

*I hereby certify that this PUBLIC BILL has finally passed the
Legislative Assembly of Queensland.*

Ma Riss.

*Legislative Assembly Chamber,
Brisbane,*

The Clerk of the Parliament.

18 March 2024

In the name and on behalf of the King, I assent to this Bill.

*Government House,
Brisbane,*

John Yang

18th March

2024.



Queensland

**No. 6 of 2024
A BILL for**

An Act to amend the Appeal Costs Fund Act 1973, the Criminal Code Act 1899 and the Criminal Code for particular purposes



Queensland

Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Bill 2024

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2024

A Bill

for

An Act to amend the *Appeal Costs Fund Act 1973*, the *Criminal Code Act 1899* and the Criminal Code for particular purposes

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Act 2024*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Appeal Costs Fund Act 1973

3 Act amended

This part amends the *Appeal Costs Fund Act 1973*.

4 Amendment of s 22 (Abortive proceedings and new trials after proceedings discontinued)

(1) Section 22(2)—

insert—

(ba) a subsequent appeal against the conviction of a person (also the *appellant*) convicted on indictment succeeds, and a new trial is ordered; or

(2) Section 22(2)(ba) and (c)—

renumber as section 22(2)(c) and (d).

- (3) Section 22(6), definition *relevant judge*, paragraph (b)(i),
'(2)(c)'—
omit, insert—
(2)(d)
- (4) Section 22(6), definition *relevant justice*, paragraph (b)(i),
'(2)(c)'—
omit, insert—
(2)(d)
- (5) Section 22(6), definition *relevant magistrate*, paragraph (b)(i),
'(2)(c)'—
omit, insert—
(2)(d)
- (6) Section 22(6)—
insert—

subsequent appeal see the Criminal Code, section 668(1).

Part 3 Amendment of Criminal Code

5 Code amended

This part amends the Criminal Code.

Note—

See also the amendments in schedule 1.

6 Amendment of s 1 (Definitions)

Section 1—

insert—

25 year offence, for chapter 68, see section 678(1).

acquittal, for chapter 68, see section 678(1).

administration of justice offence, for chapter 68, see section 678(1).

appellant, for chapter 67, see section 668(1).

Court—

(a) for chapter 67, see section 668(1); or

(b) for chapter 68, see section 678(1).

court of trial, for chapter 67, see section 668(1).

fresh and compelling evidence—

(a) for chapter 67, chapter division 3, see section 671AB; or

(b) for chapter 68, see section 678D.

interests of justice, for chapter 68, see section 678F.

new and compelling evidence, for chapter 67, chapter division 3, see section 671AB.

prescribed offence, for chapter 68, see section 678(1).

registrar, for chapter 67, see section 668(1).

sentence, for chapter 67, see section 668(1).

subsequent appeal, for chapter 67, see section 668(1).

tainted acquittal, for chapter 68, see section 678E.

7 Amendment of s 17 (Former conviction or acquittal)

Section 17, note—

omit, insert—

Note—

See sections 678B, 678BA and 678C for when this section does not apply to the charge mentioned in those sections.

8 Replacement of ch 67, hdg (Appeal—pardon)

Chapter 67, heading—

omit, insert—

**Chapter 67 Appeals, subsequent
appeals and pardons**

9 Insertion of new ch 67, ch div 1, hdg

Before section 668—

insert—

Chapter division 1 Preliminary

10 Amendment of s 668 (Definitions)

- (1) Section 668, heading, after ‘Definitions’—

insert—

for chapter

- (2) Section 668(1), definition *appellant*, after ‘appeal’—

insert—

, or to make a subsequent appeal,

- (3) Section 668(1), definition *court of trial*, from ‘entitled to’—

omit, insert—

entitled—

- (a) to appeal or to apply for leave to appeal; or

[s 11]

(b) to apply for leave to make a subsequent appeal.

(4) Section 668(1)—

insert—

subsequent appeal means an appeal under section 671AC(2).

11 Insertion of new ch 67, ch div 2, hdg and new s 668AA

After section 668—

insert—

Chapter division 2 References, reservations and appeals

668AA Application of chapter division

This chapter division does not apply to a subsequent appeal.

12 Amendment of s 668E (Determination of appeal in ordinary cases)

Section 668E—

insert—

(4) In subsection (1), if an appellant has been convicted of an offence in the court of trial by a judge sitting without a jury, a reference to the jury is taken to be a reference to the judge.

13 Amendment of s 668F (Powers of Court in special cases)

Section 668F—

insert—

- (5) In subsection (2), if an appellant has been convicted of an offence in the court of trial by a judge sitting without a jury, a reference to the jury is taken to be a reference to the judge.

**14 Insertion of new ch 67, ch div 3 and new ch 67, ch div 4,
hdg**

After section 671—

insert—

Chapter division 3 Subsequent appeals

671AA Definitions for chapter division

In this chapter division—

fresh and compelling evidence see section 671AB.

new and compelling evidence see section 671AB.

671AB Fresh and compelling evidence and new and compelling evidence—meanings

- (1) This section applies for the purpose of deciding under this chapter division whether there is fresh and compelling evidence or new and compelling evidence.
- (2) Evidence is *fresh* if—
- (a) the evidence was not adduced in the proceedings in the court of trial before which the appellant was convicted; and
 - (b) either—
 - (i) the evidence could not have been adduced in the proceedings in the court

- of trial with the exercise of reasonable diligence by the defence; or
 - (ii) the evidence could have been adduced in the proceedings in the court of trial with the exercise of reasonable diligence by the defence but was not because of the incompetence or negligence of a lawyer acting for the appellant in those proceedings.
- (3) For subsection (2)(b)(i), the defence is taken not to have failed to exercise reasonable diligence in relation to the evidence if—
- (a) the prosecution failed to comply with the prosecution’s obligation mentioned in section 590AB(1) in relation to the evidence; and
 - (b) the defence did not discover the evidence only because of the failure to comply with that obligation.
- (4) Evidence is *new* if—
- (a) the evidence was not adduced in the proceedings in the court of trial before which the appellant was convicted; and
 - (b) the evidence could have been adduced in the proceedings in the court of trial with the exercise of reasonable diligence by the defence.
- (5) Under this chapter division, evidence that is both fresh evidence and new evidence is taken to only be fresh evidence.
- (6) Evidence is *compelling* if—
- (a) the evidence is reliable; and
 - (b) the evidence is substantial; and
 - (c) the evidence—

- (i) is highly probative in the context of the issues that were in dispute in the proceedings in the court of trial before which the appellant was convicted; or
 - (ii) would have substantially weakened the case for the prosecution in the proceedings in the court of trial.
- (7) Evidence that would be admissible under this chapter division is not precluded from being fresh and compelling evidence or new and compelling evidence merely because it would have been inadmissible—
 - (a) in the proceedings in the court of trial before which the appellant was convicted; or
 - (b) in earlier proceedings in the Court for an appeal or subsequent appeal against the appellant's conviction.
- (8) In this section, the *defence* is the appellant or a lawyer acting for the appellant in proceedings in the court of trial before which the appellant was convicted.

671AC Right of subsequent appeal

- (1) This section applies if—
 - (a) a person appealed, or applied for leave to appeal, against a conviction of the person under section 668D; and
 - (b) the Court, under chapter division 2—
 - (i) refused to grant leave to appeal; or
 - (ii) dismissed the appeal in whole or in part; or
 - (iii) determined the appeal and dealt with the person under section 668F.
- (2) The person may make a subsequent appeal to the

Court, with the leave of the Court, against the person's conviction on a ground that there is fresh and compelling evidence or new and compelling evidence.

- (3) Also, the person may make a subsequent appeal under subsection (2) if—
 - (a) the Court has, under this chapter division, refused to grant an earlier application for leave to make a subsequent appeal; or
 - (b) the Court has, under this chapter division, dismissed an earlier subsequent appeal in whole or in part.
- (4) The Court may give its leave to make a subsequent appeal at any time it considers necessary or desirable.

671AD Evidence in proceedings for subsequent appeal

- (1) This section applies in relation to proceedings in the Court for a subsequent appeal, or leave to make a subsequent appeal, against an appellant's conviction.
- (2) Evidence is not inadmissible in the proceedings merely because it would have been inadmissible—
 - (a) in the proceedings in the court of trial before which the appellant was convicted; or
 - (b) in earlier proceedings in the Court for an appeal or subsequent appeal against the appellant's conviction.

671AE Determination of subsequent appeal

- (1) For a subsequent appeal against an appellant's conviction on a ground of fresh and compelling

evidence, the Court must allow the subsequent appeal if it is of the opinion that there was a miscarriage of justice.

- (2) However, the Court may, even if it is of the opinion that the point or points raised by a subsequent appeal on a ground of fresh and compelling evidence might be decided in favour of the appellant, dismiss the subsequent appeal if it considers that no substantial miscarriage of justice has actually occurred.
- (3) For a subsequent appeal against an appellant's conviction on a ground of new and compelling evidence, the Court must allow the subsequent appeal if, on the balance of probabilities, it is of the opinion that, in considering all of the evidence, the appellant was not guilty of the offence of which the appellant was convicted.
- (4) Also, if for any subsequent appeal the Court considers the subsequent appeal to be a special case under section 668F, the Court may deal with the appellant under section 668F, despite section 668AA, as if the subsequent appeal were an appeal against conviction under chapter division 2.
- (5) The Court must, if a subsequent appeal is not determined under subsection (1), (3) or (4), dismiss the subsequent appeal.

671AF Directions, orders etc. on allowed subsequent appeal

- (1) If the Court allows a subsequent appeal under section 671AE, the Court must quash the appellant's conviction and direct a judgment and verdict of acquittal to be entered.
- (2) However, if the Court considers, for a subsequent appeal allowed under section 671AE(1), that there

[s 15]

is a miscarriage of justice that can be more adequately remedied by an order for a new trial than by any other order, the Court may order a new trial in the way the Court considers appropriate.

- (3) If the Court makes an order for a new trial and the appellant is not granted bail, the order is taken to be a warrant for the appellant's detention under the *Corrective Services Act 2006*, section 9(1)(a).

Chapter division 4 Other provisions for appeals and subsequent appeals

15 Amendment of s 671A (Judge's notes and report to be furnished on appeal)

Section 671A—

insert—

- (3) This section does not apply to a subsequent appeal.

16 Amendment of s 671B (Supplemental powers)

- (1) Section 671B(1)(a), after 'proceedings'—

insert—

of the Court

- (2) Section 671B(1)—

insert—

(ca) receive any other evidence; and

- (3) Section 671B(1)(d), after 'the appeal'—

insert—

or subsequent appeal

(4) Section 671B(1)—

insert—

- (f) order the appellant or Crown Law Officer to give further particulars for a ground of the appeal or subsequent appeal; and
- (g) strike out a ground of the appeal or subsequent appeal in which the Court considers the particulars are inadequate and not consider the matters in relation to the ground for the proceedings; and
- (h) amend or add a ground of appeal or subsequent appeal against a conviction;

(5) Section 671B(1)(ca) to (h)—

renumber as section 671B(1)(d) to (i).

(6) Section 671B(3), ‘(d), or (e)’—

omit, insert—

- (e) or (f)

17 Amendment of s 671D (Right of appellant to be present)

(1) Section 671D(1), from ‘, except’—

omit, insert—

or subsequent appeal.

(2) Section 671D(1A)—

omit, insert—

(1A) However, the appellant is not entitled to be present, without leave of the Court, for any of the following—

- (a) an appeal on some ground involving a question of law alone;
- (b) an application for leave to appeal or leave to make a subsequent appeal;

- (c) any proceedings preliminary or incidental to an appeal or subsequent appeal.

18 Amendment of s 671E (Appeals permitted in writing)

Section 671E, heading, after ‘Appeals’—
insert—

and subsequent appeals

19 Amendment of s 671F (Costs of appeal)

Section 671F, after ‘appeal’—
insert—

or subsequent appeal

20 Amendment of s 671G (Grant of bail to appellant and custody when attending Court)

Section 671G(1), (2) and (3), after ‘appeal’—
insert—

or subsequent appeal

21 Replacement of s 671H (Duties of registrar)

Section 671H—
omit, insert—

671H Duties of registrar

- (1) The registrar must, if notice is given to the registrar, take all necessary steps for obtaining a hearing of any appeal, subsequent appeal or application.
- (2) The registrar must obtain and give the Court, in the appropriate form, all documents, exhibits and other things relating to the proceedings in the

court of trial that appear necessary for the proper determination of the appeal, subsequent appeal or application.

- (3) Also, for a subsequent appeal or application for leave to make a subsequent appeal, the registrar must obtain and give the Court—
 - (a) the judge's notes and report under section 671A that relate to the proceedings in the court of trial given to the registrar in relation to any appeal or application for leave to appeal against the appellant's conviction; and
 - (b) in the appropriate form, all documents, exhibits and other things relating to the proceedings in the Court for—
 - (i) an appeal or application for leave to appeal against the appellant's conviction; and
 - (ii) an earlier subsequent appeal or application for leave to make a subsequent appeal against the appellant's conviction.
- (4) The registrar may refer any appeal, subsequent appeal or application to the Court for summary determination if it appears to the registrar that the notice of appeal, subsequent appeal or application does not show any substantial ground of appeal or subsequent appeal.
- (5) The Court may, if it considers that the appeal, subsequent appeal or application is frivolous or vexatious, dismiss the appeal, subsequent appeal or application summarily without calling upon any person to attend the hearing.
- (6) The registrar must give forms and instructions in relation to notices of appeals, subsequent appeals or applications to—

[s 22]

- (a) any person who asks for the same; and
 - (b) officers of courts; and
 - (c) the chief executive (corrective services);
and
 - (d) any other officers or persons as the registrar
considers appropriate.
- (7) The chief executive (corrective services) must cause the forms and instructions mentioned in subsection (6) to be placed at the disposal of prisoners desiring to appeal, to make a subsequent appeal or to make an application.
- (8) Also, the chief executive (corrective services) must cause any notice given by a prisoner for whom the chief executive (corrective services) has responsibility to be forwarded for the prisoner to the registrar.

22 Amendment of s 671J (Documents, exhibits etc.)

Section 671J—

insert—

- (2) This section does not apply to a subsequent appeal.

23 Amendment of s 671K (Recording of trial proceedings)

- (1) Section 671K, heading, ‘Recording of trial’—

omit, insert—

Records of

- (2) Section 671K(1) and (2)—

omit, insert—

- (1) If the registrar directs in relation to any notice of appeal, subsequent appeal or application for leave to appeal or leave to make a subsequent appeal,

the following must be given to the registrar for the use of the Court or a judge of the Court—

- (a) a record or part of the record of the proceedings in the court of trial;
- (b) for a subsequent appeal—a record or part of the record of earlier proceedings in the Court for an appeal or subsequent appeal against the appellant’s conviction.

Note—

See the *Recording of Evidence Act 1962*, section 5 which provides for recording all relevant matter in a legal proceeding.

- (3) Section 671K(3), from ‘in respect of a trial’ to ‘appeal—’—
omit insert—

for a trial, an appeal or a subsequent appeal—

- (4) Section 671K(3) to (6)—
renumber as section 671K(2) to (5).

24 Amendment of s 671L (Powers exercisable by a judge)

After section 671L, after ‘be given’—

insert—

, to give leave to make a subsequent appeal

25 Amendment of s 672 (Appeals from the decisions of the Court)

Section 672(1), after ‘appeal’—

insert—

or subsequent appeal

26 Insertion of new ch 67, ch div 5, hdg

After section 672—

insert—

Chapter division 5 Pardons

27 Amendment of s 678 (Definitions)

- (1) Section 678, heading, after ‘Definitions’—

insert—

for chapter

- (2) Section 678(1)—

insert—

prescribed offence means an offence, punishable by imprisonment for life, defined in—

- (a) section 215(1) to which section 215(3), (4) or (4A) applies; or
- (b) section 216(1) to which section 216(3)(a) or (b) applies; or
- (c) section 222(1); or
- (d) section 229B; or
- (e) section 303; or
- (f) section 306; or
- (g) section 313; or
- (h) section 314A; or
- (i) section 349; or
- (j) section 352(1) to which section 352(3)(a), (b) or (c) applies.

28 Amendment of s 678A (Application of ch 68)

- (1) Section 678A(2), from ‘although’ to ‘lesser offence’—

omit, insert—

a person was acquitted of the offence as charged and convicted instead of another offence of which the person might have been convicted as an alternative to the offence as charged

(2) Section 678A(2), examples—

insert—

- in relation to a charge of the offence of rape, a person was acquitted of rape and convicted instead of incest

29 Amendment of s 678B (Court may order retrial for murder—fresh and compelling evidence)

Section 678B(2), after ‘lesser offence’—

insert—

relating to the unlawful killing of another person

30 Insertion of new s 678BA

After section 678B—

insert—

678BA Court may order retrial for prescribed offence—fresh and compelling evidence

- (1) The Court may, on the application of the director of public prosecutions, order an acquitted person to be retried for a prescribed offence if satisfied that—
 - (a) there is fresh and compelling evidence against the acquitted person in relation to the prescribed offence; and
 - (b) in all the circumstances it is in the interests of justice for the order to be made.
- (2) The Court may order a person to be retried for a prescribed offence (the *relevant offence*) under this section even if—

[s 31]

- (a) the person had been charged with and acquitted of another prescribed offence; and
 - (b) the relevant offence is an offence of which the person might have been convicted as an alternative to the other prescribed offence.
- (3) Also, the Court may order a person to be retried for a prescribed offence (also the ***relevant offence***) under this section even if—
 - (a) the person had been charged with and acquitted of the offence of murder; and
 - (b) the relevant offence is an offence of which the person might have been convicted as an alternative to the offence of murder.
- (4) If the Court orders an acquitted person to be retried for the prescribed offence, the Court must quash the person’s acquittal or remove the acquittal as a bar to the person being retried.
- (5) On the retrial, section 17 does not apply in relation to the charge of the prescribed offence.

31 Amendment of s 678C (Court may order retrial for 25 year offence—tainted acquittal)

Section 678C(2), ‘a lesser offence’—

omit, insert—

another offence of which the person might have been convicted as an alternative to the 25 year offence

32 Amendment of s 678D (Fresh and compelling evidence—meaning)

(1) Section 678D(1), after ‘murder’—

insert—

or a prescribed offence

(2) Section 678D(2)(b), ‘diligence.’—

omit, insert—

diligence by—

- (i) a police officer in relation to the investigation of the commission of the offence; or
- (ii) a prosecutor in relation to the prosecution of the offence.

33 Amendment of s 678G (Application for retrial—procedure)

Section 678G(2)(a), after ‘678B’—

insert—

or 678BA

34 Amendment of s 678H (Retrial)

Section 678H(4), from ‘in relation to’—

omit, insert—

in relation to—

- (a) the offence concerned; or
- (b) another offence of which the person might have been convicted as an alternative to the offence concerned.

35 Insertion of new pt 9, ch 110

Part 9—

insert—

Chapter 110 Transitional provision for Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Act 2024

764 Subsequent appeals—appeals or applications for leave to appeal before commencement

- (1) This section applies if, before the commencement, a person appealed, or applied for leave to appeal, against a conviction of the person under section 668D.
- (2) The person may apply for leave to make a subsequent appeal under section 671AC against the person's conviction whether the person's appeal or application for leave to appeal was determined before or after the commencement.

Part 4 Other amendments

36 Legislation amended

Schedule 1 amends the legislation it mentions.

Schedule 1 Other amendments

section 36

Criminal Code Act 1899

1 Section 5, ‘Her Majesty’s’—

omit, insert—

the Sovereign’s

Criminal Code

1 Sections 1, definition *person* and *owner*, 60(3), 398, punishment in special cases, item 5, 450I(1) and (2), 566(14), 641(1), 647(2), 672A, 675(1) and 677, ‘Her Majesty’—

omit, insert—

the Sovereign

2 Sections 44(c), (d) and (e), 45(c) and (d), 230(b), 642, ‘Her Majesty’s’—

omit, insert—

the Sovereign’s

3 Section 45(a), ‘Her counsels’—

omit, insert—

the Sovereign’s counsels

4 Section 668B(2), from ‘render’ to ‘execution’—

omit, insert—

attend in execution of

5 Section 670(3), from ‘by himself’ to ‘appear’—

omit, insert—

appear in person, or by the person’s counsel or
solicitor,

6 Section 672(3), from ‘deeming’ to ‘herself’—

omit, insert—

who considers they were

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