

**IN THE HIGH COURT OF AUSTRALIA  
BRISBANE REGISTRY**

**No: B68/2016**

**BETWEEN:**

**RODNEY PETER PICKERING**

(Appellant)

-and-

**THE QUEEN**

(Respondent)

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**RESPONDENT'S SUBMISSIONS**

**PART I: PUBLICATION ON THE INTERNET**

1. The respondent certifies that this submission is in a form suitable for publication on the internet.

**PART II: RESPONDENT'S STATEMENT OF PRESENTED ISSUES**

2. The respondent agrees with the formulation of the issue as stated by the appellant.

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**PART III: SECTION 78B OF THE JUDICIARY ACT 1903 (Cth)**

3. The respondent considers that notice is not required pursuant to section 78B of the *Judiciary Act 1903 (Cth)*.

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**Submissions  
Filed on behalf of the Respondent**

**Form 27D  
R 44.03.03**

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#### PART IV: CONTESTED MATERIAL FACTS

4. The respondent accepts that the facts outlined in paragraphs 5 to 14 of the appellant's outline provides a summary of the testimony given by the appellant at his trial, save that the appellant also referred to attending the butcher's shop to drink alcohol with others including the deceased before he went to the Hotel. It was his account which was most favourable to the appellant and which raised for consideration the application of section 31(1)(c) of the *Criminal Code (Qld)* ("the Code") for the purposes of the appeal below. It was on the appellant's evidence that Fraser JA, Holmes CJ and Gotterson JA agreeing, concluded that there was a miscarriage of justice in the failure to direct the jury as to section 31(1)(c) if section 31(2) did not exclude its operation.<sup>1</sup>
- 10
5. Nonetheless, the appellant's summary can be usefully supplemented with the following references:
- a. Although the appellant testified to the general effect that he was not aware how the knife he was holding came to penetrate the chest of the deceased and that he did not deliberately stab him,<sup>2</sup> whilst testifying he three times demonstrated moving his left arm away from his body at the time the deceased was approaching him.<sup>3</sup>
  - b. Two other witnesses, namely Eugene Logan<sup>4</sup> and Walter Baker<sup>5</sup> saw the appellant move the knife towards the deceased. Although their descriptions were not necessarily consistent with each other, it appears from the comment of the trial judge during summing up that Mr Logan's description had some similarity to the  
20 appellant's description.<sup>6</sup>
  - c. Two further witnesses in the near vicinity at the time did not see the stabbing occur but described hearing a thudding sound representing the stabbing, namely Cameron Stevenson<sup>7</sup> and Lorina Douglas.<sup>8</sup>
6. Although there was evidence from others present at the time which, if accepted by the jury, would negative the effect of section 31(1)(c), it is unnecessary to consider it in detail as the issue raised in this appeal is one of statutory construction and it was

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<sup>1</sup> Reasons at [18].

<sup>2</sup> Transcript 6-53, lines 33-38; transcript 6-54, lines 29-32; transcript 6-67, lines 7-11 and line 35.

<sup>3</sup> Transcript 6-51, lines 42-47; transcript 6-54, lines 33-38; transcript 6-67, lines 15-18 and lines 28-31. The appellant had earlier testified that the knife was held in his left hand.

<sup>4</sup> Transcript 5-3, lines 15-42.

<sup>5</sup> Transcript 2-62, line 38 – 2-63 line 15.

<sup>6</sup> Summing up, page 48 lines 1-5.

<sup>7</sup> Transcript 3-73, lines 9-24; transcript 3-76, lines 17-19; transcript 4-30, lines 21-26; transcript 4-31, lines 10-14; transcript 4-44, lines 1-4;

<sup>8</sup> Transcript 5-62, lines 1-4; transcript 5-76, lines 9-11.

conceded by Counsel then appearing for the respondent below that section 31(1)(c) was raised on the evidence.<sup>9</sup> Fraser JA agreed with the concession.<sup>10</sup>

7. The respondent accepts that the facts outlined in paragraphs 15 to 18 of the appellant's outline provides a summary of the conduct of the appeal below.
8. The appellant's chronology can be supplemented with the following additional entries:

Date and Time	Event	Appeal Book Reference
Between about 6.30pm and 7.00pm 18 December 2012.	Went to butcher's shop to drink alcohol with others, including the deceased.	Transcript p6-41 line 20 – 6-42 line 41.
Between 11.52pm on 18 December 2012 and 12.06am on 19 December 2012.	Appellant and deceased involved in a verbal altercation outside the Hotel after the deceased "offered (him) outside for a fight". Afterwards the appellant walked off to his house. He picked up a knife before he again left the house.	Transcript p6-44 line 30 – p6-46 line 38.
After 12.06am on 19 December 2012.	The appellant went to "Eugene and Lorina's place" where he could hear music and knew there was a party on. It was here that the stabbing occurred.	Transcript p6-47 line 26 – p6-48 line 22.

9. For completeness, it is noted that:
  - a. "(s 284)" at [5] of the reasons below should read as "(s 289)".
  - b. The sentence at [6] of the reasons below "*The deceased pulled out his knife and told the appellant to stay away.*" should read as "*The appellant pulled out his knife and told the deceased to stay away.*".
  - c. "s 33(4)" at [25] of the reasons below should read as "31(4)".<sup>11</sup>

<sup>9</sup> Reasons at [4].

<sup>10</sup> Reasons at [9].

<sup>11</sup> This paragraph is in a portion of the judgment from which special leave was refused and is unlikely to be of particular relevance to the appeal.

## PART V: APPELLANT'S STATEMENT OF APPLICABLE STATUTES

10. The respondent accepts the appellant's statement of the applicable statutes as set out in the annexure to his submission.
11. The statutes applicable to the respondent's submissions, and which are not already contained in the appellant's list, are in the annexure attached to this submission.

## PART VI: STATEMENT OF THE RESPONDENT'S ARGUMENT IN ANSWER

- 10 12. The provisions currently found in section 31 of the Code have remained relevantly unchanged since their initial enactment in the *Criminal Code Act 1899 (Qld)*. However they have been re-numbered. Reference to the provisions in the course of these submissions will be as they presently appear for ease of reference.
13. At the heart of the appellant's argument is the proposition that section 31(2) of the Code attaches only where the offence under consideration is one of those expressly stated in the provision, namely "... *the crime of murder, or an offence of which grievous bodily harm to the person of another, or an intention to cause such harm, is an element...*". The proposition relies on the implied assertion that the use of the word "*act*" in section 31(2) is uniquely synonymous with the concept of "*offence*".
- 20 14. The respondent submits that the word "*act*" in section 31(2) must be understood in a wider sense than meaning only the offence charged. Section 31(2) encompasses an act which includes the offence which is the subject of the charge, but also other offences which would be established on the evidence if charged.
15. Since this Court's decision in *Kaporonovski v The Queen*, it has consistently been held in Queensland that the word "*act*" for the purposes of section 23 of the Code is the physical action, apart from its consequences.<sup>12</sup> There is no reason for this well-established meaning of the word "*act*" to bear a different complexion for the purposes of section 31, especially given that both sections 23 and 31 fall within the same Chapter of the Code.<sup>13</sup>

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<sup>12</sup> *Kaporonovski v The Queen* (1973) 133 CLR 209, per Gibbs J at 231, Stephens J agreeing at 241. See also *The Queen v Falconer* (1990) 171 CLR 30 per Mason CJ, Brennan and McHugh J at 38.

<sup>13</sup> "Chapter 5 – Criminal Responsibility".

16. In *The Queen v Barlow* (1997) 188 CLR 1, Brennan CJ, Dawson and Toohey JJ at 9 stated:

*“Section 2 of the Code makes it clear that “offence” is used in the Code to denote that element of conduct (an act or omission) which, if accompanied by prescribed circumstances, or if causing a prescribed result or if engaged in with a prescribed state of mind, renders a person engaging in the conduct liable to punishment.”*

10 17. That statement does not mean that the performance of a particular act, accompanied by the prescribed circumstances, prescribed result or prescribed state of mind necessarily gives rise to liability for only one offence. The act, and its sequelae, may have a specific quality which is independent of the offence actually charged. The availability of multiple possible charges arising from the one act increases when the prosecutorial decision as to which charge or charges are to proceed is taken into account.

20 18. It is accepted that the word “act” in section 31(1)(c) is a reference to the phrase “act or omission” in the introduction to section 31(1), as is the word “act” in section 31(2).<sup>14</sup> The “act” for present purposes was the appellant’s act of stabbing the deceased in the manner in which he did.<sup>15</sup> That “act”, depending on the proof of the existence of prescribed circumstances, prescribed state of mind and/or prescribed result raises liability for the offences of murder,<sup>16</sup> manslaughter,<sup>17</sup> unlawfully causing grievous bodily harm with intent,<sup>18</sup> unlawfully causing grievous bodily harm,<sup>19</sup> unlawful wounding<sup>20</sup> and assault occasioning bodily harm whilst armed,<sup>21</sup> amongst others. It is for the prosecuting authority to decide which, if any, of those offences are to be charged even though there may be different penalties attaching to the different offences.<sup>22</sup> The construction contended for by the respondent achieves a consistency in application of the provision which defines the extent of criminal liability regardless of the charging decisions of the prosecuting authority.

<sup>14</sup> Paragraph 23 of the appellant’s submissions. See also Reasons at [44].

<sup>15</sup> Reasons at [47].

<sup>16</sup> Section 302 of the Code.

<sup>17</sup> Section 303 of the Code.

<sup>18</sup> Section 317(b) and (e) of the Code.

<sup>19</sup> Section 320 of the Code.

<sup>20</sup> Section 323 of the Code.

<sup>21</sup> Section 339(1) and (3) of the Code.

<sup>22</sup> *Magaming v The Queen* (2013) 252 CLR 381 per French CJ, Hayne, Crennan, Kiefel and Bell JJ at [38].

19. Fraser JA was correct to identify that ‘*The critical question in this case concerns the content to be given to the words “would constitute”.*’,<sup>23</sup> having earlier identified that ‘*The issue turns upon the meaning of the phrase in s 31(2) “act ... which would constitute ... an offence ... of which grievous bodily harm to the person of another is an element”.*’<sup>24</sup>
20. The words “*would constitute*” have a prospective or contingent connotation which draws attention to both the offence specifically before the jury as well as a charge or charges not before them for consideration but which include an element of doing or intending to do grievous bodily harm to another. The phrase “*would constitute*” appears in this prospective or contingent sense often in the Code.<sup>25</sup>
21. The phrase from section 268 of the Code under consideration in *Kaporonovski v The Queen*, namely “*...an offence of which an assault is an element...*” is materially different from the functional phrase presently under consideration and draws attention to the charged offence being considered.<sup>26</sup> The focus in section 268 is the (charged) “*offence of which an assault is an element*” whereas the focus, for present purposes, in section 31(2) is the quality of the act which would constitute an offence of which grievous bodily harm to another is an element (if charged).
22. The words “*would constitute*” should be read as meaning something more than “*but for s31(1)(c) the charged act would otherwise constitute the crime of murder or the charged act would otherwise be an offence of which grievous bodily harm is an element*”, as contended by the appellant.<sup>27</sup> Were the phrase intended to be read in that more restrictive manner, one would have expected the same phraseology to have been used as can be found in sections 304, 304A and 304B, namely “*... under circumstances which, but for the provisions of this section, would constitute ...*”. That presumption gains more traction when it is noted that section 304 was enacted using that phrase at the same time as the provision that is now numbered as section 31(2).
23. Accordingly, Fraser JA was correct to hold that “*the criterion of operation of the exception in s 31(2) is a specified quality of the act or omission referred to in s 31(1): if*

<sup>23</sup> Reasons at [41].

<sup>24</sup> Reasons at [39].

<sup>25</sup> See sections 11(1), 12(2),(3) & (4), 34, 210(6) (definition of “deals with”), 216(5) (definition of “deals with”), 229B(10) (definition of “unlawful sexual act”), 304, 304A, 304B and 543 of the Code.

<sup>26</sup> McTiernan ACJ and Menzies J at 217-218 and Walsh J at 223.

<sup>27</sup> Paragraph 24 of appellant’s submissions.

*the act or omission "would constitute" an offence described in s 31(2), then protection for that "act or omission" is excluded.*"<sup>28</sup>

24. This scheme of denying access to a defence on the basis of the outcome of an act rather than according to the offence charged is not unique in the Code. There are a number of provisions that deny the availability of a "defence"<sup>29</sup> on a basis which adopts the minimum threshold of grievous bodily harm being caused. Specifically, sections 270 and 271(1) provide that those justifications will be denied if the force used is intended or is such as is likely to cause death or grievous bodily harm. Sections 274, 275, 276, 277(1), 277(2), 278 and 279 deny the applicability of those various justifications if the person does grievous bodily harm to the other. Whilst the threshold in each of those sections was bodily harm rather than grievous bodily harm at the time of enactment in 1899,<sup>30</sup> the construction adopted by Fraser JA is consistent with this policy scheme as used elsewhere in the Code both presently and at the time of enactment.
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25. The resolution of the issue proposed by the respondent's construction does not require the jury to perform "a complicated enquiry".<sup>31</sup> In a case such as the present where manslaughter falls for consideration, it is difficult to think of a situation where grievous bodily harm would not also have been caused and other issues touching the proof of unlawfulness would be common. In all cases, it evolves down to a simple matter of proof depending on the type and quality of the evidence called by the prosecution. The enquiry is no more complicated than that which has been required by sections 274, 275, 276, 277(1), 277(2), 278 and 279 for many years.
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26. On the other hand, there is little to be gained by a comparison of the effect of section 31(2) with what the appellant asserts are cognate provisions in sections 22(2), 24 and 25 of the Code. It is uncontroversial that each of those provisions direct attention to the charged act or omission, as does each of the paragraphs of section 31(1). That is the manner in which they achieve function of providing an excuse for the charged act, but the functional provision for present purposes is section 31(2) which performs a different function. Under the scheme chosen by Parliament, it does not focus necessarily on the charge then being considered but focuses on the type of charges that could arise given

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<sup>28</sup> Reasons at [45].

<sup>29</sup> To use the generic term. Each of the examples in this paragraph are in fact justifications under the Code.

<sup>30</sup> The amendment in that "threshold" took effect on and from 1 July 1997 and was effected by various provisions of the *Criminal Law Amendment Act 1997*.

<sup>31</sup> Paragraph 29 of the appellant's submissions.

the conduct undertaken. It is unremarkable that such an exclusionary provision would have a different or wider focus than simply the charged act, consistent with the format Parliament also adopted in relation to other exclusionary provisions already noted.

27. The appellant's construction would lead to some unfortunate and, it is submitted, undesirable results. Each of the following examples is predicated on a factual context that other evidential thresholds for the particular limbs of section 31(1) to operate are satisfied.

10 27.1. A defendant would be afforded for consideration the protection of section 31(1)(c) for unlawfully doing grievous bodily harm to another, but would not be offered that protection had the very same conduct caused the other's death.<sup>32</sup>

27.2. A defendant who intended to do grievous bodily harm by shooting another with a high powered bullet but who missed his or her target,<sup>33</sup> would be denied access to the protection offered by section 31(1)(c) but one who killed by firing the same bullet whilst intending only to frighten or alarm would be afforded the availability of the protection.

20 27.3. A defendant who is charged with torturing<sup>34</sup> another and in the course thereof caused some grievous bodily harm would have available for consideration the defence if charged only with torture, but would not if charged solely with doing grievous bodily harm. If charged with both on the one indictment, the defence would be available for consideration only on the torture charge but not on the grievous bodily harm charge, even though both charges arise out of the one course of conduct.

27.4. Immediately after receiving the relevant threat, the defendant drives away and is closely pursued by the person who threatened him or her. In the course of that pursuit the defendant drives dangerously and loses control of the car, killing one of the passengers and causing grievous bodily harm to another. If he or she is indicted on charges of both manslaughter and unlawfully doing grievous bodily harm,<sup>35</sup> section 31 would be available for consideration on the

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<sup>32</sup> Reasons at [43].

<sup>33</sup> Section 317(a) and (f)

<sup>34</sup> Section 320A of the Code.

<sup>35</sup> Section 328A of the Code. It is permissible to draft a charge in this manner – see *R v Harris; ex parte A-G (Qld)* [1999] QCA 392, [28]-[31].

former charge but not the latter. If he or she is indicted on a charge alleging dangerous operation of a motor vehicle causing death to one person and grievous bodily harm to the other, section 31 would be available for consideration on so much of the charge as relates to the death of one, but not in so far as it alleged causing grievous bodily harm to the other.

Each of these results would be avoided under the construction contended for by the respondent.

28. That compulsion has been left to the jury in two previous manslaughter trials is, with respect, not to the point. The judgments cited in support of that argument<sup>36</sup> say nothing about the reasoning by which it was determined that the “defence” would be left. In each case the correctness of that view was not under consideration in the appellate proceedings, and the decisions to leave the defence were not assisted by appellate authority.
29. Resort to the common law, whether for the purpose of attempting to achieve consistency of application of like doctrines across jurisdictions is of no assistance in this matter. It is clear enough that section 31(1) contains a combination of what are usually known as justifications and excuses. The very wording of the section heading is indicative of this, namely “*Justification and excuse – compulsion*”. A significant point of comparison at common law does not exist under the Code.
30. The introductory words of section 31(1), namely “*A person is not criminally responsible ...*” traditionally indicate that the provision provides an excuse rather than a justification. Section 31(1)(d) is akin to the common law defence of duress,<sup>37</sup> which was an excuse. At common law there are certain offences to which duress cannot apply, but what they are has been the subject of controversy – see paragraph 38 below.
31. Section 31(1)(c) is derived, it seems, from the common law doctrines of self-defence, which were justifications. Lord Chief Justice Coleridge in *R v Dudley and Stephens* (1884) 14 QBD 273 noted at 282 – 283 portions of *Hales Pleas of the Crown* which clearly suggested that doctrines which permitted the taking of a life to protect one’s own life derived from doctrines of self-defence and that those doctrines did not permit a man to take the life of another unless that other was the assailant himself. That section

<sup>36</sup> Paragraph 30 of appellant’s submission, namely *R v Hunt* [2009] QCA 397, [41]; *R v Skondin* [2015] QCA 138, [16].

<sup>37</sup> *Taiapa v The Queen* (2009) 240 CLR 95, [25]-[28].

31(1)(c) was derived from the doctrines of self-defence is supported by the annotations to Sir Samuel Griffith's Draft Code.<sup>38</sup> The observations of McLure P in *Smith v Western Australia* (2010) 204 A Crim R 280 at [6] – [10] illustrate the point. The self-defence provisions of the Code as enacted, and which remain in place today, also contained restrictions on the application of the various limbs of self-defence. They have been referred to earlier. It is sufficient to note that they are based essentially on the amount of force permitted to be used depending on the level of the threat being met.

10 32. The conflation of the justifications and excuses in the one codified provision demonstrates the difficulties in meaningfully applying pre-existing common law as an aid to construction of the provision.

33. There is in any event no utility in looking to what the state of the law was prior to enactment of this Code in an effort to understand what the limits are of the exclusionary provisions in section 31(2). The answer lies in the ordinary meaning of the words themselves in the Code as understood in their context. This is not an instance where the words used have acquired a technical or special meaning not defined in the Code.

20 *“It is erroneous to approach the Code with the presumption that it was intended to do no more than restate the existing law but when the Code employs words and phrases that are conventionally used to express a general common law principle, it is permissible to interpret the statutory language in light of decisions expounding the common law including decisions subsequent to the Code’s enactment. The meaning of the words and phrases to be found in a Code is controlled by the context in which they are found but when the context does not exclude the common law principles which particular words and phrases impliedly import, reference to those common law principles is both permitted and required.”*<sup>39</sup>

34. Whilst it is not accepted that there is ambiguity in the present matter, there is dicta to suggest that where ambiguity exists it is permissible to look to Codes in other Australian jurisdictions in order to achieve consistency in the interpretation of the language.<sup>40</sup> No such principle is known concerning international jurisdictions and it is entirely unclear

<sup>38</sup> Reproduced in the reasons at [22].

<sup>39</sup> *Bouhey v The Queen* (1986) 161 CLR 10, per Brennan J at 30-31, cited in *The Queen v LK* (2010) 241 CLR 177 by Gummow, Hayne, Crennan, Kiefel and Bell JJ at 220, [97]. See also *Sungravure Pty Ltd v Middle East Airlines Airliban S.A.L.* (1975) 134 CLR 1 per Mason J at 22.

<sup>40</sup> Kirby J in *Barlow v The Queen*, *supra* at 32.

what is to be achieved by looking to the Canadian and New Zealand Criminal Codes for the purposes of consistency.<sup>41</sup> The legitimacy of doing so is further muddled by the fact that each of those Codes have provisions which recognise the continued operation of common law defences where they are not inconsistent with the provisions of the respective Codes.<sup>42</sup> It is presumed that the continued influence of the common law has affected the content of those defences which have been placed into each respective piece of legislation.

- 10 35. In relation to section 32 of the Western Australian Criminal Code, the provision was substantially amended in 2008. It no longer contains an exclusionary provision and the availability of the defence for consideration is not dependent upon the type of offence alleged to have been committed. It is, with respect, entirely unsuitable for comparison for purposes of consistency.
36. The provision as it previously appeared contained an exclusionary provision but was worded significantly differently from the Queensland provision and clearly applied to the charge at hand. Resort to that former provision does not assist with the understanding of the Queensland provision due to the difference in the wording.
37. In relation to section 20 of the Tasmanian Criminal Code, it too contains an exclusionary aspect of the defence, but it also is worded significantly differently to the Queensland provision such that it is of no assistance to the issue at hand.
- 20 38. It is also unhelpful to turn to the extent of protection offered by the defence under the current state of the common law, even if it were permissible to do so. Whilst Lush J, sitting alone, in *R v Evans & Gardiner (No 1)* held that duress was available to a charge of manslaughter at common law, he was unable to locate any direct authority on the point.<sup>43</sup>
39. In England, for some time the defence of duress was available to defend all crimes except murder and treason, apart from robbery for a short time.<sup>44</sup> The House of Lords extended the application of the defence to those charged as being a principal in the second degree to murder in *DPP v Lynch*,<sup>45</sup> and the application of the defence was

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<sup>41</sup> Paragraph 31 of the appellant's submissions.

<sup>42</sup> *Criminal Code (Canada) RSC 1985 C-46*, section 8(2); *Crimes Act 1961 (NZ)*, section 20.

<sup>43</sup> [1976] VR 517, 522. For completeness it is noted that the factual scenario there considered was more apt to an application of section 31(1)(d) of the Code had it occurred in Queensland.

<sup>44</sup> *Reg v Gots* [1992] 2 AC 412, per Lord Jauncey of Tullichettle at 420.

<sup>45</sup> [1975] AC 653.

further extended by a bare majority of the House of Lords in *Reg v Gotts*<sup>46</sup> to include the crime of attempted murder. When *Reg v Gotts* is read with *DPP v Lynch* it is clear that the common law is far from settled as to the parameters of the defence. Adding further to the dynamics is *R v Howe*,<sup>47</sup> in which the House of Lords over-ruled the decision in *DPP v Lynch*, in so far as it applied to the availability of the defence of duress to a principal in the second degree on a charge of murder.

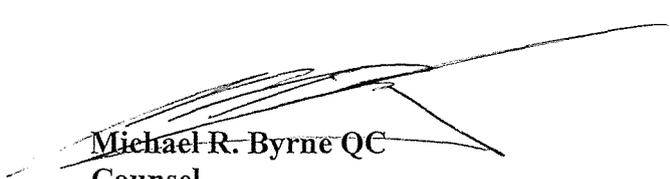
40. Further, in English common law, it seems that the defence is available to a charge of doing grievous bodily harm.<sup>48</sup> The fact that the availability of the section 31 defence is specifically excluded for such an offence in Queensland by the express words of section 31(2), on both parties' submissions, demonstrates the difficulty in drawing much from the current state of the common law on this construction point in a codified statute.

**Part VII: STATEMENT OF THE RESPONDENT'S ARGUMENT ON THE NOTICE OF CONTENTION OR NOTICE OF CROSS-APPEAL**

41. Not applicable.

**Part VIII: ESTIMATE OF TIME FOR PRESENTATION OF RESPONDENT'S ARGUMENT**

42. The respondent considers that up to 1 hour may be required for presentation of the oral argument.

  
Michael R. Byrne QC  
Counsel

24 January 2017

Gregory Cummings  
Counsel

January 2017

<sup>46</sup> *ibid.*

<sup>47</sup> [1987] AC 417.

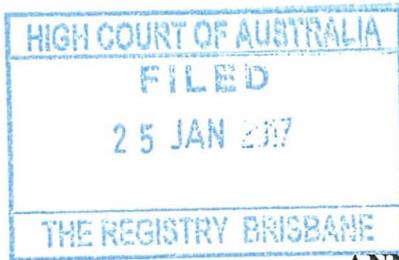
<sup>48</sup> *Reg v Gotts, ibid.*

BETWEEN:

RODNEY PETER PICKERING  
Appellant

and

THE QUEEN  
Respondent



**ANNEXURE TO PART V**

**LEGISLATIVE PROVISIONS**

20 *Criminal Code (Qld) (Current as at 17 September 2012)*

**11 Effect of changes in law**

(1) A person can not be punished for doing or omitting to do an act unless the act or omission constituted an offence under the law in force when it occurred; nor unless doing or omitting to do the act under the same circumstances would constitute an offence under the law in force at the time when the person is charged with the offence.

30 (2) If the law in force when the act or omission occurred differs from that in force at the time of the conviction, the offender can not be punished to any greater extent than was authorised by the former law, or to any greater extent than is authorised by the latter law.

**12 Application of Code as to offences wholly or partially committed in Queensland**

40 (1) This Code applies to every person who does an act in Queensland or makes an omission in Queensland, which in either case constitutes an offence.

(2) Where acts or omissions occur which, if they all occurred in Queensland, would constitute an offence and any of the acts or omissions occur in Queensland, the person who does the acts or makes the omissions is guilty of an offence of the same kind and is liable to the same punishment as if all the acts or

omissions had occurred in Queensland.

(3) Where an event occurs in Queensland caused by an act done or omission made out of Queensland which, if done or made in Queensland, would constitute an offence, the person who does the act or makes the omission is guilty of an offence of the same kind and is liable to the same punishment as if the act or omission had occurred in Queensland.

10 (3A) It is a defence to prove that the person did not intend that the act or omission should have effect in Queensland.

(4) Where an event occurs out of Queensland caused by an act done or omission made in Queensland, which act or omission would constitute an offence had the event occurred in Queensland, the person who does the act or makes the omission is guilty of an offence of the same kind and is liable to the same punishment as if the event had occurred in Queensland.

20 (5) This section does not extend to a case where the only material event that occurs in Queensland is the death in Queensland of a person whose death is caused by an act done or an omission made out of Queensland at a time when the person was out of Queensland.

### **Section 23 Intention - motive**

30 (1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for—

- (a) an act or omission that occurs independently of the exercise of the person's will; or
- (b) an event that—

- (i) the person does not intend or foresee as a possible consequence; and
- (ii) an ordinary person would not reasonably foresee as a possible consequence.

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(1A) However, under subsection (1)(b), the person is not excused from criminal responsibility for death or grievous bodily harm that results to a victim because of a defect, weakness, or abnormality.

50 (2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

(3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

**34 Offences by partners and members of companies with respect to partnership or corporate property**

10 A person who, being a member of a co-partnership, corporation, or joint stock company, does or omits to do any act with respect to the property of the co-partnership, corporation, or company, which, if the person were not a member of the co-partnership, corporation, or company, would constitute an offence, is criminally responsible to the same extent as if the person were not such member.

**210 Indecent treatment of children under 16**

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(1) Any person who—

(a) unlawfully and indecently deals with a child under the age of 16 years; or

(b) unlawfully procures a child under the age of 16 years to commit an indecent act; or

(c) unlawfully permits himself or herself to be indecently dealt with by a child under the age of 16 years; or

30 (d) wilfully and unlawfully exposes a child under the age of 16 years to an indecent act by the offender or any other person; or

(e) without legitimate reason, wilfully exposes a child under the age of 16 years to any indecent object or any indecent film, videotape, audiotape, picture, photograph or printed or written matter; or

(f) without legitimate reason, takes any indecent photograph or records, by means of any device, any indecent visual image of a child under the age of 16 years;

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is guilty of an indictable offence.

(2) If the child is of or above the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for 14 years.

(3) If the child is under the age of 12 years, the offender is guilty of a crime, and is liable to imprisonment for 20 years.

50 (4) If the child is, to the knowledge of the offender, his or her lineal descendant or if the offender is the guardian of the child

or, for the time being, has the child under his or her care, the offender is guilty of a crime, and is liable to imprisonment for 20 years.

(5) If the offence is alleged to have been committed in respect of a child of or above the age of 12 years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above the age of 16 years.

10 (6) In this section—

*deals with* includes doing any act which, if done without consent, would constitute an assault as defined in this Code.

### **216 Abuse of persons with an impairment of the mind**

20 (1) Any person who has or attempts to have unlawful carnal knowledge of a person with an impairment of the mind is, subject to subsection (3)(a) and (b), guilty of a crime, and is liable to imprisonment for 14 years.

(2) Any person who—

- (a) unlawfully and indecently deals with a person with an impairment of the mind; or
- (b) unlawfully procures a person with an impairment of the mind to commit an indecent act; or
- 30 (c) unlawfully permits himself or herself to be indecently dealt with by a person with an impairment of the mind; or
- (d) wilfully and unlawfully exposes a person with an impairment of the mind to an indecent act by the offender or any other person; or
- (e) without legitimate reason, wilfully exposes a person with an impairment of the mind to any indecent object or any indecent film, videotape, audiotape, picture, photograph or printed or written matter; or
- 40 (f) without legitimate reason, takes any indecent photograph or records, by means of any device, any indecent visual image of a person with an impairment of the mind;

is, subject to subsection (3)(c), guilty of a crime, and is liable to imprisonment for 10 years.

50 (3) If the person with an impairment of the mind is not the lineal descendant of the offender but the offender is the guardian of that person or, for the time being, has that person under the offender's care, the offender is guilty of a crime, and is

liable—

- (a) in the case of the offence of having unlawful carnal knowledge—to imprisonment for life; or
- (b) in the case of an attempt to have unlawful carnal knowledge—to imprisonment for life; or
- (c) in the case of an offence defined in subsection (2)—to imprisonment for 14 years.

10 (3A) In the case of an offence defined in subsection (2), if the person with an impairment of the mind is, to the knowledge of the offender, the offender's lineal descendant, the offender is guilty of a crime, and is liable to imprisonment for 14 years.

(4) It is a defence to a charge of an offence defined in this section to prove—

- 20 (a) that the accused person believed on reasonable grounds that the person was not a person with an impairment of the mind; or
- (b) that the doing of the act or the making of the omission which, in either case, constitutes the offence did not in the circumstances constitute sexual exploitation of the person with an impairment of the mind.

(5) In this section—

*carnal knowledge* does not include sodomy.

30 *deals with* includes doing any act that, if done without consent, would constitute an assault.

## **229B Maintaining a sexual relationship with a child**

(1) Any adult who maintains an unlawful sexual relationship with a child under the prescribed age commits a crime.

Maximum penalty—life imprisonment.

40 (2) An unlawful sexual relationship is a relationship that involves more than 1 unlawful sexual act over any period.

(3) For an adult to be convicted of the offence of maintaining an unlawful sexual relationship with a child, all the members of the jury must be satisfied beyond reasonable doubt that the evidence establishes that an unlawful sexual relationship with the child involving unlawful sexual acts existed.

50 (4) However, in relation to the unlawful sexual acts involved in an unlawful sexual relationship—

- (a) the prosecution is not required to allege the particulars of any unlawful sexual act that would be necessary if the act were charged as a separate offence; and
- (b) the jury is not required to be satisfied of the particulars of any unlawful sexual act that it would have to be satisfied of if the act were charged as a separate offence; and
- (c) all the members of the jury are not required to be satisfied about the same unlawful sexual acts.

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(5) If the child was at least 12 years when the crime was alleged to have been committed, it is a defence to prove the adult believed on reasonable grounds the child was at least the prescribed age.

(6) An adult can not be prosecuted for the crime without a Crown Law Officer's consent.

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(7) An adult may be charged in 1 indictment with—

- (a) the offence of maintaining an unlawful sexual relationship with a child (the maintaining offence); and
- (b) 1 or more other offences of a sexual nature alleged to have been committed by the adult in relation to the child in the course of the alleged unlawful sexual relationship (the other offence or offences).

(8) The adult charged in 1 indictment as mentioned in subsection

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(7) may be convicted of and punished for any or all of the offences charged.

(9) However, if the adult is—

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- (a) charged in 1 indictment as mentioned in subsection (7); and
  - (b) sentenced to imprisonment for the maintaining offence and for the other offence or offences;
- the court imposing imprisonment may not order that the sentence for the maintaining offence be served cumulatively with the sentence or sentences for the other offence or offences.

(10) In this section—

*offence of a sexual nature* means an offence defined in section 208, 210 (other than section 210(1)(e) or (f)), 215, 222, 349, 350 or 352.

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*prescribed age*, for a child, means—

- (a) if the unlawful sexual relationship involves an act that constitutes, or would constitute (if it were sufficiently particularised), an offence defined in section 208—18 years; or
- (b) in any other case—16 years.

10 **unlawful sexual** act means an act that constitutes, or would constitute (if it were sufficiently particularised), an offence of a sexual nature.

### 304 Killing on provocation

20 (1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, 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, the person is guilty of manslaughter only.

(2) Subsection (1) does not apply if the sudden provocation is based on words alone, other than in circumstances of a most extreme and exceptional character.

(3) Also, subsection (1) does not apply, other than in circumstances of a most extreme and exceptional character, if—

- 30 (a) a domestic relationship exists between 2 persons; and  
(b) one person unlawfully kills the other person (the *deceased*); and  
(c) the sudden provocation is based on anything done by the deceased or anything the person believes the deceased has done—

- 40 (i) to end the relationship; or  
(ii) to change the nature of the relationship; or  
(ii) to indicate in any way that the relationship may, should or will end, or that there may, should or will be a change to the nature of the relationship.

(4) For subsection (3)(a), despite the *Domestic and Family Violence Protection Act 2012*, section 18(6), a domestic relationship includes a relationship in which 2 persons date or dated each other on a number of occasions.

50 (5) Subsection (3)(c)(i) applies even if the relationship has ended before the sudden provocation and killing happens.

(6) For proof of circumstances of a most extreme and exceptional character mentioned in subsection (2) or (3) regard may be had to any history of violence that is relevant in all the circumstances.

(7) On a charge of murder, it is for the defence to prove that the person charged is, under this section, liable to be convicted of manslaughter only.

10 (8) When 2 or more persons unlawfully kill another, the fact that 1 of the persons is, under this section, guilty of manslaughter only does not affect the question whether the unlawful killing amounted to murder in the case of the other person or persons.

### **304A Diminished responsibility**

20 (1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, is at the time of doing the act or making the omission which causes death in such a state of abnormality of mind (whether arising from a condition of arrested or retarded development of mind or inherent causes or induced by disease or injury) as substantially to impair the person's capacity to understand what the person is doing, or the person's capacity to control the person's actions, or the person's capacity to know that the person ought not to do the act or make the omission, the person is guilty of manslaughter only.

30 (2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section liable to be convicted of manslaughter only.

(3) When 2 or more persons unlawfully kill another, the fact that 1 of such persons is by virtue of this section guilty of manslaughter only shall not affect the question whether the unlawful killing amounted to murder in the case of any other such person or persons.

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### **304B Killing for preservation in an abusive domestic relationship**

(1) A person who unlawfully kills another (the deceased) under circumstances that, but for the provisions of this section, would constitute murder, is guilty of manslaughter only, if—

50 (a) the deceased has committed acts of serious domestic violence against the person in the course of an abusive

domestic relationship; and

(b) the person believes that it is necessary for the person's preservation from death or grievous bodily harm to do the act or make the omission that causes the death; and

(c) the person has reasonable grounds for the belief having regard to the abusive domestic relationship and all the circumstances of the case.

10 (2) An ***abusive domestic relationship*** is a domestic relationship existing between 2 persons in which there is a history of acts of serious domestic violence committed by either person against the other.

(3) A history of acts of serious domestic violence may include acts that appear minor or trivial when considered in isolation.

20 (4) Subsection (1) may apply even if the act or omission causing the death (the ***response***) was done or made in response to a particular act of domestic violence committed by the deceased that would not, if the history of acts of serious domestic violence were disregarded, warrant the response.

(5) Subsection (1)(a) may apply even if the person has sometimes committed acts of domestic violence in the relationship.

30 (6) For subsection (1)(c), without limiting the circumstances to which regard may be had for the purposes of the subsection, those circumstances include acts of the deceased that were not acts of domestic violence.

(7) In this section—

***domestic violence*** see the Domestic and Family Violence Protection Act 2012, section 8.

### **320A Torture**

40 (1) A person who tortures another person commits a crime. Maximum penalty—14 years imprisonment.

(2) In this section—

***pain or suffering*** includes physical, mental, psychological or emotional pain or suffering, whether temporary or permanent.

***torture*** means the intentional infliction of severe pain or suffering on a person by an act or series of acts done on 1 or more than 1 occasion.

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**328A Dangerous operation of a vehicle**

(1) A person who operates, or in any way interferes with the operation of, a vehicle dangerously in any place commits a misdemeanour.

Maximum penalty—200 penalty units or 3 years imprisonment.

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(2) If the offender—

- (a) at the time of committing the offence is adversely affected by an intoxicating substance; or
- (b) at the time of committing the offence is excessively speeding or taking part in an unlawful race or unlawful speed trial; or
- (c) has been previously convicted either upon indictment or summarily of an offence against this section; the person commits a crime.

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Maximum penalty—400 penalty units or 5 years imprisonment.

(3) If the offender has been—

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- (a) previously convicted either upon indictment or summarily of an offence against this section committed while the offender was adversely affected by an intoxicating substance; or
- (b) twice previously convicted either upon indictment or summarily (or once upon indictment and once summarily) of the same prescribed offence or different prescribed offences;

the court or justices shall, upon conviction, impose as the whole or part of the punishment, imprisonment.

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(4) A person who operates, or in any way interferes with the operation of, a vehicle dangerously in any place and causes the death of or grievous bodily harm to another person commits a crime and is liable on conviction on indictment—

- (a) to imprisonment for 10 years, if neither paragraph (b) nor (c) applies; or
- (b) to imprisonment for 14 years if, at the time of committing the offence, the offender is—

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- (i) adversely affected by an intoxicating substance; or
- (ii) excessively speeding; or
- (iii) taking part in an unlawful race or unlawful speed trial; or

(c) to imprisonment for 14 years, if the offender knows, or ought reasonably know, the other person has been killed or injured, and the offender leaves the scene of the incident, other than to obtain medical or other help for the other person, before a police officer arrives.

(5) The offender may be arrested without warrant.

10 (6) In this section—

***excessively speeding*** means driving or operating a vehicle at a speed more than 40km/h over the speed limit applying to the driver under the *Transport Operations (Road Use Management) Act 1995*.

20 ***operates, or in any way interferes with the operation of, a vehicle dangerously*** means operate, or in any way interfere with the operation of, a vehicle at a speed or in a way that is dangerous to the public, having regard to all the circumstances, including—

- (a) the nature, condition and use of the place; and
- (b) the nature and condition of the vehicle; and
- (c) the number of persons, vehicles or other objects that are, or might reasonably be expected to be, in the place; and
- (d) the concentration of alcohol in the operator's blood or breath; and
- 30 (e) the presence of any other substance in the operator's body.

***place*** does not include a place being lawfully used to race or test vehicles under a licence or another authority under an Act and from which other traffic is excluded at the time.

***prescribed offence*** means—

- (a) an offence against this section; or
- (b) an offence charged on indictment involving the driving or operation of a vehicle at a speed causing or likely to
- 40 cause injury to anyone; or
- (c) an offence against the *Transport Operations (Road Use Management) Act 1995*, section 79(1), (1F), (2), (2AA), (2A), (2B), (2D) or (2J).

***the public*** includes passengers in a vehicle whether in a public or private place.

50 ***unlawful race*** means a race involving a vehicle in contravention of the *Transport Operations (Road Use Management) Act 1995*, section 85.

*unlawful speed trial* mean a trial of the speed of a vehicle in contravention of the *Transport Operations (Road Use Management) Act 1995*, section 85.

### **339 Assaults occasioning bodily harm**

10 (1) Any person who unlawfully assaults another and thereby does the other person bodily harm is guilty of a crime, and is liable to imprisonment for 7 years.

(3) If the offender does bodily harm, and is or pretends to be armed with any dangerous or offensive weapon or instrument or is in company with 1 or more other person or persons, the offender is liable to imprisonment for 10 years.

### **543 Other conspiracies**

20 (1) Any person who conspires with another to effect any of the purposes following, that is to say—

(a) to prevent or defeat the execution or enforcement of any statute law;

(b) to cause any injury to the person or reputation of any person, or to depreciate the value of any property of any person;

30 (c) to prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value;

(d) to injure any person in the person's trade or profession;

(e) to prevent or obstruct, by means of any act or acts which if done by an individual person would constitute an offence on the person's part, the free and lawful exercise by any person of the person's trade, profession, or occupation;

(f) to effect any unlawful purpose;

(g) to effect any lawful purpose by any unlawful means;

40 is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

(2) A prosecution for an offence defined in this section shall not be instituted without the consent of the Attorney-General.

1899 Criminal Code (Qld) as enacted (Vic No.9 1899)

**271 Self-defence against Unprovoked Assault**

When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for him to use such force to the assailant as is reasonably necessary to make effectual defence against the assault, provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

10 If the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm, and the person using force by way of defence believes, on reasonable grounds, that he cannot otherwise preserve the person defended from death or grievous bodily harm, it is lawful for him to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous bodily harm.

**274 Defence of Moveable Property against Trespassers**

20 It is lawful for any person who is in peaceable possession of any moveable property, and for any person acting by his authority, to use such force as is reasonably necessary in order to resist the taking of such property by a trespasser, or in order to retake it from a trespasser, provided that he does not do bodily harm to the trespasser.

**275 Defence of Moveable Property with Claim of Right**

30 When a person is in peaceable possession of any moveable property under a claim of right, it is lawful for him, and for any person acting by his authority, to use such force as is reasonably necessary in order to defend his possession of the property, even against a person who is entitled by law to possession of the property, provided that he does not do bodily harm to such other person.

**276 Defence of Moveable Property without Claim of Right**

40 When a person who is entitled by law to the possession of moveable property attempts to take it from a person who is in possession of the property, but who neither claims right to it, nor acts by the authority of a person who claims right, and the person in possession resists him, it is lawful for the person so entitled to possession to use force in order to obtain possession of the property, provided that he does not do bodily harm to the person in possession.

**277 Defence of Premises against Trespassers: Removal of Disorderly Persons**

It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person acting by his authority, to use such force as is reasonably necessary in order to prevent any person from wrongfully entering upon such land, structure, vessel, or place, or in other to remove therefrom a person who wrongfully remains therein, provided that he does not do bodily harm to such person.

It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place or who is entitled to the control or management of any land, structure, vessel, or place, and for any person acting by his authority, to use force in order to remove therefrom any person who conducts himself in a disorderly manner therein, provided that he does not do him bodily harm.

The term "place" includes any part of an enclosure or structure, whether separated from the rest of the enclosure or structure by a partition, fence, rope, or any other means, or not.

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### **278 Defence of Possession of Real Property or Vessel with Claim of Right**

When a person is in peaceable possession of any land, structure, or vessel, with a claim of right, it is lawful for him, and for any person acting by his authority, to use such force as is reasonable necessary in order to defend his possession, even against a person who is entitled by law to the possession of the property, provided that he does not do bodily harm to such person.

### **20 279 Exercise of Right of Way or Easement**

When a person who is lawfully entitled to enter upon land for the exercise of a right of way or other easement or profit enters upon the land for the purpose of exercising such right of way, easement, or profit, after notice that his right to use such way or easement or to take such profit is disputed by the person in possession of the land, or having entered persists in his entry after such notice, it is lawful for the person in possession, and for any person acting by his authority, to use such force as is reasonably necessary for the purpose of making the person so entering desist from the entry, provided that he does not do him bodily harm.

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### **304 Killing on Provocation**

When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute wilful murder or murder, does the act which causes death in the heat of passion caused by sudden provocation, and before there is time for his passion to cool, he is guilty of manslaughter only.

### **40 Criminal Code (Canada) RSC 1985 c C-46**

#### **Application to territories**

8 (1) The provisions of this Act apply throughout Canada except

- (a) in Yukon, in so far as they are inconsistent with the Yukon Act;
- (b) in the Northwest Territories, in so far as they are inconsistent with the Northwest Territories Act; and
- (c) in Nunavut, in so far as they are inconsistent with the Nunavut Act.

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### **Application of criminal law of England**

(2) The criminal law of England that was in force in a province immediately before April 1, 1955 continues in force in the province except as altered, varied, modified or affected by this Act or any other Act of the Parliament of Canada.

### **Common law principles continued**

10 (3) Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force and applies in respect of proceedings for an offence under this Act or any other Act of Parliament except in so far as they are altered by or are inconsistent with this Act or any other Act of Parliament.

### *Crimes Act 1961 (NZ)*

#### **20 General rule as to justifications**

20 (1) All rules and principles of the common law which render any circumstances a justification or excuse for any act or omission, or a defence to any charge, shall remain in force and apply in respect of a charge of any offence, whether under this Act or under any other enactment, except so far as they are altered by or are inconsistent with this Act or any other enactment.

(2) The matters provided for in this Part are hereby declared to be justifications or excuses in the case of all charges to which they are applicable.