

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

Crimes Amendment (Provocation) Bill 2013

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Consultation Draft

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

Crimes Amendment (Provocation) Bill 2013

No. , 2013

A Bill for

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

Consultation Draft

Crimes Amendment (Provocation) Bill 2013 [NSW]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Provocation) Act 2013*.

2 Commencement

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

Schedule 1 Amendment of Crimes Act 1900 No 40

Section 23

Omit the section. Insert instead:

23 Partial defence of extreme provocation

- (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.
- (2) An act is done in response to extreme provocation if and only if:
 - (a) the act of the accused that causes death was in response to conduct of the deceased towards or affecting the accused, and
 - (b) the conduct of the deceased was a serious indictable offence, and
 - (c) the conduct of the deceased caused the accused to lose self-control, and
 - (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.
- (3) Conduct of the deceased does not constitute extreme provocation if:
 - (a) the conduct was only a non-violent sexual advance to the accused, or
 - (b) the accused incited the conduct in order to provide an excuse to use violence against the deceased.
- (4) Conduct of the deceased may constitute extreme provocation even if the conduct did not occur immediately before the act causing death.
- (5) For the purposes of determining whether an act causing death was in response to extreme provocation, evidence of self-induced intoxication (within the meaning of Part 11A) cannot be taken into account.
- (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.
- (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.
- (8) This section does not exclude or limit any defence to a charge of murder.
- (9) The substitution of this section by the *Crimes Amendment (Provocation) Act 2013* does not apply to the trial of a person charged with murder before the commencement of that Act.
- (10) In this section:
act includes an omission to act.