



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 04 Aug 2026 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: B24/2026
File Title: Redland City Council v. Burns
Registry: Brisbane
Document filed: Form 27F - A-G Qld Outline of oral argument
Filing party: Intervener
Date filed: 04 Aug 2026

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No. B24/2026

BETWEEN:

REDLAND CITY COUNCIL
Appellant

and

DARREN BURNS
Respondent

**OUTLINE OF ORAL SUBMISSIONS OF THE
ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**

PART I: Internet publication

1. This outline of oral submissions is in a form suitable for publication on the Internet.

PART II: Propositions to be advanced in oral argument

A. *Meaning of ‘an offence relating to property’*

2. The honest claim of right defence in s 22(2) of the *Criminal Code* (Qld) only applies if the offence with which the person is charged is ‘an offence relating to property’—meaning one of a category of offences where the act or omission that constitutes an element of the offence is the misappropriation of property or the destruction of, or injury to, property.

- *Walden v Hensler* (1987) 163 CLR 561, 574-575 (**JBA, vol 3, tab 11, pp 575-576**)

3. That narrow reading better accommodates the text of s 22(2), read in context, than the broader reading adopted by the Court of Appeal. That is so for several reasons.

4. First, the phrase ‘offence relating to property’ is used elsewhere in the *Criminal Code* to refer to the collection of elements that create offences relating to property: s 22(2), the heading to Part VI, s 680 (**JBA, vol 1, tab 1, pp 31, 112**).

- Contrast *Redland City Council v Burns* [2025] QCA 222, [124]-[129] (**CAB, tab 8, pp 118-9**)

Filed on behalf of the Attorney-General for the State of Queensland (Intervening)

4 August 2026

5. Second, on the broader reading, the phrase ‘offence relating to property’ in s 22(2) is redundant: it is entirely subsumed by the words ‘for an act done or omitted to be done by the person with respect to any property’.
 - Contrast Respondent’s submissions, [30]-[32] (referring to *Redland City Council v Burns* [2025] QCA 222, [130] (**CAB, tab 8, p 119**))
 - See *Walden v Hensler* (1987) 163 CLR 561, 605-606 (**JBA, vol 3, tab 11, pp 606-607**).
6. Thirdly, the narrow reading more closely accords with the scope of the common law defence and the offences in Part VI of the Criminal Code as originally enacted. By contrast, the broader reading of s 22(2) would give an honest claim of right defence a far wider operation than the equivalent claim of right at common law while simultaneously rendering the phrase ‘an offence relating to property’ redundant.
 - Sir Samuel Griffith, *Explanatory letter to the Attorney-General accompanying Draft of a Code of Criminal Law*, pp VIII, XIV (**JBA, vol 5, tab 24, pp 1302, 1308**)
 - Sir Samuel Griffith, *Draft of a Code of Criminal Law*, clauses 24 and 25 (**JBA, vol 5, tab 23, pp 1318-1319**)
 - James Stephen, *A History of the Criminal Law of England* (Macmillan, 1883) vol 3, p 121 (**JBA, vol 5, tab 21, p 1210**)
 - *Walden v Hensler* (1987) 163 CLR 561, 573-574 (Brennan J), 580 (Deane J), 592 (Dawson J) (**JBA, vol 3, tab 11, pp 574-575, 581, 593**)
7. Fourthly, s 22(2) must be read in the context of s 22(1). That context suggests that s 22(2) must be read narrowly so that it remains an exception that does not undermine the general rule in s 22(1).
8. The broad approach would ‘unduly subvert[] the capacity of the criminal law to serve the public interest, for it would go far towards frustrating its broad educative and deterrent function’.

- *Walden v Hensler* (1987) 163 CLR 561, 570, 574-5 (Brennan J) (**JBA, vol 3, tab 11, pp 571, 575-576**)

9. Fifthly, the broader reading of s 22(2) may give rise to results that Parliament is unlikely to have intended.

- *Redland City Council v Burns* [2025] QCA 222, [151] (**CAB, tab 8, pp 123-4**)

10. Sixthly, the textual reasons for adopting the broader reading are flawed. Neither the definitions of ‘property’ and ‘offence’, nor the presence of s 36, require rejection of the narrow reading. In particular, the narrow reading does not suggest that the class of offences relating to property is confined to Part VI of the *Criminal Code*.

- Contrast Respondent’s submissions, [15], [20], [36]
- See *Electricity Act 1994* (Qld) s 235

11. In addition, there is no binding authority that stands in the way of adopting the narrow reading. The issue of the proper construction of s 22(2) can be determined from first principles.

- *Walden v Hensler* (1987) 163 CLR 561, 574-575 (Brennan J), 580 (Deane J), 592-593 (Dawson J), 598-599 (Toohey J), 605-606 (Gaudron J) (**JBA, vol 3, tab 11, pp 575-576, 581, 593-594, 599-600, 606-607**)

B. Exercise of an honest claim of right

12. The defence in s 22(2) is available where the defendant honestly believed they had a private right grounded in the civil law to do what they did, and if that right existed, it would constitute a defence to the charge. The right claimed must be one that is capable of being recognised by our system of law.

- *Walden v Hensler* (1987) 163 CLR 561, 600, 602-3 (Toohey J), 606-607 (Gaudron J) (**JBA, vol 3, tab 11, pp 601, 603-4, 607-8**)

Dated: 4 August 2026.



.....
G J D Del Villar KC

.....
Susan Hedge

.....
Kent Blore