



New South Wales

Crimes Amendment (Provocation) Bill 2014

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to reformulate the law of provocation in order to restrict its operation.

Under section 23 of the *Crimes Act 1900*, provocation is a partial defence to a charge of murder which will result in the accused being acquitted of murder and convicted of manslaughter instead.

This Bill repeals section 23 of the *Crimes Act 1900* and replaces it with a section that provides a more limited partial defence of extreme provocation.

The existing section makes the partial defence available if the accused loses self-control because of the words or other conduct of the deceased and that conduct could have caused an ordinary person in the position of the accused to have lost self-control to the extent of intending to kill or inflict grievous bodily harm on the deceased.

The substituted section provides that an accused acts in response to extreme provocation only if the provocative conduct of the deceased:

- (a) was a serious indictable offence (that is, an offence punishable by imprisonment for life or for 5 years or more), and
- (b) caused the accused to lose self-control (a subjective test), and
- (c) could have caused an ordinary person to lose self-control to the extent of intending to kill or inflict grievous bodily harm on the deceased (an objective test).

The substituted section specifically excludes certain conduct from being provocative conduct (namely, non-violent sexual advances and conduct incited by the accused in order to provide an excuse to use violence against the deceased). It also excludes evidence of self-induced intoxication from being taken into account in determining whether the accused acted in response

to extreme provocation. As with the existing section, the substituted section provides that the killing of the deceased need not occur immediately after the provocative conduct.

Proposals for reform in this area were included in *The partial defence of provocation* report published in April 2013 by the Legislative Council's Select Committee on the Partial Defence of Provocation.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be proclaimed.

Schedule 1 amends the *Crimes Act 1900* in the manner described in the above Overview.



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New South Wales

Crimes Amendment (Provocation) Bill 2014

No. , 2014

A Bill for

An Act to amend the *Crimes Act 1900* in relation to the partial defence of provocation to a charge of murder.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Crimes Amendment (Provocation) Act 2014*.

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2 Commencement

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

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Schedule 1	Amendment of Crimes Act 1900 No 40	1
Section 23		2
Omit the section. Insert instead:		3
23	Trial for murder—partial defence of extreme provocation	4
(1)	If, on the trial of a person for murder, it appears that the act causing death was in response to extreme provocation and, but for this section and the provocation, the jury would have found the accused guilty of murder, the jury is to acquit the accused of murder and find the accused guilty of manslaughter.	5 6 7 8
(2)	An act is done in response to extreme provocation if and only if:	9
(a)	the act of the accused that causes death was in response to conduct of the deceased towards or affecting the accused, and	10 11
(b)	the conduct of the deceased was a serious indictable offence, and	12
(c)	the conduct of the deceased caused the accused to lose self-control, and	13
(d)	the conduct of the deceased could have caused an ordinary person to lose self-control to the extent of intending to kill or inflict grievous bodily harm on the deceased.	14 15 16
(3)	Conduct of the deceased does not constitute extreme provocation if:	17
(a)	the conduct was only a non-violent sexual advance to the accused, or	18
(b)	the accused incited the conduct in order to provide an excuse to use violence against the deceased.	19 20
(4)	Conduct of the deceased may constitute extreme provocation even if the conduct did not occur immediately before the act causing death.	21 22
(5)	For the purpose of determining whether an act causing death was in response to extreme provocation, evidence of self-induced intoxication of the accused (within the meaning of Part 11A) cannot be taken into account.	23 24 25
(6)	For the purpose of determining whether an act causing death was in response to extreme provocation, provocation is not negated merely because the act causing death was done with intent to kill or inflict grievous bodily harm.	26 27 28
(7)	If, on the trial of a person for murder, there is any evidence that the act causing death was in response to extreme provocation, the onus is on the prosecution to prove beyond reasonable doubt that the act causing death was not in response to extreme provocation.	29 30 31 32
(8)	This section does not exclude or limit any defence to a charge of murder.	33
(9)	The substitution of this section by the <i>Crimes Amendment (Provocation) Act 2014</i> does not apply to the trial of a person for murder that was allegedly committed before the commencement of that Act.	34 35 36
(10)	In this section: <i>act</i> includes an omission to act.	37 38