relating to the recording of convictions for domestic violence offences, or the making of entries in criminal histories about domestic violence offences, including, for example, the way in which, and time within which, the records or entries are to be made.

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