

# Criminal Code and Other Legislation Amendment Bill 2010

## Explanatory Notes

### Objectives of the Bill

The primary objectives of the *Criminal Code and Other Legislation Amendment Bill 2010* (the Bill) are:

- To amend the excuse of accident (section 23(1)(b), Criminal Code) to omit the term ‘accident’ and substitute the term with a phrase which better reflects the ‘reasonably foreseeable consequence’ test;
- To recast the partial defence of provocation (section 304, 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. Property is damaged within the meaning of section 469 when it is rendered imperfect or inoperative. Conduct such as urinating on a grave or war memorial would not amount to ‘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 Costs Fund (the 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.
- To amend the *Retail Shop Leases Act 1994* to ensure that rent reviews are not avoided under ‘ratchet’ clauses preventing decreases in rent

and to entitle assignees from lessees to claim compensation under section 43 of the Act.

## **Reasons for the Bill**

### **Criminal Code and Summary Offences Act Amendments**

The Queensland Law Reform Commission's (QLRC) final Report entitled, "*A review of the excuse of accident and the defence of provocation*" was tabled in Parliament on 1 October 2008.

#### *Accident – section 23(1)(b), Criminal Code*

The QLRC recommended that the Criminal Code should continue to contain an excuse of accident (section 23(1)(b)) and endorsed the current 'reasonably foreseeable consequence' test as the appropriate test to determine whether an event occurred by 'accident'.

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.

#### *Provocation – section 304, Criminal Code*

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. This partial defence is found in section 304 of the Criminal Code and 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 amendments will: remove insults and statements about relationships from the scope of the defence; recognise a person’s right to assert their personal or sexual autonomy; and will reduce the scope of the defence being available to those who kill out of sexual possessiveness or jealousy.

The reversal of the onus of proof takes into account:

- the prosecution is often not in a position to contest the defendant’s claims because the only other ‘witness’ is the deceased;
- it will lead to more clearly articulated claims of provocation, which is fairer to all concerned including the jury;
- it enhances the capacity of the trial judge to prevent unmeritorious claims being raised; and
- an analogy with diminished responsibility, which also reduces murder to manslaughter, and where the defendant bears the onus.

#### *Graveyard vandalism and like conduct*

The offence of wilful damage is provided in section 469 of the Criminal Code and applies to any person who wilfully and unlawfully destroys or damages property. Section 458 of the Code provides 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, justified or excused by law.

Evidentiary difficulties can arise in a wilful damage prosecution where the owner of the property is not readily identifiable. While the Court of Appeal has stated that the absence of consent in a wilful damage prosecution may be inferred from the circumstances (*R v Stevenson* (1996) 90 A Crim R 259), that case was determined in the context of the prosecution failing to call the identified owner to give evidence. Where the owner of the property cannot be identified (for example, historical graves), the concern is that the court may be reluctant to infer absence of consent in such circumstances.

Section 566 of the Criminal Code sets out rules which concern the content of certain indictments. Subsection (11) provides that in an indictment for an offence “relating to anything fixed in a square or street, 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”. While section 566(11) avoids the necessity of pleading an owner when the property is fixed in a square or street etc, it does not deal with the related question of ‘unlawfulness’. Where the owner is unable to be identified or is an entity that does not lend itself to having a representative that can evidence a lack of consent, it falls to the Crown to prove from the circumstances alone that the act is unlawful (i.e. that the damage occurred without the owner’s consent).

The Bill extends section 566(11) to property fixed in a cemetery. This will avoid the necessity of pleading the owner of the gravestone. Further amendments are made to address the issue of ‘unlawfulness’ as outlined under ‘Achievement of the Objectives’.

In recognition of the community’s outrage at the abhorrent conduct of damaging or destroying gravestones and like property such as war memorials, the Bill amends section 469 to provide for an increased maximum penalty in certain circumstances and inserts a new offence into the Summary Offences Act to apply to a person who unlawfully interferes with such property.

#### *Joinder of charges*

Section 567 of the Criminal Code provides the basic rule that an indictment must charge only one offence unless the charges are: founded on the same facts; form part of a series of offences of the same or similar character; or a series of offences committed in the prosecution of a single count. Where more than one offence is charged in the same indictment, each offence charged must be set out as a separate count.

Section 568 of the Criminal Code provides an exception to the ordinary drafting rules. It allows a single count to combine several instances of property offences, as long as they are of the same legal offence. Specific provision is made for the offences of stealing, receiving, fraud, forgery and uttering. The reason for allowing this departure is that in the case of property offences, it is not uncommon to have a high volume of the same type of offence committed by a single offender. Such cases can present evidentiary challenges in relation to the particularisation of charges.

In practice, section 568 is used when the offender has indicated a willingness to plead guilty. In the case of a trial, the preferred practice would be to indict a separate count for each transaction as best as can be established on the evidence. Section 568 has the effect of streamlining the process.

Section 408D (Obtaining or dealing with identification information) of the Criminal Code can be conveniently added to the list of matters in section 568 that may be joined in a single count on an indictment in certain circumstances, for the following reasons:

- the offence falls under the ambit of Part 6 of the Code and is arguably a ‘property’ type offence consistent with the existing offences represented in section 568;
- the offence is of a nature where a single offender may commit a high volume of this type of offence;
- depending upon the timeframe across which the offending occurred, the frequency of the offending and the number of entities affected – the particularisation of certain matters may be problematic.

### **Appeal Costs Fund Act Amendments**

The *Penalties and Sentences (Sentencing Advisory Council) Amendment Act 2010* provides the Court of Appeal with the power to give and review guideline judgments to be taken into consideration by courts in sentencing offenders.

By their very nature, guideline proceedings have the potential to run for longer or be otherwise more complex than a typical appeal as they may require consideration of materials and factors not presently relevant to the task of determining an appeal against sentence.

Consequently, it has been deemed appropriate for amendments to be made to the Appeal Costs Fund Act to provide the Court of Appeal with the authority to grant an indemnity certificate to a convicted person, or Legal

Aid Queensland if they are acting for that person, entitling them to recover from the Appeal Costs Fund any additional costs incurred as a result of an appeal against sentence being dealt with as or as part of a guideline proceeding.

### **Retail Shop Leases Act 1994**

Under section 43(1) of the *Retail Shop Leases Act 1994*, 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 of a lessee. The Bill provides accordingly for 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.

## **Achievement of the Objectives**

### ***Criminal Code Amendments***

The Bill amends the Criminal Code by:

- amending section 23(1)(b) which provides the excuse of accident to omit the term 'accident' and instead provide that a person is not criminally responsible for an event that the person does not intend or foresee as a possible consequence and that an ordinary person would not reasonably foresee as a possible consequence;
- amending section 304 to provide that other than in circumstances of a most extreme and exceptional character, the partial defence of

provocation cannot be based on words alone. Further, that other than in circumstances of a most extreme and exceptional character, the partial defence of provocation does not apply when a domestic relationship (as defined under the *Domestic and Family Violence Protection Act 1989*) exists between the defendant and the deceased and the provocation is based on anything done by the deceased or anything the defendant believes the deceased has done to end or change the nature of the relationship. For proof of circumstances of a most extreme and exceptional character regard may be had to any history of violence that is relevant, for example, a history of domestic violence between the defendant and the deceased. Finally, the defence is amended to reverse the onus of proof by requiring the defendant to prove that they are liable to be convicted of manslaughter only;

- amending section 469 (Wilful damage) to provide an increased maximum penalty for the wilful damage of: a grave, vault, niche or memorial in a cemetery or at a crematorium; a war memorial; or property at a place of religious worship;
- amending section 566 (11) (Particular indictments) to extend the subsection to property fixed in a cemetery or at a crematorium;
- amending section 469 to require the defendant to prove they acted with the consent of the owner of the property where the property damaged or destroyed is mentioned in section 566 (11), as extended – but to recognise that, in relation to property fixed in a cemetery or at a crematorium, a defendant may have acted with the consent of the administering authority; and
- amending section 568 to include the offence of Obtaining or dealing with identification information (section 408D).

### **Appeal Costs Fund Act Amendments**

The Bill amends the Appeal Costs Fund Act by:

- inserting a new division into Part 4 regarding the provision of indemnity certificates in regard to guideline proceedings;
  - new section 20B provides the Court of Appeal with the authority to grant an indemnity certificate to a person on appeal after conviction who applies to the court for review of a guideline judgement under section 15AE(3) of the *Penalties and Sentences Act 1992*. If the appeal was lodged by the person convicted, the appeal must succeed for an indemnity certificate to be granted;

- new section 20D provides the Court of Appeal with the authority to grant an indemnity certificate to a convicted person who appears in a guideline proceeding relevant to an appeal against their sentence, brought by the Attorney-General, the Director of Public Prosecutions or Legal Aid Queensland under section 15AF(2) of the *Penalties and Sentences Act 1992*, regardless of the outcome of the appeal;
- new sections 20C and 20E entitle the holder of an indemnity certificate to be paid from the Fund an amount equal to the additional costs incurred in respect of the appeal, being the costs beyond what would otherwise have been incurred had the appeal not included a guideline proceeding.

### **Appeal Costs Fund Regulation 2010 Amendments**

The Bill amends the Appeal Costs Fund Regulation by:

- amending section 14 to establish that a maximum amount of \$15,000 may be recovered from the Fund in regard to a guideline proceeding.

### **Summary Offences Act Amendments**

The Bill amends the *Summary Offences Act 2005* by the insertion of a new offence of Interference with graves etc. which will apply to a person who, without reasonable excuse, interferes with a: grave, vault, niche or memorial in a cemetery or at a crematorium; war memorial; or property fixed at a place of religious worship. It is a defence for the person to prove they acted with the consent of the owner or administering authority of the relevant site. The term 'interfere' is defined to include dealing with the property in a way likely to cause offence to a reasonable adult. Therefore, the new offence will extend to conduct such as urinating on a war memorial.

### **Retail Shop Leases Act 1994**

The Bill amends the *Retail Shop Leases Act 1994*:

- to provide that the lessor can be liable to pay compensation under section 43 of the Act not only to a lessee but also to an assignee from a lessee; and
- to ensure that rent reviews are not avoided under 'ratchet' clauses preventing decreases in rent.

### **Estimated Cost for Government Implementation**

Any costs in relation to the amendments will be met from existing agency resources.

### **Consistency with Fundamental Legislative Principles**

The Bill inserts a new offence in to the Summary Offences Act of interfering with: a grave and like property; a war memorial; or a thing fixed in a place of worship and accordingly, will affect the rights and liberties of individuals. The new offence will capture less serious examples of interference with such property where actual damage is not caused and therefore section 469 (Wilful damage) of the Criminal Code does not apply. Such conduct is abhorrent and should not go without sanction. The increase in the maximum penalty for wilful damage of certain property reflects the seriousness with which the community views such behaviour.

The Bill amends the partial defence of provocation by placing the onus of proof upon the defendant. Before provocation arises, the prosecution must prove that the defendant intentionally killed the deceased. The QLRC considered that once murder has been proved, the defendant should bear the onus of proof (on the balance of probabilities) for establishing that he or she should be not be convicted of murder because of provocation. Reversing the onus takes into account:

- (a) the prosecution is often not in a position to contest the defendant's claims because the only other 'witness' is the deceased;
- (b) it will lead to more clearly articulated claims of provocation, which is fairer to all concerned including the jury;
- (c) it enhances the capacity of the trial judge to prevent unmeritorious claims being raised; and
- (d) an analogy with diminished responsibility, which also reduces murder to manslaughter, and where the defendant bears the onus.

The Bill amends the offence of wilful damage by placing the onus of proof upon the defendant with regards proving the damage/destruction of property that falls within expanded section 566(11) occurred with the owner's consent (or in the case of property fixed in a cemetery or at a crematorium, without the consent of the administering authority). Placing the onus of proof upon the defendant in this limited manner is justified because, in circumstances where the owner of the property is not readily identifiable, it is the defendant who is best positioned to place evidence

before the court as to whether they acted with the consent of the owner of the damaged/destroyed property.

To avoid creating an anomaly with the amendments to the offence of wilful damage in the Criminal Code to reverse the onus of proof in terms of proving 'absence of consent', a reverse onus is also applied to the new simple offence in the Summary Offences Act.

The Bill amends the Appeal Costs Fund Act to provide the Court of Appeal with the authority to grant an indemnity certificate to a convicted person whose appeal against sentence is dealt with as or as part of a guideline proceeding. The indemnity certificate will allow the convicted person to apply to the Appeal Costs Fund to recover any additional costs they incurred as a consequence of the appeal being heard as a guideline proceeding. Clause 21 stipulates that an appeal can not be made against any decision to grant or refuse to grant an indemnity certificate.

The removal of the right to appeal the court's decision regarding the grant of an indemnity certificate is justified so as to maintain consistency with section 21 of the Appeal Costs Fund Act, which confers discretion to grant an indemnity certificate to the courts and stipulates that an appeal can not be made regarding the exercise of that discretion.

### **Consultation**

Consultation with the following government departments and agencies occurred: the Department of the Premier and Cabinet; Queensland Treasury; the Department of Community Safety; the Department of Communities; and the Queensland Police Service.

Consultation has also occurred with the Chief Justice of the Supreme Court, President of the Court of Appeal, Chief Judge of the District Court, Chief Magistrate, Bar Association of Queensland, Queensland Law Society, Director of Public Prosecutions, Legal Aid Queensland, Queensland Council for Civil Liberties, Women's Legal Services, Queensland Homicide Victims Support Group; Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service; Domestic Violence Resource Centre; Rural Women's Outreach Legal Service; The Queensland Centre for Domestic and Family Violence Research; the Brisbane City Council and the Appeal Costs Fund Board.

The Queensland Law Society, the Australian Property Institute (Qld), the Property Council of Australia (Qld), the National Retail Association, United Retail Federation, Restaurant & Catering Queensland, the

Queensland Newsagents Federation, Pharmacy Guild of Australia (Qld) and Shopping Centre Council of Australia were consulted on amendments to the *Retail Shop Leases Act 1994*.

## Notes on Provisions

### Part 1 – Preliminary

Clause 1 establishes the short title to the Act as the *Criminal Code and Other Legislation Amendment Act 2010*.

### Part 2 – Amendment of the Criminal Code

Clause 2 provides that Part 2 amends the Criminal Code.

Clause 3 amends section 1 by the insertion of definitions for ‘crematorium’ and ‘domestic relationship’.

Clause 4 omits section 23(1)(b) and inserts a new subsection to provide that a person is not criminally responsible for an event that the person does not intend or foresee as a possible consequence and is not reasonably foreseeable as a possible consequence. It is not intended to alter the current law but to omit the term ‘accident’ and legislatively enshrine the ‘reasonably foreseeable consequence’ test as articulated in *R v Taiters* [1997] 1 Qd R 333. The term ‘consequence’ is used in lieu of the term ‘outcome’ for consistency in terminology throughout the Criminal Code. The amendment to section 23(1A) is consequential to the amendment to section 23(1)(b).

Clause 5 amends section 304. New subsection (2) provides that the partial defence of provocation cannot be based on words alone, other than in circumstances of a most extreme and exceptional character. The

amendment legislatively enshrines the decision in *R v Buttigieg* (1993) 69 A Crim R 21.

New subsection (3) provides for a further circumstance when the partial defence of provocation cannot be relied on by a defendant, other than in circumstances of a most extreme and exceptional character. Subsection (3) applies where the defendant kills a person they are in a domestic relationship with (as defined under the *Domestic and Family Violence Protection Act 1989*) and the killing is in response to anything done by the deceased or anything the defendant believes the deceased has done: to end or change the nature of the relationship; or to indicate in any way that the relationship may, should or will end or change.

The subsection deals with an unacceptable response by a party to a domestic relationship, to an event affecting the relationship, arising from a choice made by the deceased about the relationship. Lesser events are not specified as they should not constitute provocation in any event and caution should be taken with overburdening the section with detail of smaller events that would require careful definition.

Subsection (4) provides that where the domestic relationship is an intimate personal relationship under the *Domestic and Family Violence Protection Act* the persons' lives need not be enmeshed.

Subsection (5) provides that subsection (3)(c)(i) applies even if the relationship has ended before the sudden provocation and killing happens. For example, the deceased may have already ended the relationship but a confrontation concerning that decision occurs at a later date.

Subsection (6) provides that for proof of circumstances of a most extreme and exceptional character regard may be had to any history of violence that is relevant, for example, a history of domestic violence between the deceased and the defendant.

New subsection (7) places the onus of proof of the partial defence of provocation upon the defendant. New subsection (8) is self-explanatory.

Clause 6 amends section 304B (Killing in an abusive domestic relationship) to amend the heading to insert the phrase 'for preservation'. Subsection (2)(a) is omitted as a consequence of the new definition of 'domestic relationship' inserted into section 1. Subsection (2)(b) is renumbered to subsection (7).

Clause 7 amends section 458 to insert a new subsection (1A). The new subsection picks up the amendment to insert a new punishment in special

cases, clause 11, into section 469. The new subsection provides that for the offence of wilful damage of property within punishment in special cases, clause 11, the destruction or damage of property fixed in a cemetery or at a crematorium is unlawful unless the defendant is acting with: the owner's consent; or with the lawful consent of the administering authority of the cemetery or crematorium (or in the reasonable belief that such lawful consent has been given).

Clause 8 amends section 469. New subsections (2) and (3) place the onus upon the defendant to prove they acted with the relevant consent when charged with the damage or destruction of property mentioned in section 566(11) as amended. New subsection (2) provides that, other than punishment in special cases, clause 11, the destruction or damage of property mentioned in section 566(11) is presumed to be done without the owner's consent until the contrary is proved. New subsection (3) applies to property mentioned in punishment in special cases, clause 11 and enables a defendant to prove they acted with the lawful consent of the administering authority (or in the reasonable belief that such lawful consent has been given).

Subclause (2) inserts a new punishment in special cases in relation to the damage or destruction of: a grave, vault, niche or memorial in a cemetery or at a crematorium; a war memorial; or property at a place of religious worship. In such cases a maximum penalty of seven years applies.

Clause 9 extends section 566(11) to anything fixed in a cemetery or at a crematorium.

Clause 10 amends section 568 to allow multiple offences of Obtaining or dealing with identification information (section 408D, Criminal Code) to be joined in the one charge on an indictment.

Clause 11 deals with the transitional application of the amendments and is self-explanatory.

## **Part 3 – Amendment of Appeal Costs Fund Act 1973**

Clause 12 provides that Part 3 amends the *Appeal Costs Fund Act 1973*.

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Clause 13 amends section 4 by the insertion of a definition for ‘guideline proceeding’.

Clause 14 amends section 5(3) by inserting a reference to new sections 20C and 20E to allow costs assessed or agreed upon regarding an indemnity certificate issued in a guideline proceeding to be paid out of the Fund.

Clause 15 amends Part 4 by inserting a Division 1 heading in regard to provisions dealing with the general granting of indemnity certificates and the effect of those certificates.

Clause 16 amends Part 4 by inserting a new Division 2 and a Division 3 heading. Division 2 outlines the circumstances when an indemnity certificate may be granted in relation to guideline proceedings, and the effect of the grant of an indemnity certificate. Section 20A provides the definition of ‘court’ and ‘guideline judgement’ in new Division 2. Section 20B specifies when an indemnity certificate may be granted to a person on appeal after conviction and section 20C outlines the amount that that person is entitled to be paid from the Fund. Section 20D specifies when an indemnity certificate may be granted to a convicted person and section 20E outlines the amount a convicted person is entitled to be paid from the Fund.

Clause 17 amends section 21(1) to provide that an indemnity certificate may be granted at the discretion of the Court of Appeal, Supreme Court or District Court, and that no appeal can be made in regard to any decision to grant or refuse to grant an indemnity certificate.

Clause 18 amends section 22 by the insertion of a new subsection (1A), providing that section 22 (Abortive proceedings and new trials after proceedings discontinued) does not apply to a guideline proceeding.

Clause 19 inserts a new section 29 to clarify that amendment of the *Appeal Costs Fund Regulation 2010* by the Bill does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

## **Part 4 – Amendment of Appeal Costs Fund Regulation 2010**

Clause 20 provides that Part 4 amends the *Appeal Costs Fund Regulation 2010*.

Clause 21 amends section 5(b). Section 5(b)(vii) is renumbered as section 5(b)(ix), and two subclauses are inserted, detailing the documents required to be lodged when an application to the Fund is made in reliance on an indemnity certificate granted under the new section 20B or 20D; being a copy of a receipt or other documents evidencing any payment of costs, by or on behalf of the person, relied on.

Clause 22 amends section 14. Sections 14(3) and 14(4) are renumbered as sections 14(5) and 14(6), and two subclauses are inserted, specifying that the prescribed limit on the amount payable from the Fund in relation to an indemnity certificate granted under the new section 20B or 20D is \$15,000.

## **Part 5 – Amendment of the Retail Shop Leases Act 1994**

Clause 23 provides that Part 5 amends the *Retail Shop Leases Act 1994*.

Clause 24 inserts new section 36A which provides that, where a retail shop lease provides a basis for rent review under which the rent may be varied (including by a decrease) and the lease includes a ratchet rent provision (as defined), the ratchet rent provision is void.

Clause 25 provides that a lessor can be liable to pay compensation under section 43 not only to a lessee but also to an assignee from a lessee.

Clause 26 amends section 44 as a consequence of compensation under section 43 being extended to assignees from lessees

Clause 27 amends Part 12 by inserting new Division 5. New section 134 provides for new section 36A to apply to leases entered into after the commencement of the section. New section 135 provides for the amendments to sections 43 and 44 to apply to leases assigned or entered into after the commencement of the section.

Clause 28 amends the definition *existing retail shop lease* to clarify the commencement mentioned in the definition.

## **Part 6 – Amendment of the Summary Offences Act 2005**

Clause 29 provides that Part 3 amends the *Summary Offences Act 2005*.

Clause 30 inserts a new section 26A to provide the offence of Interference with graves etc. A person must not interfere with: a grave, vault, niche or memorial in a cemetery or at a crematorium; a war memorial; or a thing fixed at a place of religious worship. It is a defence for the person to prove that they acted with the lawful consent of the owner or the relevant administering authority (or acted in the reasonable belief that they had such lawful consent). The term ‘interfere’ is defined to include dealing with the thing in a way that is likely to cause offence to a reasonable person. Therefore the offence will apply to acts such as urinating on a war memorial or conducting a satanic ritual on or near a grave.

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