

FACT SHEET

Sentencing Amendment (Aggravating Factors) Bill 2025

This Bill amends the *Sentencing Act 1997* (the Sentencing Act). The amendments respond to the recommendations made by the Sentencing Advisory Council's (SAC) 2024 Report 'Prejudice and Discrimination as Aggravating Factors in Sentencing' that proposed improving the way that the Sentencing Act captures hateful or prejudicial offending.

Section 11B of the Act currently provides that, where the offender commits an offence motivated to any degree by hatred or prejudice based on race, the court is to take this into account as an aggravating circumstance. The Bill expands the scope of the section and adds to the ways that hatred or prejudice can be proved, consistent with recommendations 1-3 of the SAC report.

The Bill also inserts a new section based on SAC recommendation 4. This section captures 'discriminatory targeting' where the offender selects a victim because of their vulnerability or personal circumstances. The section aims to address opportunistic offending against vulnerable members of the community or those whom the offender perceives as vulnerable.

Finally, the Bill provides for a review provision requiring a review of the new and amended provisions after 5 years. This ensures that there will be an opportunity to evaluate whether the Bill has appropriately enhanced the criminal justice system's response to prejudicial or targeted offending.

Replacing section 11B with a broader section

The Bill replaces the current section 11B with a new and broader section that extends the scope of the aggravation factor to other relevant attributes in addition to race. It includes an illustrative and non-exhaustive list of attributes and provides a power for additional attributes to be prescribed.

The expanded scope of section 11B ensures that the aggravation factor applies equally, regardless of whether the hate or prejudice that motivated the offence is directed against race, religion, sexuality, disability or other relevant attributes. The section also applies if the offender's motivation is based on a mistaken belief that the victim possesses a relevant attribute.

The new section 11B also includes a second legal test alongside motivation that enables a demonstration or expression of hostility, malice or ill-will to be used to make out the aggravation factor. This means that, where there is evidence of such a demonstration or expression, this can be used to prove that the offence was hateful or prejudicial in nature without having to provide evidence of the offender's state of mind. This change makes it easier for the prosecution to argue that this aggravation factor is applicable where there is objective evidence of prejudicial conduct.

Insertion of new section 11BA

The Bill inserts a new section 11BA to provide that a court must take into account whether the offender selected the victim due to the vulnerability or personal

circumstances of the victim. Such selection of victims is to be considered as an aggravating circumstance of the offence. As in section 11B, an illustrative and non-exhaustive list of relevant attributes is provided.

Importantly, the Bill also provides that this section can be applied where the offender thought that the victim was vulnerable. For example, the offender may have believed that members of a group to which the victim belonged were easier targets than the rest of the community. The court can consider offending in these circumstances as aggravated even if there was no objective vulnerability, recognising that stereotypical motivations for offending can still cause harm to the community.

The inclusion of this section addresses community concerns over opportunistic targeting and offences linked to anti-social behaviours such as ageism without setting these offences apart as motivated by hatred or prejudice.