

~~This will be a useful compliance tool and has received the strong backing of industry groups who have been concerned that operators with a temporary permit can overstay their approved time frame, disadvantaging holders of permanent permits.~~

~~The bill also amends the Recreation Areas Management Act 2006 to provide a more secure investment framework for commercial operators by extending the maximum term of commercial activity agreements from 10 to 15 years. This is welcome news for commercial operators as it allows more time for operators to build a recognised brand in the market, secure capital investment and recoup costs for assets such as tour buses.~~

~~Mr Stevens interjected.~~

~~Ms JONES: I welcome the support of the shadow minister for tourism. The bill introduces amendments identified as part of the Queensland Regulatory Simplification Plan 2009-13, as a step towards reducing the compliance burden on business. These simplification amendments include: amendments to the Recreation Areas Management Act 2006 to remove the requirement for a permit for small scale commercial filming or photography activities; amendments to the Coastal Protection and Management Act 1995 that will reduce the complexity in the assessment process for tidal works applications that also require a resource allocation for quarry materials; and amendments to the Environmental Protection Act 1994 to ensure that industry does not prematurely pay fees for a registration certificate before obtaining a development permit.~~

~~The bill also makes a series of amendments to the Coastal Protection and Management Act 1995 in preparation for the finalisation of the Queensland Coastal Plan. These amendments are required to ensure a greater focus on coastal hazards in land use decisions near the coast as hazards become more significant due to climate change and sea level rise and to align the coastal planning framework with that of the Sustainable Planning Act 2009. The amendments will provide for the Queensland Coastal Plan to incorporate a state planning policy for coastal protection, which will also be made as a state planning policy under the Sustainable Planning Act.~~

~~The state planning policy will address four major policy issues: development in coastal hazard areas, maritime development, protection of areas of high ecological significance, and urban settlement patterns in the coastal zone. The state planning policy will ensure consistent and transparent treatment of these important issues by all coastal local governments across the state something the local government sector has been supporting for some time.~~

~~The bill also amends a variety of other acts which the Department of Environment and Resource Management administers, harmonises the provisions in relation to the issue of warrants to be executed by authorised officers and provides more flexibility in the execution of these warrants. The remaining amendments are minor or technical and necessary to provide for effective and efficient administration and enforcement of the legislation.~~

~~I am pleased to introduce a bill that makes common sense amendments to Queensland's environment legislation to ensure that it is clear and simple to use and, most importantly, so that it is effective in protecting our valuable environmental resources. I commend this bill to the House.~~

~~Debate, on motion of Mr Horan, adjourned.~~

025

CRIMINAL CODE AND OTHER LEGISLATION AMENDMENT BILL

Message from Governor

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (2.59 pm): I present a message from Her Excellency the Governor.

Mr Deputy Speaker (Mr Hoolihan) read the following message—

MESSAGE

CRIMINAL CODE AND OTHER LEGISLATION AMENDMENT BILL 2010

Constitution of Queensland 2001, section 68

I, PENELOPE ANNE WENSLEY, Governor, recommend to the Legislative Assembly a Bill intitled—

A Bill for an Act to amend the Criminal Code, the Appeal Costs Fund Act 1973, the Appeal Costs Fund Regulation 2010, the Retail Shop Leases Act 1994 and the Summary Offences Act 2005 for particular purposes.

(sgd)

GOVERNOR

Date: 18 Nov 2010

Tabled paper: Message, dated 18 November 2010, from Her Excellency the Governor recommending the Criminal Code and Other Legislation Amendment Bill.

First Reading

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (3.00 pm): I present a bill for an act to amend the Criminal Code, the Appeal Costs Fund Act 1973, the Appeal Costs Fund Regulation 2010, the Retail Shop Leases Act 1994 and the Summary Offences Act 2005 for particular purposes. I present the explanatory notes, and I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Tabled paper: Criminal Code and Other Legislation Amendment Bill.

Tabled paper: Criminal Code and Other Legislation Amendment Bill, explanatory notes.

Second Reading

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (3.01 pm): I move—

That the bill be now read a second time.

The criminal justice system plays an important role in creating a safe community for all Queenslanders. This bill represents the Bligh government's continuing commitment to monitor Queensland's criminal laws and amend the laws as required to ensure they reflect modern community standards and values.

The primary objectives of the Criminal Code and Other Legislation Amendment Bill 2010 are to amend the excuse of accident found in section 23(1) (b) of the Criminal Code to omit the term 'accident' and substitute the term with a phrase which better reflects how the courts have approached this exception to criminal responsibility; to recast the partial defence of provocation which is found in section 304 of the Criminal Code to address its bias and flaws; to amend relevant provisions of the Criminal Code to overcome evidentiary difficulties which can arise in the prosecution of wilful damage cases where the owner of the relevant property is not readily identifiable, for example, gravestones and certain public property; to criminalise the unlawful interference of graves and like property such as war memorials, where such interference may not fall within the meaning of damage, to allow for a prosecution of wilful damage; to amend the Criminal Code in relation to the joinder of charges which will contribute to the modernisation and streamlining of the criminal justice system; to amend the Appeal Costs Fund Act 1973 to allow a convicted person to recover from the appeal cost 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 as contemplated in the Penalties and Sentences (Sentencing Advisory Council) Amendment Act 2010; and to amend the Retail Shop Leases Act 1994 to ensure both that rent reviews are not avoided under ratchet clauses preventing decreases in rent and to enable assignees from lessees to claim compensation under section 43 of the act.

The Queensland Law Reform Commission's final report titled, *A review of the excuse of accident and the defence of provocation* was tabled in parliament on 1 October 2008. The QLRC recommended that the Criminal Code should continue to contain an excuse of accident and endorsed the current reasonably foreseeable consequence test as the appropriate test to determine whether an event occurred by accident. This test provides that a defendant will not be criminally responsible for an event unless the prosecution can establish that the defendant intended that the event in question should occur or foresaw it as a possible outcome, or that an ordinary person in the position of the defendant would reasonably have foreseen the event as a possible outcome.

Although it did not form the basis of a recommendation, the QLRC canvassed the issue of the term 'accident' and how it does not reflect the essence of the excuse, and may create misunderstanding within the community. As stated in the report, the word 'accident' may be thought to convey an occurrence that happens without fault, something tragic brought about by a random unexpected act. Under section 23(1) (b), the term has a different meaning—an unintended, unforeseen and unforeseeable event. Where a death flows from an assault, it is difficult for the community to understand how an accused may be acquitted on the basis the death was an accident. The bill amends section 23(1) (b) to omit the term 'accident' and legislatively enshrine the reasonably foreseeable consequence test.

In recent years the courts have dealt with a number of cases where the prosecution for murder has resulted in a conviction for manslaughter at trial, after the accused has submitted evidence that taunts of infidelity have prompted them to lose self control in the heat of the moment. A person who is otherwise guilty of murder may instead be convicted of manslaughter if the jury decides that the murder was committed while the accused was provoked. The partial defence of provocation applies where a person does the act which causes death in the heat of passion caused by sudden provocation, and

before there is time for the person's passion to cool. If raised on the evidence, the onus is upon the prosecution to negative the defence beyond a reasonable doubt.

As outlined in the QLRC report at page 225, it is not uncommon for men who kill their intimate partners to raise the defence of provocation on the basis that they were provoked to kill by their partner's infidelity, insults or threats to leave the relationship. Further, at page 465 the QLRC states that—

The defence operates in favour of those in positions of strength at the expense of the weaker. The application of the defence has produced different outcomes in cases that involve comparable circumstances. In accordance with authority, trial judges play their role as 'gate-keeper' with caution. And it is at least arguable that the defence has been left to the jury, contrary to authority, in those cases in which the provocative conduct consisted only of words.

The QLRC recommended that the defence be recast to address its bias and flaws, in particular, to include a provision to the effect that, other than in circumstances of an extreme and exceptional character, the defence cannot be based on words alone or conduct that consists substantially of words; to include a provision that has the effect that, other than in circumstances of an extreme and exceptional character, provocation cannot be based upon the deceased's choice about a relationship; and to place the onus of proof upon a defendant seeking to rely on the partial defence.

The bill implements these QLRC recommendations by amending section 304 of the Criminal Code to remove insults and statements about relationships from the scope of the defence and to recognise a person's right to assert their personal or sexual autonomy. The amendments will reduce the scope of the defence being available to those who kill out of sexual possessiveness or jealousy and will reflect that, in determining what are circumstances of a most extreme and exceptional character, regard may be had to any history of violence that is relevant in all the circumstances—for example, a history of domestic violence between the defendant and the deceased.

The bill also reverses the onus of proof in accordance with the QLRC's recommendation. The reversal of onus takes into account that the prosecution is often not in a position to contest the defendant's claims because the only other witness is the deceased; the prospect of more clearly articulated claims of provocation; the enhanced capacity of the trial judge to prevent unmeritorious claims being raised; and the analogy with the defence of diminished responsibility, which also reduces murder to manslaughter, and where the defendant bears the onus.

In April this year the community expressed outrage when four people charged with damaging gravestones had charges dismissed over the question of whether the damage had been caused without the owners' consent. The amendments in this bill reflect the government's commitment to protect important places of remembrance such as graveyards. The legislation reflects community expectations concerning how places of remembrance should be respected, and why those people who commit serious acts of vandalism should be punished.

An element of the offence of wilful damage which must be proven by the prosecution is the absence of the owner's consent. Proving this element can be problematic where the owner of the property is not readily identifiable. The bill addresses the issue by amending the offence of wilful damage of property fixed in a cemetery, crematorium, public street or square by reversing the onus of proof concerning the issue of unlawfulness and requiring the defendant to prove that he or she acted with the consent of the owner or entity responsible for administering the relevant site. In recognition of the community's outrage at graveyard vandalism and similar conduct, the bill amends section 469 of the Criminal Code to provide an increased maximum penalty, where the damage or destruction is caused to a cemetery, gravestone, place of worship, or war memorial.

Further, a new offence of interfering with a grave and like property is inserted into the Summary Offences Act 2005. The new offence will address the issue of persons inappropriately interfering with graves and like property, but where the conduct does not, in law, amount to damage, to allow for a prosecution of the offence of wilful damage under the Criminal Code. Property is damaged within the meaning of section 469 when it is rendered imperfect or inoperative. The new offence is drafted to ensure conduct such as urinating on a grave and other such conduct that would offend a reasonable person is prohibited.

026

Other amendments in the bill include an amendment to section 568 of the code which provides for cases in which several charges may be joined to allow multiple offences of identity theft to be incorporated into a single count. Additionally, amendments are made to the Appeal Costs Fund Act 1973 to allow a privately funded convicted person, or Legal Aid Queensland, to seek reimbursement from the appeal costs fund for any additional expenses incurred as a result of an appeal against the convicted person's sentence or in responding to an appeal against their sentence where the appeal is relevant to the giving or reviewing of a guideline judgement as contemplated in the Penalties and Sentences (Sentencing Advisory Council) Amendment Act 2010.

The bill also amends the Retail Shop Leases Act 1994. Under section 43(1) of the act, a lessor can be liable to pay compensation to a lessee, for example, for taking actions that restrict the lessee's access to, or use of, the leased shop. Under section 43(2) of the Retail Shop Leases Act 1994, a lessor can be liable to pay compensation to a lessee for making a misrepresentation during the negotiation of a

lease. In *Logan City Shopping Centre Pty Ltd v Retail Shop Leases Tribunal and Another* [2006] QSC 172, the Supreme Court held that the provisions in section 43(2) could not be relied upon by an assignee from the lessee. It is only fair and reasonable that the right to compensation under section 43 should apply equally to an assignee from a lessee. The bill will apply to retail shop leases assigned or entered into after commencement.

Section 27 of the Retail Shop Leases Act 1994 limits the way rent for a retail shop lease may be reviewed. From the second reading speech and explanatory notes for the Retail Shop Leases Bill 1994, it was clearly the intention that the act would prohibit the use of 'ratchet' clauses where rent can rise but not fall. However, in *Connor Hunter (A Firm) v Keencrest P/L & Ors* [2009] QCA 156, the Queensland Court of Appeal held that the act permits 'ratchet' clauses. The bill will restore the intention of the legislation by ensuring that rent reviews are not avoided under 'ratchet' clauses preventing decreases in rent. The bill continues the Bligh government's commitment to the ongoing modernisation and reform of Queensland's legal system. I commend the bill to the House.

Debate, on motion of Mr Springborg, adjourned.

~~WATER AND OTHER LEGISLATION AMENDMENT BILL~~

~~Second Reading~~

~~Resumed from p. 4243, on motion of Mr Robertson~~

~~That the bill be now read a second time.~~

~~**Mr SEENEY** (Callide—LNP) (3.11 pm): Before the interruption I was pointing out how the wild rivers legislation had nothing to do with rivers, nothing to do with protecting the environment and everything to do with returning incompetent Labor members to this House, and there are plenty of incompetent Labor members in here to prove that point. But the price for the return of those incompetent Labor members using this political deal of the wild rivers legislation has been the economic development of the Aboriginal communities on the cape. This is the Labor government that was prepared to sell out the future of the Aboriginal communities on the cape to return a few incompetent Labor members to this House, and the provisions of this bill seek to perpetrate that outrage, because it is an outrage. It is political cynicism—political deals—at its worst when one sees the way that the wild rivers legislation has been used by the Labor government in this state, and the provisions in this bill are no better—they are absolutely no better. What they seek to do is to do to the people of south west Queensland what this government has already done to the people of Cape York Peninsula, and of course we will oppose it. We will oppose it, as we should and as every sensible Queenslanders should, because the farce of the wild rivers legislation has been seen through by every sensible Queenslanders.~~

~~This is not about protecting anything in the Channel Country. There is plenty of legislation on the statutes to protect the Channel Country, just as it has been protected for the last 150 years. Some 150 years of pastoral development in that area and apparently it still has values that the government seeks to somehow protect! The fact that those values have been protected by the people who have lived there for the last 150 years is in itself enough evidence that they can continue to do that as the good stewards of that part of Queensland that they have proven to be. They do not need socialist bureaucrats appointed by a failing government to continue the stewardship of that area. I commend the people of south west Queensland, the people of the Channel Country, the people who have been the stewards of that land. We will not impose upon them an unnecessary bureaucratic planning process so that this Labor government can perpetuate the political deal—the political farce—that is the wild rivers legislation. I look forward, as so many other people in Queensland do, to seeing the end of the wild rivers legislation which will allow the people in the cape the opportunities that they deserve and the people in the Channel Country the opportunities that they deserve.~~

~~(Time expired)~~

~~**Mr HOPPER** (Condamine—LNP) (3.14 pm): I rise to make a contribution to the Water and Other Legislation Amendment Bill 2010. As our shadow minister has said, the LNP opposes this bill in its present form. On behalf of the many landholders in Queensland, particularly those in my Darling Downs electorate of Condamine, I want to recognise their great disappointment and frustration with this current government. I also want to support landholders and the communities they support in their fight to get it right—let us get it right now—to ensure that the producers of our food and fibre are able to continue to operate successfully and for a sustainably long time into the future. It is only now that the government has begun to acknowledge the negative environmental, economic and social issues that revolve around the rapid expansion of the coal seam gas industry upon our rural and regional landscape.~~

~~There is so much more to be done to offer genuine protection and security of our groundwater supplies to the landholders and to our communities that are reliant upon this water. I implore the government to support the LNP's call for a gas fields land and water authority. This statutory body would oversee the land and water regulations in the coal seam gas fields of the Surat and Bowen Basins. I~~