

## CLAUSE NOTES

### *Criminal Code Amendment Bill 2022*

- Clause 1**      **Short title**  
Specifies the name of the proposed Act.
- Clause 2**      **Commencement**  
Provides that the Act commences on proclamation.
- Clause 3**      **Principal Act**  
Provides that the Principal Act that is being amended is the *Criminal Code Act 1924*.
- Clause 4**      **Principal Act amended**  
Clause 4 provides that Schedule 1 of the Principal Act is amended.  
*Amendment to Section 2A*  
Clause 4(a) inserts new subsection (2A) into section 2A of Schedule 1 of the Principal Act. The current section 2A(1) provides in part that “consent means free agreement.” Without limiting that principle, current section 2A(2) provides for a non-exhaustive list of when a person does not agree to an act. This new subsection (2A) adds a further provision stating there is no free agreement (consent) to sexual intercourse where the other person engages in what is colloquially described as ‘stealthing’. Specifically, new section 2A(2A):
- Provides that a person does not freely agree to an act of sexual intercourse with another person if the person says or does anything to communicate to the other person that a condom must be used for that sexual intercourse, and the other person, intentionally, before or during the sexual intercourse, does not use a condom or tampers with or removes the condom.
  - Does not limit the application of subsection 2A(2) to an act of sexual intercourse.
- Amendments relating to strangulation*  
Clause 4(b) inserts new section 170B ‘Strangulation, &c.’ into Schedule 1 of the Principal Act.  
This new section provides:
- That a person who intentionally and unlawfully chokes, suffocates or strangles another person is guilty of a crime, charged as strangulation.
- In relation to ‘alternative convictions’, section 332 in Chapter XXXIX of the Code provides for where, if the jury find the accused person not guilty of the crime with which the person is charged, the person may be convicted of the other specified crime in Chapter XXXIX if it is established by the evidence to have been committed.

Clauses 4(c), 4(d), 4(e), 4(f) and 4(g) make amendments to Chapter XXXIX so that persons charged with strangulation can be alternatively convicted of assault, or persons charged with other specified crimes can alternatively be convicted of strangulation, where section 332 applies:

- New section 333A provides that, upon an indictment for attempting to commit murder, the accused person may be convicted of an unlawful act intended to cause bodily harm or strangulation.
- New section 334AA provides that upon an indictment for strangulation, the accused person may be convicted of assault (section 184 of Schedule I).
- Section 334A(1) is amended so that a person can be convicted of strangulation as an alternative upon indictments for:
  - Committing an unlawful act intended to cause bodily harm – by adding new paragraph (ab) to section 334A(1); and
  - Wounding or causing grievous bodily harm – by adding 'strangulation' to section 334A(2).
- Section 337A(1) is amended so that a person can be convicted of strangulation as an alternative upon an indictment for persistent family violence – by adding new paragraph (ga).

Clause 4(h) adds the strangulation offence to Appendix A of Schedule I (Crimes for which offender may be arrested without warrant). This Appendix provides a list of offences of violence and otherwise in relation to which arrest can occur without warrant under section 27 of the Code. Further, section 27 provides it is the duty of a person to arrest without warrant any person found committing crimes in Appendix A.

## Clause 5

### Repeal of Act

This automatically repeals the amending legislation 12 months after the Act is fully commenced. This is because the amendments are incorporated into the Principal Act, and will remain in force after the repeal of the Amending Act.