

# CONCURRENCE COPY

## CRIMES (HOMICIDE) AMENDMENT BILL, 1982

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### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The objects of this Bill are—

- (a) to ameliorate the severity of section 19 of the Crimes Act, 1900, which imposes a mandatory sentence of penal servitude for life in all cases of murder, no matter what the circumstances (Schedule 1 (1));
  - (b) to reform the law relating to provocation in cases of murder (Schedule 1 (2)); and
  - (c) to make other provisions of an ancillary nature.
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CONFIDENTIAL COPY

**CRIMES (HOMICIDE) AMENDMENT BILL, 1982**

No.           , 1982.

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**A BILL FOR**

An Act to amend sections 19 and 23 of the Crimes Act, 1900, with respect to the crime of murder.

[MR WALKER—11 *March*, 1982.]

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*Crimes (Homicide) Amendment.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**5 Short title.**

1. This Act may be cited as the "Crimes (Homicide) Amendment Act, 1982".

**Application of Act.**

2. The amendments made by this Act do not have effect in relation to  
10 any person arraigned before a day to be appointed by the Governor for the purposes of this section and notified by proclamation published in the Gazette.

**Amendment of Act No. 40, 1900.**

3. The Crimes Act, 1900, is amended in the manner set forth in Schedule  
15 1.

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**SCHEDULE 1.**

(Sec. 3.)

**AMENDMENTS TO THE CRIMES ACT, 1900.**

(1) Section 19—

20 After "section" where secondly occurring, insert "unless it appears to the Judge that the person's culpability for the crime is significantly diminished by mitigating circumstances, whether disclosed by the evidence in the trial or otherwise".

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*Crimes (Homicide) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

## (2) Section 23—

Omit the section, insert instead:—

5 **Trial for murder—provocation.**

23. (1) Where, on the trial of a person for murder, it appears that the act or omission causing death was an act done or omitted under provocation and, but for this subsection and the provocation, the jury would have found the accused guilty of murder, the jury shall  
10 acquit the accused of murder and find the accused guilty of manslaughter.

(2) For the purposes of subsection (1), an act or omission causing death is an act done or omitted under provocation where—

15 (a) the act or omission is the result of a loss of self-control on the part of the accused that was induced by any conduct of the deceased (including grossly insulting words or gestures) towards or affecting the accused; and

20 (b) that conduct of the deceased was such as could have induced an ordinary person in the position of the accused to have so far lost self-control as to have formed an intent to kill, or to inflict grievous bodily harm upon, the deceased,

whether that conduct of the deceased occurred immediately before the act or omission causing death or at any previous time.

25 (3) For the purpose of determining whether an act or omission causing death was an act done or omitted under provocation as provided by subsection (2), there is no rule of law that provocation is negated if—

30 (a) there was not a reasonable proportion between the act or omission causing death and the conduct of the deceased that induced the act or omission;

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*Crimes (Homicide) Amendment.*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(b) the act or omission causing death was not an act done or omitted suddenly; or

5 (c) the act or omission causing death was an act done or omitted with any intent to take life or inflict grievous bodily harm.

10 (4) Where, on the trial of a person for murder, there is any evidence that the act causing death was an act done or omitted under provocation as provided by subsection (2), the onus is on the prosecution to prove beyond reasonable doubt that the act or omission causing death was not an act done or omitted under provocation.

(5) This section does not exclude or limit any defence to a charge of murder.







**CRIMES (HOMICIDE) AMENDMENT ACT, 1982, No. 24**

**New South Wales**



ANNO TRICESIMO PRIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 24, 1982.**

An Act to amend sections 19 and 23 of the Crimes Act, 1900, with respect to the crime of murder. [Assented to, 23rd April, 1982.]

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*Crimes (Homicide) Amendment.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title.**

1. This Act may be cited as the "Crimes (Homicide) Amendment Act, 1982".

**Application of Act.**

2. The amendments made by this Act do not have effect in relation to any person arraigned before a day to be appointed by the Governor for the purposes of this section and notified by proclamation published in the Gazette.

**Amendment of Act No. 40, 1900.**

3. The Crimes Act, 1900, is amended in the manner set forth in Schedule 1.

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SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE CRIMES ACT, 1900.

(1) Section 19—

After "section" where secondly occurring, insert "unless it appears to the Judge that the person's culpability for the crime is significantly diminished by mitigating circumstances, whether disclosed by the evidence in the trial or otherwise".

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*Crimes (Homicide) Amendment.*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(2) Section 23—

Omit the section, insert instead:—

**Trial for murder—provocation.**

23. (1) Where, on the trial of a person for murder, it appears that the act or omission causing death was an act done or omitted under provocation and, but for this subsection and the provocation, the jury would have found the accused guilty of murder, the jury shall acquit the accused of murder and find the accused guilty of manslaughter.

(2) For the purposes of subsection (1), an act or omission causing death is an act done or omitted under provocation where—

- (a) the act or omission is the result of a loss of self-control on the part of the accused that was induced by any conduct of the deceased (including grossly insulting words or gestures) towards or affecting the accused; and
- (b) that conduct of the deceased was such as could have induced an ordinary person in the position of the accused to have so far lost self-control as to have formed an intent to kill, or to inflict grievous bodily harm upon, the deceased,

whether that conduct of the deceased occurred immediately before the act or omission causing death or at any previous time.

(3) For the purpose of determining whether an act or omission causing death was an act done or omitted under provocation as provided by subsection (2), there is no rule of law that provocation is negatived if—

- (a) there was not a reasonable proportion between the act or omission causing death and the conduct of the deceased that induced the act or omission;

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*Crimes (Homicide) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

- (b) the act or omission causing death was not an act done or omitted suddenly; or
- (c) the act or omission causing death was an act done or omitted with any intent to take life or inflict grievous bodily harm.

(4) Where, on the trial of a person for murder, there is any evidence that the act causing death was an act done or omitted under provocation as provided by subsection (2), the onus is on the prosecution to prove beyond reasonable doubt that the act or omission causing death was not an act done or omitted under provocation.

(5) This section does not exclude or limit any defence to a charge of murder.

*In the name and on behalf of Her Majesty I assent to this Act.*

J. A. ROWLAND,  
*Governor.*

*Government House,*  
*Sydney, 23rd April, 1982.*