



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*.