

CLAUSE NOTES**Sentencing Amendment (Publication of Criminal Activity) Bill 2026****Clause 1 Short title**

Specifies the name of the proposed Act.

Clause 2 Commencement

Provides that the Act commences on the day that it receives Royal Assent.

Clause 3 Principal Act

Provides that the Principal Act being amended by this Act is the *Sentencing Act 1997*.

Clause 4 Section 11BB inserted

This clause inserts a new section into the Principal Act

Subsection (1) defines ‘electronically publish’. The definition covers a wide range of material in written, image or video format. The definition provides that electronic publishing occurs whether the material is available to any member of the public or is only published to a limited number of persons.

Subsection (2)(a) requires that the material that is electronically published must be linked to an offence or a victim of an offence committed by the offender for the aggravating factor to be established. The offender is liable for such publication if they electronically publish the material or they cause another person to publish it – for instance, by requesting or encouraging the publication.

Subsection (2)(b) provides the legal test for establishing whether the published material falls within the aggravating factor. The test is framed in terms of whether a reasonable person would consider that the material or its dissemination was likely to humiliate, intimidate or victimise a victim of the offence or that the publication was for one of a number of purposes that promote the offender or the offence or encourage copycat offenders. The reference to a reasonable person prevents the court from needing to be satisfied beyond reasonable doubt that the offender held a subjective intent when they published the material.

Subsection (3) provides an avoidance of doubt clause to clarify that this aggravating factor does not limit the court's discretion to take into account any other relevant aspects of the offender or the offence during sentencing.

Subsection (4) provides that the new section 11BB does not apply retrospectively. Its provisions will only apply to offending that is committed on or after the day that the new section 11BB commences.

Clause 5 Section 104AF inserted

This clause inserts a review provision into the Principal Act that provides that the new section 11BB is to be reviewed after it has been in force for a 5-year period. The review is to be conducted by a person appointed by the Minister and that person must prepare a written report which, after being provided to the Minister, is to be laid before each House of Parliament.

Clause 6 Repeal of Act

This is a standard provision for amending legislation, repealing this amending Act one year after its amendments have been incorporated into the Principal Act.