



New South Wales

Crimes Amendment (Breaking and Entering) Bill 2023

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Crimes Act 1900* to reform and modernise the law relating to breaking and entering residential premises.

The *Crimes Act 1900*, Part 4, Division 4 deals with offences relating to housebreaking, including section 112, which creates an offence of breaking and entering, and committing a serious indictable offence in, certain residential premises.

The High Court has held in *BA v The King* [2023] HCA 14 that the composite elements of “breaks and enters” in the *Crimes Act 1900*, section 112 require a trespass, involving entry into premises of another without lawful authority.

The Bill amends Part 4, Division 4 to replace the elements of various offences involving a break and entry into premises with the requirement for entry without the consent of the occupier of the premises.

The Bill also makes consequential amendments to the *Criminal Procedure Act 1986* and the *Crimes (Sentencing Procedure) Act 1999*.

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 on the date of assent to the proposed Act.

Schedule 1 Amendment of Crimes Act 1900 No 40

Schedule 1[1] replaces the circumstances of aggravation requiring a break and entry for the offence of aggravated sexual assault under the *Crimes Act 1900 (the Act)*, section 61J with circumstances involving entry without consent, in line with the amendments made by Schedule 1[10] and [12].

Schedule 1[2] replaces the circumstances of aggravation requiring a break and entry for the offence of sexual intercourse—child between 10 and 16 under the Act, section 66C with circumstances involving entry without consent, in line with the amendments made by Schedule 1[9] and [11].

Schedule 1[3] replaces the circumstances of aggravation requiring a break and entry for the offence of aggravated sexual act—child between 10 and 16 under the Act, section 66DE with circumstances involving entry without consent, in line with the amendments made by Schedule 1[9] and [11].

Schedule 1[4] replaces the circumstances of aggravation requiring a break and entry for the offence of using a child for production of child abuse material under the Act, section 91G with circumstances involving entry without consent, in line with the amendments made by Schedule 1[9] and [11].

Schedule 1[7] repeals the Act, section 109 and substitutes the Act, section 110. Section 109 deals with the offence of breaking out of a dwelling-house after committing, or entering with intent to commit, an indictable offence. Section 110 makes it an offence to break and enter a dwelling-house or associated building and assault a person with intent to murder, or inflict grievous bodily harm on a person, in the dwelling-house or other building. The substituted provision extends the offence to entry into, or remaining in, the dwelling-house of another person without the other person's consent. The Act, section 4 defines *dwelling-house* to include a building or other structure intended for occupation as a dwelling and capable of being occupied as a dwelling, a boat or vehicle in which a person resides and certain ancillary buildings and structures. **Schedule 1[5], [6] and [13]** make consequential amendments.

Schedule 1[8] recasts the Act, section 111(1), which makes it an offence to enter a dwelling-house with intent to commit a serious indictable offence in the dwelling-house, to update language in line with other changes made by Schedule 1.

Schedule 1[10] substitutes the Act, section 112(1), which makes it an offence to break and enter, or to be in and break out of, a dwelling-house or other building and commit a serious indictable offence in the building. The substituted provision extends the offence to entry into, or remaining in, a dwelling-house, or other building, of another person without the other person's consent. **Schedule 1[9]** makes a consequential amendment.

Schedule 1[12] substitutes the Act, section 113(1), which makes it an offence to break and enter a dwelling-house or other building with intent to commit a serious indictable offence in the dwelling-house or other building. The substituted provision extends the offence to entry into a dwelling-house, or other building, of another person without the other person's consent. **Schedule 1[11] and [14]** make consequential amendments.

Schedule 1[15] makes an amendment of a savings nature.

Schedule 2 Amendment of other Acts

Schedule 2.1 makes a minor consequential amendment to the *Criminal Procedure Act 1986*.

Schedule 2.2 makes a minor consequential amendment to the *Crimes (Sentencing Procedure) Act 1999*.



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New South Wales

Crimes Amendment (Breaking and Entering) Bill 2023

No. , 2023

A Bill for

An Act to amend the *Crimes Act 1900* in relation to breaking and entering and other related offences; and for related purposes.

The Legislature of New South Wales enacts—

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1 Name of Act

2

This Act is the *Crimes Amendment (Breaking and Entering) Act 2023*.

3

2 Commencement

4

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

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Schedule 1	Amendment of Crimes Act 1900 No 40	1
[1]	Section 61J Aggravated sexual assault	2
	Omit “breaks and enters into any dwelling-house or other building” from section 61J(2)(h).	3
	Insert instead “enters or remains in a dwelling-house, or other building, of another person without the consent of the other person and”.	4 5
[2]	Section 66C Sexual intercourse—child between 10 and 16	6
	Omit “breaks and enters into any dwelling-house or other building” from section 66C(5)(i).	7
	Insert instead “enters or remains in a dwelling-house, or other building, of another person without the consent of the other person and”.	8 9
[3]	Section 66DE Aggravated sexual act—child between 10 and 16	10
	Omit “breaks and enters into any dwelling-house or other building” from section 66DE(2)(i).	11 12
	Insert instead “enters or remains in a dwelling-house, or other building, of another person without the consent of the other person and”.	13 14
[4]	Section 91G Children not to be used for production of child abuse material	15
	Omit “breaks and enters into a dwelling-house or other building” from section 91G(3A)(j).	16
	Insert instead “enters or remains in a dwelling-house, or other building, of another person without the consent of the other person and”.	17 18
[5]	Part 4, Division 4	19
	Omit the heading to the division. Insert instead—	20
	Division 4	
	Offences relating to dwelling-houses and other buildings	21 22
[6]	Section 105A Definitions	23
	Insert at the end of the section—	24
	(4) For the purposes of an offence under section 110, 112 or 113—	25
	(a) a person does not enter or remain in a dwelling-house, or other building, of another person with the consent of the other person if the consent is obtained by—	26 27 28
	(a) force, or	29
	(b) a threat, or	30
	(c) an act of deception, and	31
	(b) it is immaterial that, at the time of the alleged offence, the accused had a right of occupation of the dwelling-house or other building, so long as the accused did not ordinarily reside in the dwelling-house or other building.	32 33 34 35
[7]	Sections 109 and 110	36
	Omit the sections. Insert instead—	37
	110 Entering dwelling-house and assaulting with intent to murder etc	38
	A person is guilty of an offence if the person—	39

	(a) enters or remains in a dwelling-house, or other building, of another person without the consent of the other person, and	1 2
	(b) in the dwelling-house—	3
	(i) assaults a person with intent to murder the person, or	4
	(ii) inflicts grievous bodily harm on a person.	5
	Maximum penalty—imprisonment for 25 years.	6
[8]	Section 111 Entering dwelling-house	7
	Omit section 111(1). Insert instead—	8
	(1) A person is guilty of an offence if the person enters a dwelling-house with intent to commit a serious indictable offence in the dwelling-house.	9 10
	Maximum penalty—imprisonment for 10 years.	11
[9]	Section 112 Breaking etc into any house etc and committing serious indictable offence	12 13
	Omit the heading to the section. Insert instead—	14
	112 Entering dwelling-house etc and committing serious indictable offence	15
[10]	Section 112(1)	16
	Omit the subsection. Insert instead—	17
	(1) A person is guilty of an offence if the person—	18
	(a) enters or remains in a dwelling-house, or other building, of another person without the consent of the other person, and	19 20
	(b) commits a serious indictable offence in the dwelling-house or other building.	21 22
	Maximum penalty—imprisonment for 14 years.	23
[11]	Section 113 Breaking etc into any house etc with intent to commit serious indictable offence	24 25
	Omit the heading to the section. Insert instead—	26
	113 Entering dwelling-house etc with intent to commit serious indictable offence	27
[12]	Section 113(1)	28
	Omit the subsection. Insert instead—	29
	(1) A person is guilty of an offence if the person enters or remains in a dwelling-house, or other building, of another person—	30 31
	(a) without the consent of the other person, and	32
	(b) with intent to commit a serious indictable offence in the dwelling-house or other building.	33 34
	Maximum penalty—imprisonment for 10 years.	35
[13]	Section 428B Offences of specific intent to which Part applies	36
	Omit “Breaking, entering and assaulting with intent to murder etc” from the matter relating to section 110 in the table.	37 38
	Insert instead “Entering dwelling-house and assaulting with intent to murder etc”	39

[14] Section 428B, table	1
Omit “Breaking etc into any house etc with intent to commit serious indictable offence” from the matter relating to section 113.	2 3
Insert instead “Entering dwelling-house etc with intent to commit serious indictable offence”.	4 5
[15] Schedule 11 Savings, transitional and other provisions	6
Insert at the end of the schedule, with appropriate part and clause numbering—	7
Part Crimes Amendment (Breaking and Entering) Act 2023	8 9
Application of amendments	10
An amendment made to this Act by the <i>Crimes Amendment (Breaking and Entering) Act 2023</i> applies only in relation to an offence committed, or alleged to have been committed, on or after the commencement of the amendment.	11 12 13

Schedule 2	Amendment of other Acts	1
2.1	Criminal Procedure Act 1986 No 209	2
	Schedule 1 Indictable offences triable summarily	3
	Omit the heading to Schedule 1, Table 1, Part 2, item 8. Insert instead—	4
	8 Entering dwelling-house etc and committing serious indictable offence	5
2.2	Crimes (Sentencing Procedure) Act 1999 No 92	6
	Part 4 Sentencing procedures for imprisonment	7
	Omit “breaking etc into” wherever occurring in Part 4, Division 1A, table, items 12 and 13.	8
	Insert instead “entering etc”.	9