

CLAUSE NOTES

Sentencing Amendment (Aggravating Factors) Bill 2025

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 11B substituted

This section replaces section 11B of the Principal Act with two new sections. The new section 11B expands on the current aggravating factor in 11B and the new section 11BA adds a new aggravating factor.

Section 11B currently only captures hatred or prejudice on racial grounds as an aggravating circumstance for purposes of determining an appropriate sentence for an offender. The new subsection 11B(1) provides that offending motivated by hatred or prejudice based on a victim having a 'relevant attribute' can be captured as an aggravating factor. The new subsection (b)(ii) further clarifies that the aggravating factor applies to offenders who commit an offence out of a motivation against a person they believe to possess a relevant attribute. This means that the aggravating factor may be applied in circumstances where the victim did not actually have the relevant attribute but the offender was motivated by an erroneous belief that they did.

The new subsection 11B(2) provides that a demonstration or expression of hostility, malice or ill-will on the grounds of a relevant attribute can be used to establish the aggravating factor without requiring the offender's motivation to be proved or evidence of motivation being produced. This test is framed as a deeming provision, meaning that satisfying this test makes out motivation without otherwise having to prove the offender's state of mind. Such a demonstration or expression must occur during the offending or immediately before or after the offending in order to allow the aggravating factor to be made out. This provides procedural fairness by ensuring that the evidence relied on has a direct link to the offending.

The new subsection 11B(3) provides a list of attributes or characteristics that may be considered as a relevant attribute for purposes of the new section 11B. This list is non-exhaustive and illustrative to provide guidance to the court in applying the aggravating factors, while also enabling it to apply the new provisions in

circumstances where the offending is targeted against similar attributes that are not explicitly listed.

The new subsection 11B(4) operates to ensure that the new section 11B does not apply retrospectively. Its provisions will only apply to offending that is committed on or after the day that the new section 11B commences.

The new section 11BA legislates a new aggravating factor by providing that a court must take into account whether the offender targeted their victim because of actual or perceived vulnerability or personal circumstances. This section is intended to apply in cases where the offender carried out an offence against a person with certain characteristics or a member of a certain group because the victim was, or was perceived to be, an easy target or was targeted opportunistically. For purposes of considering a victim's vulnerability, a list of attributes is included in the new subsection 11BA(1). This list replicates all of the relevant attributes in the new section 11B(3) and also adds the personal relationship between the victim, so as to capture offences where the offender takes advantage of a power imbalance or the victim's reliance on the offender. Similar to the new subsection 11B(3), the list in the new subsection 11BA(1) is illustrative and non-exhaustive.

The new subsection 11BA(2) allows the vulnerability provisions to apply regardless of whether the offender's selection of the victim was based on their actual or perceived vulnerability or personal circumstances.

The new subsection 11BA(3) operates to ensure that the new section 11BA does not apply retrospectively. Its provisions will only apply to offending that is committed on or after the day that the new section 11B commences.

Clause 5 Section 104AE inserted

This section provides that the new sections 11B and 11BA are to be reviewed after they have 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.