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Update Summary

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INDICTABLE OFFENCES QUEENSLAND

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UPDATED COMMENTARY

Commentary has been reviewed and updated on the following:

Criminal Code

Timely Withdrawal

Where purported withdrawal will be relevant is to the “central factual issue whether an accused has aided, counselled or otherwise done the acts which constituted the offence on his part”: *R v Menniti* [1985] 1 Qd R 520; (1984) 13 A Crim R 417 at 530 (Qd R). See [CCA.8.260].

Proof of principal offence

An offender charged as an accessory after the fact to murder may be convicted as an accessory after the fact to manslaughter, notwithstanding that the principal offender has been convicted of murder. See [CCA.10.200].

Acts done outside Queensland

In *R v Young* [2020] QCA 3, the appellant was convicted on one count of fraud under s 408C of the Criminal Code. The prosecution case relied upon several acts by the appellant as constituting the offence from which it could be inferred that the appellant had acted dishonestly in obtaining a benefit. Some of those acts occurred outside of Queensland. See [CCA.12.320].

Procedure

In *R v Robinson; Ex parte Attorney-General* [2000] 2 Qd R 413; [1999] QCA 181, it was held where an offender had been convicted of, and punished for, an offence of torture under s 320A and was also convicted of other lesser offences of grievous bodily harm, assault occasioning bodily harm and deprivation of liberty which were the acts relied upon to constitute the offence of torture, that the proper course, by virtue of s 16, was to impose no punishment on the lesser charges. See [CCA.16.240].

Offence relating to property

In *R v Jeffrey* (2002) 136 A Crim R 7; [2002] QCA 429, it was held that an accused charged with robbery could claim the defence in circumstances in which the right claimed was compensation for damage to property. See [CCA.22.500].

Meaning of consent

The definition of consent was amended by the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021*. The amendments to the Criminal Code are largely declaratory of the existing law of Queensland. However, much of that existing law is found in Queensland’s case law, not in the words of the Criminal Code itself. See [CCA.348.100].

Intent to defraud

In *R v Perrin* [2018] 2 Qd R 174; 268 A Crim R 395; [2017] QCA 194 at [74], Morrison JA considered that the question of whether a person holds an intention to defraud is subjective. See [CCA.399.400].

Overview of offences involving the bringing of stolen goods into Queensland

Section 406 makes it an offence for a person to obtain property by any act which, if done in Queensland, would be stealing under Queensland law and which would be an offence in that other jurisdiction, and the person brings that property into Queensland. See [CCA.406.300].

Maximum penalty

In *R v Kohl* (2012) 227 A Crim R 271; [2012] QCA 344, the defendant pleaded guilty to a significant number of charges, including bringing stolen goods into Queensland, being opals he had stolen from an opal business in Coober Pedy in South Australia and brought into Queensland. See [CCA.406.600].

Dangerous Prisoners (Sexual Offenders) Act 2003

Review affirming continuing detention

The ability to bring an application to allow consideration of new information outside of the usual review schedule was considered in *Attorney-General (Qld) v Gibson* [2021] QSC 61 where Davis J considered the application of rule 668 of the *Uniform Civil Procedure Rules 1999*. See [DPSOA.30.400].

Jury Act 1995

Circumstances where discharge of a juror is appropriate

In *R v SDL* [2021] QCA 14 at [12], it was held that for apprehended bias to be found required, the “identification of the connection that might lead the juror to decide the case other than on its legal and factual merits and an articulation of the logical connection between that matter and the apprehended deviation from the course of deciding the case on its merits”. See [JURY.56.120].

A trial judge may discharge the jury

In *R v Peter* [2020] QCA 228 at [54]–[66], the Court of Appeal summarised the relevant principles to be considered in application for the discharge of the jury under s 60. See [JURY.60.100].

Confidentiality of jury deliberations

Section 70(1)–(3) makes it an offence punishable by two years imprisonment to publish to the public any jury information, to seek the disclosure of jury information from a juror

or for a juror to disclose jury information if the juror has reason to believe that it is likely that such information will be published publicly. See [JURY.70.100].

Jury examination orders

Section 70(7) enables the court to authorise an investigation if “there are grounds to suspect that a person may have been guilty of bias...”. Based on the importance of the confidentiality of jury deliberations, the Court of Appeal has taken a narrow view of the circumstances in which such orders would be appropriate: *Knight v The Queen* [2014] 1 Qd R 329; [2013] QCA 144 at [33]. See [JURY.70.120].

Penalties and Sentences Act 1992

Relevance of criminal history

In *R v Kampf* [2021] QCA 47, the applicant submitted that an offender’s criminal history is not relevant to the exercise of the discretion to declare a conviction to be a conviction for a serious violent offence. See [PSA.Pt9A.250].

Jury Act 1995

Jury examination orders

The decision of *White v Office of the Director of Public Prosecutions (Qld)* [2021] QDC 121 is an example of an application under s 70(7) where a jury investigation order was made after consideration of the Court of Appeal decisions of *Knight v The Queen* [2014] 1 Qd R 329; [2013] QCA 144 and *R v BDL* [2020] QCA 249. See [JURY.70.120].

Criminal Code

Intoxication

For offences of rape and sexual assault contained in Ch 32 of the Code, s 348A, reflecting the relevance of intoxication in the context of s 24 as explained in *R v O’Loughlin* [2011] QCA 123, provides that for purposes of s 24, in deciding whether a belief of the defendant was reasonable, regard may not be had to the voluntary intoxication of the defendant caused by alcohol, a drug or another substance. See [CCA.24.900].

Onus of proof

The evidential onus will be satisfied where there is “evidence which, taken at its highest in favour of the accused, could lead a reasonable jury, properly instructed, to have a reasonable doubt that each of the elements of the defence had been negated”. See [CCA.25.300].

Matters to be excluded

In *R v Dimitropoulos* (2020) 282 A Crim R 402; [2020] QCA 75, it was held by Brown J at [62] that there is a temporal element imported in respect to both a “sudden emergency” or “extraordinary emergency”. See [CCA.25.400].