



New South Wales

Crimes Amendment (Breaking and Entering Offences) Bill 2026

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* (*the Act*), in response to the decision of the High Court of Australia in *BA v The King* [2023] HCA 14, to provide that a person (an *accused person*) may be found guilty of specified offences, regardless of the accused person's legal or equitable interest in the premises the subject of the offence, if the accused person—

- (a) enters a dwelling-house of which the accused person is not an occupant, and
- (b) commits or intends to commit a personal violence offence against the accused person's current or former intimate partner.

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 gives effect to the object set out in the overview. The schedule also—

- (a) sets out the circumstances the trier of fact may have regard to in determining whether the accused person is an occupant of the dwelling-house, and
- (b) makes it clear that, if a court order or bail or parole condition prevents the accused person from residing at the dwelling-house or requires the accused person to reside at a place other than the dwelling-house, the accused person is not an occupant of the dwelling-house, and

- (c) requires the Minister to review the Act, section 115AA, as inserted by the proposed Act, and table a report on the review in each House of Parliament within 3 years after the commencement of the proposed Act.



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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly

Clerk of the Legislative Assembly



New South Wales

Crimes Amendment (Breaking and Entering Offences) Bill 2026

No. , 2026

A Bill for

An Act to amend the *Crimes Act 1900* in relation to certain breaking and entering offences involving dwelling-houses.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with/without amendment.

Legislative Council

Clerk of the Parliaments

Tabling copy

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Crimes Amendment (Breaking and Entering Offences) Act 2026*.

3

2 Commencement

4

This Act commences on a day or days to be appointed by proclamation.

5

Schedule 1 Amendment of Crimes Act 1900 No 40

[1] Sections 115AA and 115AB

Insert after section 115—

115AA Breaking and entering involving accused persons with legal or equitable interests in certain premises

- (1) A person (an *accused person*) may be found guilty of a relevant offence, regardless of the accused person's legal or equitable interest in the premises the subject of the offence, if—
 - (a) the premises the subject of the relevant offence are a dwelling-house, and
 - (b) the accused person is not an occupant of the dwelling-house when the relevant offence is alleged to have been committed, and
 - (c) the serious indictable offence the accused person committed, or intended to commit, in relation to the relevant offence is a personal violence offence, and
 - (d) the personal violence offence was committed, or intended to be committed, against the accused person's current or former intimate partner (the *victim*).
- (2) In determining whether the accused person is an occupant of the dwelling-house for subsection (1), the trier of fact may have regard to the following—
 - (a) any prior agreement between the accused person and the victim,
 - (b) whether the intimate personal relationship between the accused person and the victim has ended,
 - (c) the circumstances in which the accused person stopped residing at the dwelling-house, including whether the circumstances involved domestic abuse,
 - (d) whether the accused person is paying rent or making mortgage payments for the dwelling-house,
 - (e) the length of time since the accused person has ordinarily resided at the dwelling-house,
 - (f) whether the accused person has begun to ordinarily reside at another dwelling-house,
 - (g) whether the accused person is paying rent or making mortgage payments to support inhabitancy of another dwelling-house,
 - (h) other matters the trier of fact considers relevant.
- (3) If one or more of the following orders or conditions prevent the accused person from residing at the dwelling-house, the accused person is taken not to be an occupant of the dwelling-house for subsection (1) while the order or condition is in force—
 - (a) an apprehended violence order or another court order that provides that the accused person is prohibited from residing at the dwelling-house,
 - (b) a condition of bail or parole that prohibits the accused person from residing at the dwelling-house,
 - (c) a court order, or condition of bail or parole, that requires the accused person to reside at another location.

(4)	In this section—	1
	<i>apprehended violence order</i> has the same meaning as in the <i>Crimes (Domestic and Personal Violence) Act 2007</i> .	2
	<i>domestic abuse</i> has the same meaning as in the <i>Crimes (Domestic and Personal Violence) Act 2007</i> .	3
	<i>intimate partner</i> has the same meaning as in Part 3, Division 6A.	4
	<i>personal violence offence</i> has the same meaning as in the <i>Crimes (Domestic and Personal Violence) Act 2007</i> .	5
	<i>relevant offence</i> means an offence against any of the following provisions—	6
	(a) section 109(1), (2) or (3),	7
	(b) section 110,	8
	(c) section 112(1), (2) or (3),	9
	(d) section 113(1), (2) or (3).	10
115AB	Review of section 115AA	11
(1)	The Minister must review section 115AA to determine whether—	12
	(a) the policy objectives of the section remain valid, and	13
	(b) the terms of the section remain appropriate for achieving the objectives.	14
(2)	The review must be undertaken as soon as practicable after the period of 2 years from the commencement of the <i>Crimes Amendment (Breaking and Entering Offences) Act 2026</i> .	15
(3)	A report on the outcome of the review must be tabled in each House of Parliament within 3 years after the commencement of the <i>Crimes Amendment (Breaking and Entering Offences) Act 2026</i> .	16
(4)	This section is repealed on 1 July 2029.	17
[2]	Schedule 11 Savings, transitional and other provisions	18
	Insert at the end of the schedule, with appropriate part numbering—	19
Part	Crimes Amendment (Breaking and Entering Offences) Act 2026	20
1	Application of section 115AA	21
(1)	Section 115AA, as inserted by the <i>Crimes Amendment (Breaking and Entering Offences) Act 2026</i> , applies only in relation to offences committed after the commencement of that Act.	22
(2)	In determining whether an accused person is an occupant of a dwelling-house for section 115AA(1), the trier of fact may have regard to matters referred to in section 115AA(2) that occurred before the commencement of the <i>Crimes Amendment (Breaking and Entering Offences) Act 2026</i> .	23