



Queensland

Criminal Code (Double Jeopardy) Amendment Bill 2006



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2006

A Bill

for

An Act to amend the Criminal Code to enable the retrial of acquitted persons for very serious offences in particular circumstances and to provide an appeal from a directed acquittal on a question of law, and for other purposes

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The Parliament of Queensland enacts—

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Clause 1 Short title

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This Act may be cited as the *Criminal Code (Double Jeopardy) Amendment Act 2006*.

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Clause 2 Act amended

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This Act amends the *Criminal Code*.

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Clause 3 Amendment of s 17 (Former conviction or acquittal)

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Section 17, ‘It is a defence’—

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omit, insert—

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‘Subject to chapter 68, it is a defence’.

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Clause 4 Insertion of new ch 68

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After section 677—

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insert—

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‘Chapter 68 Acquittals

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‘Chapter division 1 Preliminary

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‘678 Definitions

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‘(1) In this chapter—

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15 years or more sentence offence means an offence punishable by imprisonment for life or for a period of 15 years or more.

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acquittal includes—

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(a) an acquittal in appeal proceedings in relation to an offence; and

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(b) an acquittal at the direction of a court.	1
<i>administration of justice offence</i> means an offence under chapter 16.	2 3
<i>Court</i> means the Court of Appeal.	4
<i>fresh and compelling evidence</i> see section 678D.	5
<i>life sentence offence</i> means murder or another offence punishable by imprisonment for life.	6 7
<i>Note—</i>	8
On the enactment of this chapter, the following offences were some of the other offences punishable by imprisonment for life—	9 10
1 manslaughter (section 310)	11
2 aggravated sexual assault (section 352(3)).	12
<i>tainted acquittal</i> see section 678E.	13
‘(2) For the purposes of this chapter, the retrial of an acquitted person for an offence includes a trial if the offence is not the same as the offence of which the person was acquitted.	14 15 16
‘(3) In this chapter, a reference to the proceedings in which a person was acquitted includes, if they were appeal proceedings, a reference to the earlier proceedings to which the appeal related.	17 18 19 20
‘Chapter division 2 Retrial after acquittal for very serious offence	21 22
‘678A Application of ch div 2	23
‘(1) This chapter division applies if—	24
(a) a person has been acquitted of an offence; and	25
(b) according to the rules of law relating to double jeopardy (including rules based on abuse of process), because of the acquittal the person is, or may be, precluded from being retried for the same offence, or from being tried for some other offence, in proceedings in this State.	26 27 28 29 30

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Note—

Under section 678B, only a person acquitted of a life sentence offence may be retried if there is fresh and compelling evidence. Under section 678C, only a person acquitted of a 15 years or more sentence offence may be retried if there is a tainted acquittal.

‘(2) This section extends to a person acquitted in proceedings outside this State of an offence under the law of the place where the proceedings were held.

‘(3) However, this section does not extend as mentioned in subsection (2) if the law of the place where the proceedings were held does not permit the person to be retried and the application of this chapter division to such a retrial is inconsistent with the Commonwealth Constitution or a law of the Commonwealth.

‘(4) This section extends to a person acquitted before the commencement of this chapter division.

‘678B Court may order retrial—fresh and compelling evidence

‘(1) The Court may, on the application of the Director of Public Prosecutions, order an acquitted person to be retried for a life sentence offence if satisfied that—

(a) there is fresh and compelling evidence against the acquitted person in relation to the offence; and

(b) in all the circumstances it is in the interests of justice for the order to be made.

‘(2) If the Court orders an acquitted person to be retried, the Court must quash the person’s acquittal or remove the acquittal as a bar to the person being retried for the offence.

‘(3) The Court may order a person to be retried for a life sentence offence under this section even if the person had been charged with and acquitted of manslaughter or other lesser offence.

‘(4) The Court may not order a person to be retried for a life sentence offence under this section if the person had been charged with and acquitted of the life sentence offence but had been convicted instead of manslaughter or other lesser offence.

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‘678C Court may order retrial—tainted acquittals

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- ‘(1) The Court may, on the application of the Director of Public Prosecutions, order an acquitted person to be retried for a 15 years or more sentence offence if satisfied that—
- (a) the acquittal is a tainted acquittal; and
- (b) in all the circumstances it is in the interests of justice for the order to be made.
- ‘(2) If the Court orders an acquitted person to be retried, the Court must quash the person’s acquittal or remove the acquittal as a bar to the person being retried for the offence.
- ‘(3) The Court may order a person to be retried for a 15 years or more sentence offence under this section even if the person had been charged with and acquitted of a lesser offence.

‘678D Fresh and compelling evidence—meaning

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- ‘(1) This section applies for the purpose of deciding under this chapter division whether there is fresh and compelling evidence against an acquitted person in relation to an offence.
- ‘(2) Evidence is *fresh* if—
- (a) it was not adduced in the proceedings in which the person was acquitted; and
- (b) it could not have been adduced in those proceedings with the exercise of reasonable diligence.
- ‘(3) Evidence is *compelling* if—
- (a) it is reliable; and
- (b) it is substantial; and
- (c) in the context of the issues in dispute in the proceedings in which the person was acquitted, it is highly probative of the case against the acquitted person.
- ‘(4) Evidence that would be admissible on a retrial under this chapter division is not precluded from being fresh and compelling evidence merely because it would have been inadmissible in the earlier proceedings against the acquitted person.

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‘678E Tainted acquittals—meaning

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- ‘(1) This section applies for the purpose of deciding under this chapter division whether the acquittal of an accused person is a tainted acquittal.
- ‘(2) An acquittal is *tainted* if—
- (a) the accused person or another person has been convicted in this State or elsewhere of an administration of justice offence in relation to the proceedings in which the accused person was acquitted; and
- (b) it is more likely than not that, but for the commission of the administration of justice offence, the accused person would have been convicted.
- ‘(3) An acquittal is not a tainted acquittal if the conviction for the administration of justice offence is subject to appeal as of right.
- ‘(4) If the conviction for the administration of justice offence is, on appeal, quashed after the Court has ordered the acquitted person to be retried under this chapter division because of the conviction, the person may apply to the Court to set aside the order and—
- (a) restore the acquittal that was quashed; or
- (b) restore the acquittal as a bar to the person being retried for the offence.

‘678F Interests of justice—matters for consideration

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- ‘(1) This section applies for the purpose of deciding under this chapter division whether it is in the interests of justice for an order to be made for the retrial of an acquitted person.
- ‘(2) It is not in the interests of justice to make an order for the retrial of an acquitted person unless the Court is satisfied that a fair retrial is likely in the circumstances.
- ‘(3) The Court must have regard in particular to—
- (a) the length of time since the acquitted person allegedly committed the offence; and

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| (b) whether any police officer or prosecutor has failed to act | 1 |
| with reasonable diligence or expedition in relation to the | 2 |
| application for the retrial of the acquitted person. | 3 |

‘678G Application for retrial—procedure 4

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| ‘(1) Not more than 1 application for the retrial of an acquitted | 5 |
| person may be made under this chapter division in relation to | 6 |
| an acquittal. | 7 |
| ‘(2) An application may not be made in relation to an acquittal | 8 |
| resulting from a retrial under this chapter. | 9 |
| ‘(3) An application for the retrial of an acquitted person may not | 10 |
| be made under this chapter division unless— | 11 |
| (a) the person has been charged with the relevant offence; | 12 |
| or | 13 |
| (b) a warrant has been issued for the person’s arrest in | 14 |
| relation to the relevant offence. | 15 |
| ‘(4) The application must be made not later than 28 days after the | 16 |
| person is charged with the relevant offence or the warrant is | 17 |
| issued for the person’s arrest in relation to the relevant | 18 |
| offence. | 19 |
| ‘(5) The Court may extend the period mentioned in subsection (4) | 20 |
| for good cause. | 21 |
| ‘(6) The Court must consider the application at a hearing. | 22 |
| ‘(7) The person to whom the application relates is entitled to be | 23 |
| present and heard at the hearing, whether or not the person is | 24 |
| in custody. | 25 |
| ‘(8) However, if the person has been given a reasonable | 26 |
| opportunity to be present, the application may be decided | 27 |
| even if the person is not present. | 28 |
| ‘(9) The powers of the Court mentioned in section 671B(1) may | 29 |
| be exercised in relation to the hearing of the application. | 30 |
| ‘(10) The Court may at 1 hearing consider more than 1 application | 31 |
| under this chapter division for a retrial (whether or not | 32 |
| relating to the same person), but only if the offences | 33 |
| concerned may be tried on the same indictment. | 34 |

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- ‘(11) If the Court decides in proceedings on an application under this chapter division that the acquittal is not a bar to the person being retried for the offence concerned, it must make a declaration to that effect.

‘678H Retrial

- ‘(1) An indictment for the retrial of a person that has been ordered under this chapter division may not, without the leave of the Court, be presented after the end of the period of 2 months after the order was made.
- ‘(2) The Court may give leave only if it is satisfied that—
- (a) the prosecutor has acted with reasonable expedition; and
 - (b) there is good and sufficient reason for the retrial despite the lapse of time since the order was made.
- ‘(3) If, after the end of the period of 2 months after an order for the retrial of an accused person was made under this chapter division, an indictment for the retrial of the person has not been presented or has been withdrawn or quashed, the person may apply to the Court to set aside the order for the retrial and—
- (a) restore the acquittal that was quashed; or
 - (b) restore the acquittal as a bar to the person being tried for the offence.
- ‘(4) If the order is set aside, a further application may not be made under this chapter division for the retrial of the accused person in relation to the offence concerned.
- ‘(5) At the retrial of an accused person, the prosecution is not entitled to refer to the fact that the Court has found that it appears that—
- (a) there is fresh and compelling evidence against the acquitted person; or
 - (b) more likely than not, but for the commission of the administration of justice offence, the accused person would have been convicted.

‘Chapter division 3	Appeals on questions of law	1
‘678I Directed jury acquittals		2
‘(1) This section applies to the acquittal of a person by a jury at the direction of the trial judge.		3 4
‘(2) The Attorney General or the Director of Public Prosecutions may appeal to the Court against an acquittal on any ground that involves a question of law alone.		5 6 7
‘(3) An appeal may be made—		8
(a) within 28 days after the acquittal; or		9
(b) if the Court gives leave, after that period.		10
‘(4) The accused person is entitled to be present and heard at the appeal.		11 12
‘(5) However, if the person has been given a reasonable opportunity to be present, the appeal may be decided even if the person is not present.		13 14 15
‘(6) The Court may affirm or quash the acquittal appealed against.		16
‘(7) If the acquittal is quashed, the Court may order a new trial in such manner as the Court thinks fit.		17 18
‘(8) For the purpose mentioned in subsection (7), the Court may, subject to the <i>Bail Act 1980</i> , order the detention or return to custody of the accused person in relation to the new trial.		19 20 21
‘(9) If the acquittal is quashed, the Court may not—		22
(a) proceed to convict or sentence the accused person for the offence charged; or		23 24
(b) direct the court conducting the new trial to proceed to convict or sentence the accused person for the offence charged.		25 26 27
‘(10) This section does not apply to a person who was acquitted before the commencement of this section.		28 29
<i>Note—</i>		30
See section 669A(1A) for appeals against an order staying proceedings or further proceedings on an indictment.		31 32

‘Chapter division 4	Miscellaneous	1
‘678J	Authorisation of police investigations	2
‘(1)	This section applies to any police investigation of the commission of an offence by an acquitted person in relation to the possible retrial of the person for the offence under chapter division 2.	3 4 5 6
‘(2)	For the purposes of this section, a police investigation is an investigation that involves, whether with or without the consent of the acquitted person—	7 8 9
(a)	any arrest, questioning or search of the acquitted person, or the issue of a warrant for the arrest of the person; or	10 11
(b)	any forensic procedure carried out on the person or any search or seizure of premises or property of or occupied by the person.	12 13 14
‘(3)	A police officer may carry out or authorise a police investigation to which this section applies only if the Director of Public Prosecutions—	15 16 17
(a)	has advised that in the opinion of the Director of Public Prosecutions the acquittal would not be a bar to the trial of the acquitted person in this State for the offence; or	18 19 20
(b)	has given written consent to the police investigation on the application in writing of the commissioner, or a deputy commissioner, of the police service.	21 22 23
‘(4)	The commissioner, or a deputy commissioner, of the police service may make an application for the police investigation only if satisfied that relevant evidence for the purposes of an application for a retrial under chapter division 2 has been obtained or is likely to be obtained as a result of the investigation.	24 25 26 27 28 29
‘(5)	The Director of Public Prosecutions may give consent to the police investigation only if satisfied that—	30 31
(a)	there is, or there is likely as a result of the investigation to be, sufficient new evidence to warrant the conduct of the investigation; and	32 33 34

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(b) it is in the public interest for the investigation to proceed.	1 2
‘(6) Despite the <i>Police Service Administration Act 1990</i> , section 4.10, the commissioner of the police service may not delegate powers of the commissioner under this section to a police officer or staff member.	3 4 5 6
‘678K Bail	7
‘(1) This section has effect despite anything to the contrary in the <i>Bail Act 1980</i> .	8 9
‘(2) There is a presumption in favour of bail for a person who is charged with an offence for which a retrial is sought under chapter division 2 until the application is dealt with.	10 11 12
‘678L Restrictions on publication	13
‘(1) A person must not publish any matter for the purpose of identifying or having the effect of identifying an acquitted person who is being retried under this chapter or who is the subject of—	14 15 16 17
(a) a police investigation, or an application for a police investigation, mentioned in section 678J; or	18 19
(b) an application for a retrial under chapter division 2 or an appeal under chapter division 3; or	20 21
(c) an order for retrial under this chapter.	22
‘(2) Subsection (1) does not apply if the publication is authorised by order of the Court or of the court before which the acquitted person is being retried.	23 24 25
‘(3) The relevant court may make an order authorising publication only if the court is satisfied that it is in the interests of justice to make the order.	26 27 28
‘(4) Before making an order under this section, the Court must give the acquitted person a reasonable opportunity to be heard on the application for the order.	29 30 31
‘(5) The Court may at any time vary or revoke an order under this section.	32 33

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- ‘(6) The prohibition on publication under this section ceases to have effect, subject to any order under this section, when the first of the following paragraphs apply—
- (a) there is no longer any step that could be taken which would lead to the acquitted person being retried under this chapter;
 - (b) if the acquitted person is retried under this chapter—the trial ends.
- ‘(7) Nothing in this section affects any prohibition of the publication of any matter under any other Act or law.
- ‘(8) A contravention of a prohibition on publication under this section is punishable as contempt of the Supreme Court.

‘678M Review of chapter

- ‘(1) A review of the provisions of chapter 68 must be undertaken as soon as practicable after the period of 5 years after their insertion into this Act by the *Criminal Code (Double Jeopardy) Amendment Act 2006*.
- ‘(2) The report of the outcome of the review must be tabled in Parliament within 12 months after the end of the period of 5 years mentioned in subsection (1).