

CLAUSE NOTES

Criminal Code Amendment (Bullying) Bill 2019

Part 1 - Preliminary

Clause 1 Short title

Specifies the name of the proposed Act.

Clause 2 Commencement

Provides that the Act commences on Royal Assent.

Part 2 - Criminal Code Act 1924 Amended

Clause 3 Principal Act

Provides that the Principal Act that is being amended in this part is the *Criminal Code Act 1924*.

Clause 4 Schedule 1 amended (*Criminal Code*)

Inserts 'and Bullying' in the heading of Chapter XX of Part V to reflect the changes to s192 to extend the crime of stalking to address bullying behaviours.

Amends the offence of stalking in s192 of the *Criminal Code* in the following manner:

- Expands the fault element relating to the state of mind of the accused in s192(1) to include the intention to cause another person:
 - extreme humiliation; or
 - to engage in self-harm. Self-harm can include aspects of both physical or mental harm.
- Inserts new paragraphs (ea) and (eb) in s192(1) to expand the list of actions capable of constituting a 'course of conduct'. These new actions include behaviours that are often referred to as bullying.
- Expands the conduct in paragraph (j) in s192(1) to include acting in another way that could reasonably be expected to cause the other person physical or mental harm, including self-harm, or extreme humiliation.
- Changes the charge at s192(1) to 'stalking and bullying'.
- Expands the state of mind of the accused in s192(3) to include 'extreme humiliation' and 'self-harm'. The Bill provides that in s192(3) where physical or mental harm, including self-harm, or extreme humiliation is actually caused, a person is taken to have the intention required if that person knows, or ought to have known that engaging in the relevant conduct (pursuing a course of conduct of a kind referred to in s192(1)) would or would be likely to cause the other person physical or mental harm, including self-harm, or extreme humiliation.

- Inserts a new subsection (5) to provide that a reference to mental harm in s192 includes a reference to suicidal thoughts.
- Inserts a new subsection (6) to provide that the consent of the Director of Public Prosecutions is required to commence a prosecution for the offence of 'stalking and bullying' against s192.

Inserts a new s462 to provide that the amendments made to s192 by s7 of the *Criminal Code Amendment (Bullying) Act 2019* apply only to offences alleged to have been committed on or after the commencement of s7 of that Act. The offence of 'stalking and bullying' involves a person pursuing a course of conduct and the conduct may occur over a number of days. If an offence is alleged to have been committed between two dates, one before and one after the commencement of the *Criminal Code Amendment (Bullying) Act 2019*, the offence is alleged to have been committed before that commencement.

Amends the list of 'Crimes for which Offender may be Arrested without Warrant' in Appendix A by replacing 'stalking' with 'stalking and bullying' to reflect the changes to the offence in s192(1).

Part 3 - Community Protection (Offender Reporting) Act 2005 Amended

Clause 5 Principal Act

Provides that the Principal Act that is being amended in this part is the *Community Protection (Offender Reporting) Act 2005*.

Clause 6 Schedule 2 amended (Class 2 offences)

Replaces 'stalking' with 'stalking and bullying' to reflect the change to the charge at s192(1) in the *Criminal Code*.

Clause 7 Schedule 3 amended (Class 3 offences)

Replaces 'stalking' with 'stalking and bullying' to reflect the change to the charge at s192(1) in the *Criminal Code*.

Part 4 – Family Violence Act 2004 Amended

Clause 8 Principal Act

Provides that the Principal Act that is being amended is the *Family Violence Act 2004*.

Clause 9 Section 7 amended (Family violence)

Amends the reference to 'stalking' in s7(a)(iv) of the Principal Act to reflect the change to s192 in the *Criminal Code* to extend the crime of stalking to address bullying behaviours.

Part 5 – Justices Act 1959 Amended

Clause 10 Principal Act

Provides that the Principal Act that is being amended is the *Justices Act 1959*.

Clause 11 Schedule 3 amended

Removes s192 from the list of offences which can be dealt with summarily in the Magistrates Court rather than in the Supreme Court if the defendant so elects under s72(1) of the *Justices Act 1959*.

Part 6 – Repeal of Act

Clause 12 Repeal of Act

This automatically repeals the amending legislation after the Act commences. The provisions that the amending legislation inserts into the Principal Acts still remain in force after the repeal of the Amending Act.