

# Crimes (Abolition of Defence of Provocation) Amendment Bill

Member's Bill

## Explanatory Note

### General policy statement

This Bill will amend the Crimes Act 1961, removing the partial defence of provocation found in sections 58, 169 and 170 in accordance with a recent recommendation of the Law Commission.

The partial defence of provocation is an anachronistic relic of New Zealand's legal past. It is superfluous in New Zealand's current criminal legislative framework. Issues of provocation can now be sufficiently dealt with as mitigating factors in sentencing – found in section 9(2)(c) of the Sentencing Act 2002 – without creating a deficit of justice. Moreover, current sentencing guidelines enable penal sentences to be flexible, without reducing a murder charge to manslaughter, as the current Act allows for.

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause and provides that the Bill comes into force on the day after the date on which it receives the Royal Assent.

*Clause 3* states that this Act amends the Crimes Act 1961.

*Clause 4* repeals the proviso to section 58 which provides a defence of provocation in relation to a charge of assault against a person in possession of land arising from the exercise by another person of a disputed right of way.

*Clause 5* repeals section 169 which provides a defence of provocation to a charge of murder which when made out reduces the charge to manslaughter.

*Clause 6* repeals section 170 which provides that an illegal arrest may be evidence of provocation.

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*Hon Lianne Dalziel*

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The Parliament of New Zealand enacts as follows:

- 1     **Title**  
This Act is the Crime (Abolition of Defence of Provocation) Amendment Act 2009.
  - 2     **Commencement**  
This Act comes into force on the day after the date on which it receives the Royal assent.
  - 3     **Principal Act Amended**  
This Act amends the Crimes Act 1961.
  - 4     **Exercise of right of way**  
The proviso to section 58 is repealed.
  - 5     **Section 169 repealed**  
Section 169 is repealed (which provides a defence of provocation in relation to a charge of murder).
  - 6     **Section 170 repealed**  
Section 170 is repealed (which provides that an illegal arrest may be evidence of provocation).
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