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Update Summary

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UPDATE 136

AUGUST 2024

SUMMARY OFFENCES LAW AND PRACTICE QUEENSLAND

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Material Code 42475495

Print Post Approved PP255003/00446

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Coroner MacKenzie has added the following updates to Summary Offences Queensland

Cases Digest:

- R v Fowler (2012) 225 A Crim R 226; [2012] QCA 258
- *MH v HJ* (2023) QSC 176
- R v Nuske [2024] QCA 28
- R v Versac (2013) 227 A Crim R 569; [2013] QSC 46
- R v Dibble; Ex parte Attorney-General (Qld) (2014) 238 A Crim R 511; [2014] QCA 8
- Turner v Director of Public Prosecutions (Cth) [2017] QCA 30
- R v Dillon [2016] 1 Qd R 56; [2015] QCA 155
- LAI v Director of Public Prosecutions (Qld) (2016) 262 A Crim R 478; [2016] QCA 287
- R v Duckworth [2017] 1 Qd R 297; 256 A Crim R 537; [2016] QCA 30

Discussion of *Strbak v The Queen* (2020) 267 CLR 494, 280 A Crim R 285; Criminal law – Sentence – Manslaughter – Where appellant pleaded guilty to manslaughter – Where hearing held to determine factual basis upon which appellant to be sentenced – Where acts comprising offence disputed – Where appellant failed to give evidence at sentencing hearing – Whether sentencing judge applied R v Miller

Discussion of *MH v HJ* (2023) QSC 176; Evidence – Admissibility – Exclusions: Privileges – Sexual Assault Communications Privilege – where the first respondent has been charged on indictment in the District Court – where the applicant is the complainant in respect of the alleged offending – where the first respondent brought an application in the District Court for leave to access protected counselling communications concerning the applicant.

Discussion of R v Nuske [2024] QCA 28; Criminal law – appeal and new trial – particular grounds of appeal – conduct of prosecutor or prosecution – where the appellant was convicted after trial before a jury of one count of fraud – where the prosecutor made inappropriate statements about the appellant’s case, the appellant’s trial counsel and the appellant – where the prosecutor made repeated comments about the jury’s gullibility if the jury believed the appellant’s evidence.

Justices Act 1986 (Annotated)

- [JA.158.100] Further reading
- *Short v Queensland Police Service* [2023] QDC 131; discussions of ss 158, 158A, 158B Justices Act

[JA.158A.100] Further reading

- In *SCA v Commissioner of Police* [2024] QDC 57
- Insert new SECTION 158B COMMENTARY
- In *SCA v Commissioner of Police* [2024] QDC 57, Long, DCJ noted, following the decision of *Palmgrove Holdings Pty Ltd v Sunshine Coast Regional Council* [2014] QDC 77 at [89], that usually the application of s158B(2) may be expected to allow for some increased referable to the scaled amounts

Chapter 2 Summary Offences Act

- Section 6 updated commentary:

The *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023* was passed into law on 12 October, 2023. It amended Section 6 of the *Summary Offences Act 2005*

- Section 11 updated commentary:

The *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023* was passed into law on 12 October, 2023. It amended Section 11 of the *Summary Offences Act 2005*

Section 11 (trespass)

- subsections (1) and (2) are amended to provide that (a) if the offence involves circumstances of aggravation, the maximum penalty for the offence 40 penalty units or 1 year's imprisonment; or (b) otherwise – 20 penalty units or 1 year's imprisonment.
- A new subsection (4) is inserted to provide for the purposes of s. 11, the circumstance of aggravation under new s. 52B is a circumstance of aggravation for this offence as if s. 11 were a prescribed offence mentioned in that section.

[SOA 19B.20] Hooning Offences- new commentary and section insertion

- The *Police Powers and Responsibilities and Other Legislation Amendment Act (No 1) 2023* commenced on the date of assented: 2 May 2023. It amended the *Summary Offences Act 2005* inserting a new Division 4A (Offences associated with hooning offences).

Chapter 3 - Penalties and Sentences Act 1992

PSA.12.200 Where conviction has effect on employment

- *R v Ali* [2023] QCA 207, Buss AJA (Flanaghan, JA and Kelly, J)

PSA.13.60- Remorse

- *R v Gordon* [2024] QCA 16, Mullins, P
- Mullins, P noted that the principle relied on the approach in *R v Lyon* [2006] QCA 146 at [27]-[28] to the effect that an offender's offer to plead guilty to the offence of which he was subsequently convicted is a relevant matter either as supportive of the offender's cooperation with the administration of justice

Section 13A Commentary

- Insert new section, 13A.160
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Section 12 commentary

- *R v ZB* [2021] QCA 9; updated commentary: recording of a conviction

Part 10B Victim Impact Statements

- [179K.20] Absence of Victim Impact Statement; updated commentary
- In *R v Abdullah* [2023] QCA 189 the applicant argued that, in the absence of a victim impact statement, the sentencing judge erred in concluding that the first complainant suffered harm and was adversely affected by the offending.

Insert New Section 181B Commentary:

- In *Department of Environment and Science v Tyre Transitions Pty Ltd* [2023] QDC 94, Rafter DCJ held that a fine of the corporation of \$80, 000.00 was inadequate in relation to three offences.

Bail Act 1980 (Annotated)

Section 12 Commentary

Following the amendments to the Youth Justice Act pursuant to the Strengthening Community Safety Act 2023, a Child must still be released unless a court is required by law to keep the child in custody: Sections 11, 16, 16A and 17 of the Bail Act 1980 do not apply to children. Section 48AF of the Youth Justice Act mandates that a child must show cause why detention on remand is not justified if charges with a prescribed indictable offence

Section 33 Updated Commentary

- *Hennessey v Commissioner of Police* [2024] QDC 52, Smith DCJA allowed an appeal and quashed a conviction for failure to appear.
- Smith DCJA noted that a breach of bail is a form of contempt of court

Chapter 7 Domestic and Family Violence Protection Act 2012

- DFVPA.157.20 Costs: updated commentary, *Grace v Peter* [2024] QSC 69; application to set aside a costs order made by a Magistrate following the withdrawal of her application before hearing for a domestic violence protection order against her former de facto husband.
- Insertion of 157A Commentary; re-opening proceedings; *GNI v Queensland Police Service* [2023] QDC 28, Porter KC DCJ set aside a protection order made in the absence of the respondent.
- Section 177 updated commentary; *LPA v Commissioner of Police* [2023] QDC 143 Cash KC DCJ set aside a prison probation order imposed by a Magistrate on sentence in relation to 13 charges of contravention of a protection order; *KJP v Commissioner of Police* [2023] QDC 97, Cash KC DCJ dismissed an appeal against a sentence of three months imprisonment with immediate release on parole.

Chapter 9 Mental Health Act 2016

Section 157 commentary:

The *Health and Other Legislation Amendment Bill (No.2) 2023* (Qld) was passed with amendment on 7 March 2024. Section 874 provides that the amendments apply in relation to an expert's report, or a transcript, for a proceeding for a reference made after the commencement. It amends Section 157A to allow for an expert's report and a transcript of the proceeding of the Mental Health Court to be admissible in a proceeding before a Magistrates Court for the purpose of deciding whether to dismiss a complaint under s.172 or to adjourn the hearing of a complaint under s.173.

Chapter 10 Victims of Crime Assistance Act 2009- (annotated)

The Victims Commissioner and Sexual Violence Review Board Bill Act introduced into Parliament by the Honourable Yvette D'Ath, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence on 6 March 2024. Three separate recent inquiries conducted by the Women's Safety and Justice Taskforce (Taskforce), the Independent Commission of Inquiry into Queensland Police Service's responses to domestic and family violence (Commission of Inquiry) and the Legal Affairs and Safety Committee (LASC) have all supported the establishment of an independent Victims' Commissioner that promotes and protects the needs and rights of victims of crime.

