



## HOUSE OF REPRESENTATIVES

# Supplementary Order Paper

Wednesday, 23 June 1999

CRIMES (HOME INVASION) AMENDMENT BILL

### *Proposed Amendments*

Hon TONY RYALL, in Committee, to move the following amendments:

*Clause 2: New section 17A:* To omit the definition of the term "dwellinghouse" in subsection (1), and substitute the following definition:

" 'Dwellinghouse' means—

"(a) A building or other structure, or part of a building or other structure, that is used by the occupant principally as a residence; or

"(b) A mobile home, caravan, or houseboat, that is used by the occupant principally as a residence:

To omit from paragraph (b) of the definition of the term "home invasion" on page 2 the word "unlawfully" where it first occurs.

To omit subsection (2), and substitute the following subsections:

"(2) For the purposes of the definition of the term 'home invasion' in subsection (1), the terms 'breaking' and 'entering' must be construed in a sense consistent with the provisions of section 240; and section 240 applies accordingly.

"(2A) Without limiting the circumstances in which a person may be regarded as being unlawfully in a dwellinghouse, if a person has entered a dwellinghouse under an express or implied licence, that licence must be regarded as having been revoked if the person commits an offence specified in section 17B or section 17C in circumstances that render the person who could revoke that licence unable to ask the other person to leave.

*New section 17B:* To insert in subsection (1), after paragraph (b), the following paragraph:

"(ba) Section 202 (1) (setting traps):

To omit paragraph (d) of subsection (1).

To insert in subsection (2), after paragraph (b), the following paragraph:

"(ba) Section 138 (sexual intercourse with severely subnormal woman or girl):

To omit paragraph (f) of subsection (2), and substitute the following paragraph:

“(f) Section 142 (anal intercourse): being an offence to which subsection (3) (b) of that section applies:

To insert in subsection (2), after paragraph (i), the following paragraph:

“(ia) Section 210 (abduction of child under 16):

To add to subsection (2), the following paragraphs:

“(k) Section 239 (demanding with intent to steal):

“(l) Section 306 (1) (a) (threatening to kill or do grievous bodily harm).

*New section 17c:* To insert in subsection (1), immediately before paragraph (a), the following paragraph:

“(aa) Section 129A (1) (a) or (b) (inducing sexual connection by coercion):

To omit paragraph (b) of subsection (1), and substitute the following paragraph:

“(b) Section 142 (anal intercourse): being an offence to which subsection (3) (a) of that section applies:

To insert in subsection (1), after paragraph (i), the following paragraph:

“(ia) Section 201 (infecting with disease):

To insert in subsection (1), after paragraph (l), the following paragraph:

“(la) Section 236 (compelling execution of documents by force):

To omit from subsection (2) the word “involves”, and substitute the word “involved”.

*Proposed new section 17ca:* To insert, after *new section 17c*, the following section:

“17CA. **Parties, attempts, and accessories**—(1) If a person is convicted of an offence specified in **section 17B** or **section 17C**, and the sentencing court is satisfied that the commission of the offence involved home invasion by another party to the offence, the person is liable to the maximum penalty specified for that offence in **section 17B** or **section 17C**.

“(2) If a person is convicted of an attempt to commit an offence specified in **section 17B** or **section 17C**, and the sentencing court is satisfied that the attempt involved home invasion, the maximum penalty for the purpose of section 311 is the maximum penalty specified in **section 17B** or **section 17C**.

“(3) If a person is convicted of being an accessory after the fact of an offence specified in **section 17B** or **section 17C**, and the sentencing court is satisfied that the commission of the specified offence involved home invasion, the maximum penalty for the purpose of section 312 is the maximum penalty specified in **section 17B** or **section 17C**.

*New section 17D:* To omit all the words after “sentencing only”.

*Proposed new clause 3:* To insert, after clause 2, the following clause:

**3. Punishment of manslaughter**—Section 177 of the principal Act is amended by adding the following subsections:

“(2) In determining the length of the sentence to be imposed on a person to whom this subsection applies, the court must regard home invasion as a factor that justifies the imposition of a longer sentence than might otherwise be appropriate.

“(3) **Subsection (2)** applies to a person if—

“(a) The person is convicted as a party to an offence of manslaughter; and

“(b) The sentencing court is satisfied that the commission of the offence involved home invasion.

“(4) For the purposes of **subsection (3) (b)**, **sections 17A and 17CA** apply as if manslaughter were an offence specified in **section 17c**.”

*Schedule:* To omit from the amendment to section 200 of the Crimes Act 1961 the words “this section”, and substitute the expression “subsection (1)”.

To omit the item relating to section 243 of the principal Act (the last item in the Schedule).

To insert, in their appropriate numerical order, the following items:

Provision	Amendment
Section 129A	By adding the following subsection: “(3) This section is subject to <b>section 17c (1)</b> (which sets out a higher maximum penalty for an offence against this section (except <b>subsection (1) (c)</b> involving home invasion).”
Section 138	By adding the following subsection: “(3) This section is subject to <b>section 17b (2)</b> (which sets out a higher maximum penalty for an offence against this section involving home invasion).”
Section 201	By adding the following subsection: “(2) This section is subject to <b>section 17c (1)</b> (which sets out a higher maximum penalty for an offence against this section involving home invasion).”
Section 202	By adding the following subsection: “(3) This section is subject to <b>section 17b (1)</b> (which sets out a higher maximum penalty for an offence against <b>subsection (1)</b> involving home invasion).”
Section 210	By adding the following subsection: “(4) This section is subject to <b>section 17b (2)</b> (which sets out a higher maximum penalty for an offence against this section involving home invasion).”
Section 236	By adding the following subsection: “(2) This section is subject to <b>section 17c (1)</b> (which sets out a higher maximum penalty for an offence against this section involving home invasion).”
Section 239	By adding the following subsection: “(2) This section is subject to <b>section 17b (2)</b> (which sets out a higher maximum penalty for an offence against this section involving home invasion).”
Section 306	By adding the following subsection: “(2) This section is subject to <b>section 17b (2)</b> (which sets out a higher maximum penalty for an offence against <b>subsection 1 (a)</b> involving home invasion).”

## EXPLANATORY NOTE

The amendments set out in this Supplementary Order Paper and the background to them are discussed in the Justice and Law Reform Select Committee's report on the Bill and the amendments are substantially in the same form as amendments prepared for consideration by that committee.

The amendments proposed are as follows:

- The term "dwellinghouse" is redefined to exclude household land and outbuildings, and is considerably shortened.
- The meaning of the terms "breaking" and "entering" is clarified.
- A provision is included to ensure that a person's licence to be present in a dwellinghouse is revoked if the person commits a specified offence in circumstances that render the occupant unable to ask the person to leave.
- A number of specified offences are added to the list of offences that are subject to a two-tier penalty regime.
- The position of parties to offences, attempts to commit offences, and accessories is clarified to ensure that the higher maximum penalties in the two-tier penalty regime apply for the purposes of the Act.
- The application of the penalty regime to the offence of manslaughter is clarified. The amendment is intended to ensure that each person convicted as a party to an offence of manslaughter is treated in the same way as the party to the offence who committed the act of home invasion. The Court must regard home invasion as an aggravating factor.