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BILLS DIGEST

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Crimes (Provocation Repeal) Amendment Bill 2009 (2009 No 64-2)

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Portfolio:	Justice
Select Committee:	Justice
Date reported:	16 October 2009
Published: 19 October 2009 Prepared by John McSoriley BA LL.B, Barrister Legislative Analyst P: (04) 471-9626 (Ext. 9626) F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The aim of the Bill is to amend the Crimes Act 1961 (the Act) to abolish the partial defence of provocation¹.

The Bill as introduced is described in [Bills Digest No 1704](#).

Main change to the Bill

No common law defence

The Select Committee has recommended that it should be made clear that as well as abolishing the statutory defence of provocation, the Bill abolishes the defence " ... in so far as it has any effect as a rule or principle of common law in New Zealand" (*inserting New Clause 5 in the Bill*).

¹ Crimes (Provocation Repeal) Amendment Bill, 2009 No 64-1, Explanatory note, General policy statement, p. 1

Comment

The Select Committee stated in its Commentary: "We note that the codification of the partial defence of provocation was a reflection of the existing common law partial defence. For the avoidance of doubt, we recommend inserting new clause 5 to make it clear that the common law partial defence would also be abolished by the bill. This would avoid the possibility of defence counsel relying on the defence, so far as it has any effect as a principle of the common law of New Zealand, in cases of culpable homicide"².

The Crimes Act 1961 was a codification of the criminal law in New Zealand and was generally meant to be a complete statement of the areas of the law that Act dealt with and to replace the previous law.

However Section 20 (headed: General rule as to justifications) of the Crimes Act 1961 provides as follows:

(1) All rules and principles of the common law which render any circumstances a justification or excuse for any act or omission, or a defence to any charge, shall remain in force and apply in respect of a charge of any offence, whether under this Act or under any other enactment, except so far as they are altered by or are inconsistent with this Act or any other enactment.

(2) The matters provided for in this Part of this Act are hereby declared to be justifications or excuses in the case of all charges to which they are applicable.

The common law still does have significant influence on New Zealand criminal law. For example, under Section 20 of the Crimes Act 1961, the following non-statutory defences are available in New Zealand: absence of mens rea (i.e. absence of the requisite intention); necessity; and absence of fault³.

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² Ibid., p. 2.

³ *Adams on Criminal Law*, Wellington, Brooker's, 1992, CA20.01 and CA20.02.