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# Vandalism of Cemeteries: Criminal Code and Other Legislation Amendment Bill 2010 (Qld)

*In 2009, over 80 gravestones were damaged at Toowong Cemetery. Following a police investigation, four people were charged with wilful damage under the Queensland Criminal Code. At the defendants' committal hearing in April 2010, the charges were dismissed because the Magistrate held the view that a properly instructed jury could not convict the defendants for the offence because the prosecution would not be able to prove all the elements of the offence.*

*The Criminal Code and Other Legislation Amendment Bill 2010 (Qld) proposes to amend the Criminal Code so that the prosecution of future cases will not be stymied on similar grounds. Amongst other matters, the Bill also proposes to introduce a new provision into the Summary Offences Act 2005 (Qld) to make it an offence to interfere with graves and memorials and items at places of religious worship. This provision will apply in circumstances in which an act, such as urinating on a grave, would not constitute wilful damage under the Criminal Code.*

**Mary Westcott**

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**Queensland Parliamentary Library  
General Distribution Research Team  
Research and Information Service**

Ms Karen Sampford, Team Leader	(07) 3406 7116
Mrs Nicolee Dixon, Senior Parliamentary Research Officer	(07) 3406 7409
Mrs Renee Gastaldon, Parliamentary Research Officer	(07) 3406 7241
Ms Mary Westcott, Parliamentary Research Officer	(07) 3406 7372
Ms Kelli Longworth, Parliamentary Research Officer	(07) 3406 7468

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Inquiries should be addressed to:

Team Leader, General Distribution Research Team

Research and Information Service

Queensland Parliamentary Library

Parliament House

George Street, Brisbane QLD 4000

Ms Karen Sampford. (Tel: 07 3406 7116)

Email: [Karen.Sampford@parliament.qld.gov.au](mailto:Karen.Sampford@parliament.qld.gov.au)

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## EXECUTIVE SUMMARY

The Attorney-General and Minister for Industrial Relations, the Hon Cameron Dick MP, introduced the Criminal Code and Other Legislation Amendment Bill 2010 (Qld) (the Bill) into the Legislative Assembly on 24 November 2010. Amongst other matters, the Bill proposes to amend the Queensland *Criminal Code* and the *Summary Offences Act 2005* (Qld) to address concerns about vandalism of, and disrespect for, places of remembrance such as cemeteries.

**Part 2** of this Research Brief summarises *Police v Shane Bell, Zoe Wilson, Benjamin Garland and Michael Smallbon*<sup>1</sup> – the committal hearing relating to the four defendants charged with wilful damage of Toowong Cemetery in 2009 (the Toowong Cemetery case). The Magistrate’s decision to dismiss the charges was cited by the Attorney-General in his Second Reading Speech as an impetus for the Bill’s amendments relating to cemeteries and crematoria.<sup>2</sup>

**Part 3** of the paper discusses the provisions of the Criminal Code under which the defendants in the Toowong Cemetery case were charged. **Part 4** summarises the content of a petition on the matter presented to the Queensland Parliament and outlines the Attorney-General’s response.

**Part 5** looks at the proposed amendments to the Criminal Code to overcome the evidentiary issues that were identified in the Toowong Cemetery case and to increase the maximum penalty for causing wilful damage in cemeteries and other specified places to imprisonment for seven years. **Part 6** discusses the new offence of interfering with graves and like property which is proposed to be inserted into the Summary Offences Act 2005 (Qld). The commencement date for the Bill is identified in **Part 7**.

In **Part 8**, the paper summarises the provisions which apply specifically to damage to cemeteries in other Australian jurisdictions. **Part 9** concludes the paper by noting recent instances of damage to cemeteries in Queensland.

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<sup>1</sup> Magistrates Court, Brisbane, MAG-74348/10(6), 14 April 2010, Transcript of Proceedings, Decision.

<sup>2</sup> Hon Cameron Dick MP, Criminal Code and Other Legislation Amendment Bill 2010, [Second Reading Speech](#), *Queensland Parliamentary Debates*, 24 November 2010, pp 4252-4254, p 4253.



## 1 INTRODUCTION

On 24 November 2010, the Attorney-General and Minister for Industrial Relations, the Hon Cameron Dick MP, introduced the [Criminal Code and Other Legislation Amendment Bill 2010 \(Qld\) \(the Bill\)](#) into the Legislative Assembly. Amongst other matters,<sup>3</sup> the Bill proposes to amend the Queensland [Criminal Code](#)<sup>4</sup> and the [Summary Offences Act 2005 \(Qld\)](#) to address concerns about vandalism of, and disrespect for, places of remembrance such as cemeteries.

This Research Brief commences with a summary of *Police v Shane Bell, Zoe Wilson, Benjamin Garland and Michael Smallbon* – the committal hearing relating to the four defendants charged with wilful damage of Toowong Cemetery in 2009 (the Toowong Cemetery case). The Magistrate’s decision to dismiss the charges was cited by the Attorney-General in his [Second Reading Speech](#) (p 4253) as an impetus for the Bill’s amendments relating to cemeteries and crematoria. The paper discusses the provisions of the Criminal Code under which the defendants in the Toowong Cemetery case were charged and then looks at the proposed amendments. A summary of provisions which apply specifically to damage to cemeteries in other Australian jurisdictions is provided. The paper concludes by noting recent instances of damage to cemeteries in Queensland.

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<sup>3</sup> The Bill also proposes to:

- amend the excuse of accident in s 23(1)(b) of the [Criminal Code](#);
- amend s 304 of the Criminal Code to adopt certain Queensland Law Reform Commission (QLRC) recommendations relating to provocation (see QLRC, [A review of the excuse of accident and the defence of provocation](#), Report No 64, September 2008, especially pp 500-501; Nicolee Dixon, [Status of the Partial Defence of Provocation in Queensland](#), Queensland Parliamentary Library, Research Brief 2008/19);
- insert a definition of ‘domestic relationship’ in s 1 of the Criminal Code and make consequential amendments to s 304B;
- insert the phrase ‘for preservation’ after ‘Killing’ in the current heading in s 304B (Killing in an abusive domestic relationship) of the Criminal Code;
- amend s 568 of the Criminal Code in relation to joinder of charges;
- amend the [Appeal Costs Fund Act 1973 \(Qld\)](#) and the [Appeal Costs Fund Regulation 2010 \(Qld\)](#) “to allow a convicted person to recover from the Appeal Costs Fund ... the additional costs incurred in appealing their sentence or in responding to an appeal against their sentence, where the appeal is relevant to the giving or review of a guideline judgment”: Criminal Code and Other Legislation Amendment Bill 2010, [Explanatory Notes](#), p 1;
- amend the [Retail Shop Leases Act 1994 \(Qld\)](#) to make void ratchet rent provisions and to entitle assignees from lessees to claim compensation; and
- make transitional arrangements.

<sup>4</sup> The Criminal Code is in Schedule 1 of the *Criminal Code Act 1899* (Qld).

## 2 DAMAGE AT TOOWONG CEMETERY

In August 2009, it was reported that over 80 gravestones and graves in Toowong Cemetery were damaged,<sup>5</sup> resulting in more than \$400,000 damage.<sup>6</sup> Police charged four people with wilful damage (s 469 of Queensland's Criminal Code) in relation to the vandalism.<sup>7</sup>

At the defendants' committal hearing in the Brisbane Magistrates Court in April 2010, the Magistrate dismissed the charges against three of them,<sup>8</sup> saying that a properly instructed jury would not be able to find them guilty of the offence on the basis that the Crown would be unable to prove the element of 'unlawfulness' necessary to prove wilful damage.<sup>9</sup>

The following section of the paper discusses the offence of wilful damage, as currently in the Criminal Code, with particular focus on the element of unlawfulness. It sets out why the Magistrate determined that this element could not be satisfied in the Toowong Cemetery case.

## 3 CURRENT LEGAL POSITION

### 3.1 CRIMINAL CODE

Section 469 of Queensland's [Criminal Code](#) provides that any person who wilfully and unlawfully destroys or damages any property is guilty of an offence which, unless otherwise stated, is a misdemeanour, and the person is liable, if no other punishment is provided, to imprisonment for five years. There are, however, higher penalties for special cases.<sup>10</sup>

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<sup>5</sup> Tony Moore, 'Vandals on Path of Destruction at Historic Cemetery', *Brisbane Times*, 27 August 2009, online.

<sup>6</sup> Marissa Calligeros, 'Grave Decision may not Stop Vandals', *Brisbane Times*, 20 July 2010, online.

<sup>7</sup> *Police v Bell*, Decision Transcript, p 1-2.

<sup>8</sup> The Crown consented that a case against the fourth defendant had not been established: *Police v Bell*, Decision Transcript, p 1-2.

<sup>9</sup> *Police v Bell*, Decision Transcript, p 1-7.

<sup>10</sup> For example, if the property in question is a bank or wall of the sea or inland water and the destruction or damage causes an actual danger of inundation or of damage to land or a building,



Section 458, in Chapter 45, is one of the definition provisions for Chapter 46, Part 6 (Offences relating to property and contracts), Division 2 (Injuries to property) (the division in which s 469 is located). Relevantly to the Toowong Cemetery case, s 458(1) states that an act which causes injury to the property of another, and which is done without the owner's consent, is unlawful unless it is authorised or justified or excused by law.

In *R v McClymont; ex parte Attorney-General* [1987] 2 Qd R 442 at 443, Ryan J, with whom Andrews CJ and Thomas J agreed, explained that, in relation to a s 469 offence, the Crown must prove:

- (a) *that property as defined was damaged;*<sup>11</sup>
- (b) *that this was done wilfully in the sense given to that word in R v Lockwood, ex parte Attorney-General [1981] Qd. R. 209; and*
- (c) *that the accused damaged the property unlawfully as that word is defined in s.458.*

The third of these elements was the crucial one in the Magistrate's decision not to commit the defendants to trial in the Toowong Cemetery case; thus this Research Brief only discusses that requirement.

### 3.1.1 'Unlawfully'

In *R v Lockwood; ex parte Attorney-General*, Douglas J (at 218-219) said that "[t]he meaning of the word 'unlawfully' in the context [i.e. in s 469] may be derived from what appears in s.458 of *The Criminal Code*".<sup>12</sup> This was confirmed in *R v Webb; ex parte Attorney-General* [1990] 2 Qd R 275 at 279 by Macrossan CJ, with whom Lee J agreed, who said: "*Having regard to the course of authority and to the wording of the adjacent sections it should be accepted that the relevant meaning [of unlawfulness] comes exclusively from s.458*".<sup>13</sup>

As stated above, s 458 relevantly provides that an act which causes injury to the property of another, and which is done without the owner's consent, is unlawful

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the offender commits a crime and the maximum penalty is life imprisonment – see Criminal Code s 469, clause 2.

<sup>11</sup> 'Property' is defined in s 1 of the Criminal Code to include every thing animate or inanimate that is capable of being the subject of ownership.

<sup>12</sup> See also *R v McClymont; ex parte A-G* [1987] 2 Qd R 442 at 443 per Ryan J.

<sup>13</sup> While it was not relevant in *Webb* or *Lockwood*, or in the Toowong Cemetery case, an act which would otherwise be lawful is unlawful if it causes injury to property and is done with intent to defraud any person: Criminal Code s 459.

unless it is authorised or justified or excused by law. Thus, to show that the damage or destruction in s 469 is unlawful, the Crown must prove that the accused injured the property of another without the owner's consent and without any authorisation, justification or excuse at law.

In *McClymont; ex parte Attorney-General*, Ryan J (at 443) discussed the element of unlawfulness. He stated:

*... to damage abandoned property or property not owned by another person would not be an offence under s.469. That possibility must be excluded by the evidence ... The definition does not however require proof that the property was that of any specified person. ... The definition also requires proof that the act which caused injury to the property of another was done without his consent. This may be established without calling evidence from a particular person that the property was owned by him and that the acts done to it were so done without his consent. Absence of consent may be established, as it was in this case, by an admission by the accused person that he did not have consent to do the acts which caused injury to the property of another.*

The courts have also held that it is possible to infer absence of consent from the circumstances. One of the grounds of appeal in *R v Stevenson* (1996) 90 A Crim R 259; [\[1996\] QCA 523](#) (at p 16)<sup>14</sup> was that there was no proof that the act (discharge of a shotgun) which destroyed a glass window and wooden door of a courthouse in Mackay was caused without the consent of the property's owner, the Director-General, Department of Justice and Attorney-General. Davies JA, with whom Pincus JA agreed, was of the view that:

*Merely to state the ground highlights its absurdity. It is true that absence of consent is an element of the offence ... However that absence of consent may be inferred and the only proper inference which could have been drawn in this case was that the Director-General did not consent to the door and window of the courthouse being destroyed by a shotgun blast.*

With respect to *R v Stevenson*, the [Explanatory Notes](#) (p 4) make the point that the case “was determined in the context of the prosecution failing to call the identified owner to give evidence” and the Explanatory Notes said that the concern is that “the court may be reluctant to infer absence of consent” in instances in which “the owner of the property cannot be identified (for example, historical graves)”.

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<sup>14</sup> Online consecutive numbering of judgments.

### **3.1.2 Toowong Cemetery Case**

At the committal hearing in the Toowong Cemetery case, the Magistrate stated:<sup>15</sup>

*In this case there is no evidence as to who the actual owners of the relevant headstones are other than evidence from Mr Ryan that they are various unidentified individuals in the community ...*

*... The onus rests with the Crown to establish beyond reasonable doubt that any damage caused was without the owners' consent in order to establish unlawfulness, which is an element of the offence.*

*[It] appears to me that no attempt was made to ascertain who the owners of the affected headstones were let alone whether there was lack of consent. ... There is simply no evidence adduced by the Crown on the issue in section 458(1), that is, unlawfulness. ...*

*That being so, I am satisfied that there is insufficient evidence to prove an essential element of the offence in respect of the three remaining defendants, namely, unlawfulness.*

## **3.2 LOCAL LAWS**

While Brisbane City Council does not have a local law which prohibits people from interfering with a grave, some Queensland local governments have made such local laws.<sup>16</sup> Accordingly, if the damage that occurred at Toowong Cemetery had occurred at a cemetery in one of these other local government areas, it may have been possible to prosecute the defendants under the relevant local law.

Section 7(b) of the Gold Coast City Council's *Local Law No 13 (Cemetery)*, for example, provides that a person must not, unless authorised by a permit, interfere with a grave, vault, monument, tombstone, railing or any other structure, fitting or fixture on a council cemetery. 'Interference' is defined in the Schedule to the local law as including any damage, destruction, tampering, removal, alteration, defacement, change, or inappropriate use and 'interfere' has the corresponding meaning. The maximum penalty for offending against this provision is 20 penalty units (\$1,500).<sup>17</sup>

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<sup>15</sup> Police v Bell, Decision Transcript, pp 1-6-1-7.

<sup>16</sup> Queensland's local laws are available on the Queensland Government Department of Infrastructure and Planning [website](#).

<sup>17</sup> The value of a penalty unit for a local law made by a local government mentioned in Schedule 2 of the [Penalties and Sentences Regulation 2005 \(Old\)](#) is \$75 - Gold Coast City Council is mentioned in Schedule 2: [Penalties and Sentences Act 1992 \(Old\)](#), s 5(1)(b) and [Penalties and Sentences Regulation 2005 \(Old\)](#), reg 2A(1) and Schedule 2.

## 4 PETITION REGARDING ‘CEMETERY VANDALS’

Following the dismissal of the charges against the four defendants in the Toowong Cemetery case, Hilda Maclean, the President of the Friends of Toowong Cemetery Association, posted an e-petition on the Queensland Parliament website. The 1,260 petitioners requested the House to “*enact legislation to make wilful damage in a cemetery or other burial ground a serious offence, without the need for the Crown to prove that such damage is unauthorised*”.<sup>18</sup> In response to the petition, the Hon Cameron Dick MP advised that the Department of Justice and Attorney-General:<sup>19</sup>

*... is reviewing this legal issue with a view to determining whether a legislative response is required; and if so, the appropriate response. The proposal outlined in [the] petition will be considered as part of that review.*

## 5 PROPOSED AMENDMENTS TO THE CRIMINAL CODE

The Criminal Code and Other Legislation Amendment Bill 2010 proposes to amend the Criminal Code to address the evidentiary issues which can arise in wilful damage cases where the owner of the property is not readily identifiable, such as in the case of historic graves. In addition, the Bill proposes to increase the maximum penalty for damage to property in cemeteries and crematoria “[i]n recognition of the community’s outrage at graveyard vandalism and similar conduct ...”.<sup>20</sup>

### 5.1 INCREASED PENALTY

As noted above, the penalty for wilful damage is imprisonment for five years unless otherwise stated (s 469 of the Criminal Code). Clause 8(2) of the Bill proposes to insert **new clause 11 (Punishment in special cases: Cemeteries etc.)** into s 469. This clause provides that if the property in question is:

- a grave, vault, niche or memorial in a cemetery or at a crematorium;<sup>21</sup> or

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<sup>18</sup> E-petition (No 1422-10) presented by the Hon Andrew Fraser MP, Treasurer and Minister for Employment and Economic Development, regarding wilful damage in cemeteries, tabled 30 June 2010. The e-petition is available on Queensland Parliament’s Tabled Papers [website](#).

<sup>19</sup> The Hon Cameron Dick MP’s response to the e-petition is available on Queensland Parliament’s Tabled Papers [website](#). See also, Hon Cameron Dick MP, [New Law, Tougher Penalties Target Graveyard Vandalism](#), Ministerial Media Statement, 18 July 2010.

<sup>20</sup> Hon Cameron Dick MP, [Second Reading Speech](#), p 4253.

<sup>21</sup> Memorial, in a cemetery or at a crematorium, is defined in **new clause 11** to include the following:

- a war memorial; or
- at a place of religious worship;

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

## **5.2 OVERCOMING POTENTIAL EVIDENTIARY DIFFICULTIES**

Many of the graves in Toowong Cemetery are very old so it may have been difficult for the prosecution in the Toowong Cemetery case to identify and locate the owners of the gravestones to “*establish beyond reasonable doubt that any damage caused was without the owners’ consent*” so as to “*establish unlawfulness, which is an element of the offence*”.<sup>22</sup> Many other cemeteries in Queensland also have historic graves. The amendments to ss 458, 469 and 566 of the Criminal Code discussed below are designed “*to overcome evidentiary difficulties which can arise in the prosecution of wilful damage cases where the owner of the relevant property [such as gravestones and certain public property] is not readily identifiable ...*”.<sup>23</sup>

### **5.2.1 Amendment of Section 458**

Clause 7 of the Bill proposes to insert **new subsection (1A)** (to be renumbered as **new subsection (2)**) into s 458 of the Criminal Code to provide that, for **new clause 11** of s 469, the destruction or damage by a person of property fixed in a cemetery or at a crematorium is unlawful unless the person is acting:

- with the owner’s consent; or
- with the lawful consent of the entity (if any) responsible for managing and administering the cemetery or crematorium; or

- 
- a headstone;
  - an inscribed plaque or commemorative plate;
  - a monumental, ornamental or other structure;
  - another thing erected or placed:
    - to mark the site where human remains have been buried or placed; or
    - to commemorate a deceased person.

Clause 3 of the Bill proposes to insert a definition of ‘crematorium’ into s 1 of the Criminal Code. ‘Crematorium’ is to be defined to include the land or water where the crematorium is situated.

<sup>22</sup> Police v Bell, Decision Transcript, pp 1-6-1-7.

<sup>23</sup> [Explanatory Notes](#), p 1.

- in the reasonable belief that that lawful consent of the entity has been given.

### 5.2.2 Amendment of Section 469

Clause 8(1) of the Bill proposes to insert **new subsection 469(2)** and **new subsection 469(3)** into the Criminal Code.

Proposed **new subsection 469(2)** provides that for s 469, other than **new clause 11**, the destruction or damage of property that is a thing mentioned in s 566(11)<sup>24</sup> is presumed to be done without the owner's consent until the contrary is proved.

Proposed **new subsection 469(3)** provides that for **new clause 11** of s 469, the destruction or damage of property is, until the contrary is proved, presumed to be done:

- without the owner's consent; and
- if the property is fixed in a cemetery or at a crematorium:
  - without the lawful consent of the entity (if any) responsible for managing and administering the cemetery or crematorium; and
  - not in the reasonable belief that such lawful consent of the entity has been given.

As discussed above, clause 8(2) of the Bill proposes to insert **new clause 11 (Punishment in special cases: Cemeteries etc.)** into s 469.

### 5.2.3 Amendment of Section 566

Section 566 of the Criminal Code deals with particular indictments. Clause 9 of the Bill proposes to amend s 566(11) so that it will include cemeteries and crematoria as follows:

*In an indictment for an offence relating to anything fixed in a square, street or cemetery or at a crematorium or in a place dedicated to public use or ornament, or to anything in or taken from a public office, it is not necessary to allege that the thing in respect of which the offence is committed is the property of any person.*

This means that for offences in relation to property in a cemetery (such as gravestones) or at a crematorium, it will not be necessary for the Crown in a future case similar to the Toowong Cemetery case to identify and locate the owner of the property.

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<sup>24</sup> This provision is discussed below.

## **6 PROPOSED AMENDMENTS TO THE SUMMARY OFFENCES ACT**

Clause 30 of the Bill proposes to insert **new s 26A (Interference with graves etc)** into the [Summary Offences Act 2005 \(Old\)](#). **New s 26A** provides that a person must not interfere with:

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

‘Interfere’, with a thing, is defined in **new s 26A(3)** to include:

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

‘Memorial’, in proposed new s 26A, has the same meaning as it does in proposed **new clause 11** of s 469 of the Criminal Code (see Part 5.1 of this paper).

The maximum penalty for breaching proposed **new s 26A** is imprisonment for one year.

The section provides that it is a defence for the person to prove that he or she was acting:

- with lawful authority or in the reasonable belief that he or she was acting with lawful authority; or
- with any other reasonable excuse.

‘Lawful authority’ is defined for the section (in **new s 26A(3)**) to mean authority under an Act or given lawfully by either of the following:

- the owner of the thing interfered with;
- 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.

The intent of **new s 26A** is to ensure that acts that may not cause damage in a way that would fall within s 469 of the Criminal Code can be prosecuted. The Attorney-General pointed out in his [Second Reading Speech](#) (p 4253) that the proposed new offence was drafted to ensure that conduct likely to cause offence to a reasonable person, such as urinating on a grave, is prohibited. The [Explanatory Notes](#) (p 16) state that the offence will also apply to acts such as “conducting a satanic ritual on or near a grave”.

Proposed **new s 26A** is similar to some of the local government provisions regulating conduct at cemeteries and crematoria, discussed earlier. Situations in

which there is an interaction between local and State laws are dealt with by s 27 of the [Local Government Act 2009 \(Qld\)](#). This provision states that if there is any inconsistency between a local law and a law made by the State, the law made by the State prevails to the extent of the inconsistency.

## 7 COMMENCEMENT OF THE AMENDMENTS

The Bill does not specify a commencement date, thus, pursuant to s 15A of the [Acts Interpretation Act 1954 \(Qld\)](#), if the Bill is passed, the Criminal Code and Other Legislation Amendment Act will commence on the date of assent.

## 8 OTHER AUSTRALIAN JURISDICTIONS

Similar provisions to those in the Bill which specifically apply to damage to property in cemeteries and like places are found in some other Australian jurisdictions.<sup>25</sup> Interestingly, there is wide disparity between the maximum penalties for such offences in the different jurisdictions discussed, ranging from \$200 in South Australia to \$28,668 or two years imprisonment, or both, in Victoria. Of the jurisdictions discussed below, Victoria is the only one to have imprisonment as a penalty option.

### 8.1 SOUTH AUSTRALIA

The [Local Government \(Cemetery\) Regulations 2010 \(SA\)](#) (reg 24) prohibits persons from removing, damaging, defacing or interfering with:

- a building, memorial<sup>26</sup> or other fixture or structure in a cemetery; or
- a part of the grounds of a cemetery, including a tree, shrub, plant, flower or lawn, or a stake or label on or near any such thing.

The maximum penalty for failing to comply with this provision is \$200.

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<sup>25</sup> Note that there may be other more general provisions in the legislation in those jurisdictions that may be relevant but they are not discussed here.

<sup>26</sup> ‘Memorial’ is defined in reg 3 to mean:

- a gravestone or other monument; or
- a plaque; or
- any other structure or physical object used to memorialise a deceased person.



## 8.2 TASMANIA

Regulation 20 of the [Burial and Cremation \(Cemetery\) Regulations 2005 \(Tas\)](#) states, in part, that a person (other than the cemetery manager) must not:

- remove, damage, deface or otherwise interfere with any building, monument, memorial or other fixture or structure in a cemetery; or
- damage, deface or otherwise interfere with any part of the grounds of a cemetery, including any plants, flowers or tokens; or
- commit any breach of the peace or nuisance, or otherwise behave in an offensive manner in a cemetery.

The penalty for breaching this provision is a fine not exceeding \$1,300.<sup>27</sup>

## 8.3 VICTORIA

Sections 95 and 96 of the [Cemeteries and Crematoria Act 2003 \(Vic\)](#) make it an offence to desecrate memorials and places of interment. The penalty for offending against these provisions is \$28,668<sup>28</sup> or two years imprisonment or both.

Section 95 provides that, except in accordance with the Act, a person must not wilfully break open, damage, desecrate or destroy a memorial.<sup>29</sup>

Section 96 provides that, except in accordance with the Act, a person must not wilfully break open, damage, desecrate or destroy a place of interment.<sup>30</sup>

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<sup>27</sup> That is, 10 penalty units, with the value of a penalty unit being \$130: [Penalty Units and Other Penalties Act 1987 \(Tas\)](#), ss 4, 4A.

<sup>28</sup> That is, 240 penalty units. The value of a penalty unit is \$119.45: [Sentencing Act 1991 \(Vic\)](#) s 110(1), [Monetary Units Act 2004 \(Vic\)](#) s 5 and Victoria Government Gazette, [11 March 2010](#), p 449.

<sup>29</sup> A memorial is defined in s 3 of the Act as a monument, tombstone, headstone, ledger, cenotaph, plaque or other method of memorialising a deceased person where that memorial is within a public cemetery.

<sup>30</sup> Interment is defined in s 3 as the interring, burial or placing of human remains in a place of interment and, in relation to cremated human remains, includes the interment of those remains whether or not the remains are enclosed in a receptacle.

## 8.4 WESTERN AUSTRALIA

Under s 62 of the [Cemeteries Act 1986 \(WA\)](#), a person who wilfully and unlawfully destroys or damages any memorial<sup>31</sup> or any property in a cemetery commits an offence – the penalty for which is \$1,000.

## 9 CONCLUSION

The damage to the graves and gravestones at the Toowong Cemetery was not an isolated incident. Some other cemeteries in Queensland to have suffered recent damage include:

- Beenleigh Cemetery in December 2010 (six graves);<sup>32</sup>
- Drayton and Toowoomba Cemetery in September and October 2010 (at least 45 graves, with damage estimated at over \$100,000);<sup>33</sup> and
- Mackay Cemetery in September 2010 (destruction of gravestones, causing about \$100,000 damage).<sup>34</sup>

In a media statement, the Attorney-General said that the proposed amendments (which were subsequently introduced in the Bill) will “*provide police and prosecutors with the tools needed to take action against people who damage or destroy graves and other memorials*”. If persons are found guilty of damaging graves and gravestones under the proposed changes to the Criminal Code, they will face a maximum of seven years jail.<sup>35</sup>

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<sup>31</sup> Memorial is defined in s 3 of the Act to include headstone, plaque, tombstone, monumental work, inscription, kerbing, enclosure and any other fixture or thing commemorating a grave or the placement of ashes.

<sup>32</sup> ‘Baby Grave Vandalised’, *Courier Mail*, 4-5 December 2010, p 10.

<sup>33</sup> Louise O’Keefe, ‘Vandalism Upsets Cemetery Staff’, *Chronicle*, 16 October 2010, online.

<sup>34</sup> Melissa Maddison, ‘Mackay Council Considers Fencing Off Vandalised Cemetery’, *ABC News*, 14 September 2010, online; Fallon Hudson, ‘Cemetery Grubs Trash the Dead’, *Daily Mercury*, 11 September 2010, online; Melissa Grant, ‘Heartless Vandals Destroy Graves’, *Daily Mercury*, 9 September 2010, online.

<sup>35</sup> Hon Cameron Dick MP, [New Law, Tougher Penalties Target Graveyard Vandalism](#). As discussed above, the amendments will not come into effect until the date of assent. Any persons charged in relation to incidents which take place prior to this date can only be prosecuted under the current legislation.



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