



New South Wales

Crimes Amendment (Protection of Criminal Defence Lawyers) Bill 2022

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to extend offences protecting judges and persons connected with judicial proceedings from threats, intimidation and reprisals to also protect an Australian legal practitioner who acts—

- (a) for a defendant in a criminal matter, or
- (b) in connection with criminal proceedings.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Crimes Act 1900 No 40

Schedule 1[3] extends the offence in the *Crimes Act 1900* (the *principal Act*), section 322 to make it an offence to threaten to do or cause, or do or cause, an injury or detriment to a person intending to influence the person's conduct as an Australian legal practitioner acting for a defendant in a criminal matter or in connection with criminal proceedings. The offence has a maximum penalty of imprisonment for 10 years. **Schedule 1[2]** provides that a person does not commit an offence under section 322 if the person has a reasonable excuse. **Schedule 1[4]** provides that a reasonable excuse includes making a complaint to a person or body acting in an official capacity or ending a retainer. **Schedule 1[1], [5], [6] and [11]** make consequential amendments.

Schedule 1[9] amends the principal Act, section 326 to make it an offence to threaten to do or cause, or do or cause, an injury or detriment to a person on account of anything lawfully done by the person as an Australian legal practitioner acting for a defendant in a criminal matter or in connection with criminal proceedings. The offence has a maximum penalty of imprisonment for 10 years. **Schedule 1[8]** provides that a person does not commit an offence under section 326 if the person has a reasonable excuse. **Schedule 1[10]** provides that a reasonable excuse includes making a complaint to a person or body acting in an official capacity or ending a retainer. **Schedule 1[7]** makes a consequential amendment.

Schedule 2 Amendment of other Acts

Schedule 2 amends the *Criminal Procedure Act 1986* and the *Evidence Act 1995* consequent on the amendment made by Schedule 1[5].



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Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Crimes Act 1900 No 40	3
Schedule 2	Amendment of other Acts	5



New South Wales

Crimes Amendment (Protection of Criminal Defence Lawyers) Bill 2022

No. , 2022

A Bill for

An Act to amend the *Crimes Act 1900* to extend offences protecting judges and persons connected with judicial proceedings from threats, intimidation and reprisals to also protect criminal defence lawyers; and to make consequential amendments to other Acts.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Crimes Amendment (Protection of Criminal Defence Lawyers) Act 2022*.

3

4

2 Commencement

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This Act commences on the date of assent to this Act.

6

Schedule 1	Amendment of Crimes Act 1900 No 40	1
[1] Section 322, heading		2
Omit the heading. Insert instead—		3
322 Threats or intimidation—judges and other persons connected with judicial proceedings		4
		5
[2] Section 322		6
Omit “A person who threatens to do or cause, or who does”.		7
Insert instead “A person who, without reasonable excuse, threatens to do or cause, or does”.		8
[3] Section 322(e)		9
Insert at the end of section 322(d)—		10
or		11
(e) intending to influence a person in the person’s conduct as an Australian legal practitioner acting—		12
(i) for a defendant in a criminal matter, or		13
(ii) in connection with criminal proceedings,		14
		15
[4] Section 322(2)		16
Insert at the end of section 322—		17
(2) In this section—		18
<i>reasonable excuse</i> includes—		19
(a) making, or threatening to make, a complaint about a person to a person or body acting in an official capacity, including the following—		20
(i) a professional body,		21
(ii) the Judicial Commission of New South Wales,		22
(iii) the NSW Legal Services Commissioner, and		23
(b) ending, or threatening to end, a retainer.		24
		25
[5] Section 324 Increased penalty if serious indictable offence involved		26
Omit “322”. Insert instead “322(1)”.		27
[6] Section 324		28
Omit “(offences concerning interference with witnesses, jurors, judicial officers and public justice officials)”.		29
		30
[7] Section 326, heading		31
Omit the heading. Insert instead—		32
326 Reprisals—judges and other persons connected with judicial proceedings		33
[8] Section 326(1)		34
Omit “A person who threatens to do or cause, or who does”.		35
Insert instead “A person who, without reasonable excuse, threatens to do or cause, or does”.		36

[9] Section 326(1)(d)	1
Insert at the end of section 326(1)(c)—	2
or	3
(d) as an Australian legal practitioner acting—	4
(i) for a defendant in a criminal matter, or	5
(ii) in connection with criminal proceedings,	6
[10] Section 326(4)	7
Insert after section 326(3)—	8
(4) In this section—	9
<i>reasonable excuse</i> includes—	10
(a) making, or threatening to make, a complaint about a person to a person	11
or body acting in an official capacity, including the following—	12
(i) a professional body,	13
(ii) the Judicial Commission of New South Wales,	14
(iii) the NSW Legal Services Commissioner, and	15
(b) ending, or threatening to end, a retainer.	16
[11] Section 428B Offences of specific intent to which Part applies	17
Omit the matter relating to section 322 from the Table, paragraph (a). Insert instead—	18
322(1)	Threats or intimidation—judges and other persons connected with judicial proceedings

Schedule 2	Amendment of other Acts	1
2.1	Criminal Procedure Act 1986 No 209	2
	Schedule 1 Indictable offences triable summarily	3
	Omit “322” from Table 1, clause 15(1). Insert instead “322(1)”.	4
2.2	Evidence Act 1995 No 25	5
	Section 129 Exclusion of evidence of reasons for judicial etc decisions	6
	Omit “322” from section 129(5)(a)(i). Insert instead “322(1)”.	7