

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.