

# **CRIMES (HOME INVASION) AMENDMENT ACT 1994 No. 84**

NEW SOUTH WALES



## **TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Crimes Act 1900 No. 40

SCHEDULE 1—AMENDMENTS

---

**CRIMES (HOME INVASION) AMENDMENT ACT 1994 No. 84**

NEW SOUTH WALES



**Act No. 84, 1994**

An Act to amend the Crimes Act 1900 in relation to housebreaking, robbery and associated crimes. [Assented to 12 December 1994]

*Crimes (Home Invasion) Amendment Act 1994 No. 84*

---

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Crimes (Home Invasion) Amendment Act 1994.

**Commencement**

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

**Amendment of Crimes Act 1900 No. 40**

3. The Crimes Act 1900 is amended as set out in Schedule 1.

---

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 1 (**Short title and contents of Act**):

From the matter relating to Chapter 1 of Part 4, omit “106–115”, insert instead “105A–115A”.

(2) Section 4 (**Definitions**):

(a) In section 4 (1), insert in alphabetical order:

“**Armed**”, in relation to a weapon, or instrument, or an offensive weapon, or instrument, that is a dangerous weapon, includes bearing or having the immediate physical possession of the weapon, or instrument.

“**Dangerous weapon**” means:

- (a) a firearm (within the meaning of the Firearms Act 1989); or
- (b) a prohibited weapon or prohibited article (within the meaning of the Prohibited Weapons Act 1989); or
- (c) a spear gun.

SCHEDULE 1—AMENDMENTS—*continued*

- (b) In the definitions of “Offensive weapon” and “Offensive weapon, or instrument” in section 4 (1), before “include”, insert “, include a dangerous weapon and also”.
- (c) In the definitions of “Weapon” and “Weapon, or instrument” in section 4 (1), omit “includes”, insert instead “include a dangerous weapon and also include”.
- (3) Section 95 (**Same in circumstances of aggravation**):
- (a) Omit “and immediately before, or at the time of, or immediately after such robbery, assault, or larceny from the person, strikes, or uses any other corporal violence to any person”, insert instead “in circumstances of aggravation”.
- (b) At the end of section 95, insert:
- (2) In this section, “**circumstances of aggravation**” means circumstances that (immediately before, or at the time of, or immediately after the robbery, assault or larceny) involve any one or more of the following:
- (a) the alleged offender uses corporal violence on any person;
- (b) the alleged offender maliciously inflicts actual bodily harm on any person;
- (c) the alleged offender deprives any person of his or her liberty.
- (4) Section 96 (**Same (robbery) with wounding**):
- After “wounds”, insert “or inflicts grievous bodily harm on”.
- (5) Section 97 (**Robbery etc. or stopping a mail, being armed or in company**):
- At the end of section 97, insert:
- (2) **Aggravated offence.** A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) when armed with a dangerous weapon. A person convicted of an offence under this subsection is liable to penal servitude for 25 years.

*SCHEDULE 1—AMENDMENTS—continued*

(3) **Alternative verdict.** If on the trial of a person for an offence under subsection (2) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under subsection (1), it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly.

(6) Section 98 (**Robbery with arms etc. and wounding**):

Omit “so armed”.

(7) Section 105A:

Before section 106, insert:

**Definitions**

105A. (1) In sections 106–115A:

“**circumstances of aggravation**” means circumstances involving any one or more of the following:

- (a) the alleged offender is armed with an offensive weapon, or instrument;
- (b) the alleged offender is in the company of another person or persons;
- (c) the alleged offender uses corporal violence on any person;
- (d) the alleged offender maliciously inflicts actual bodily harm on any person;
- (e) the alleged offender deprives any person of his or her liberty;

“**circumstances of special aggravation**” means circumstances involving either or both of the following:

- (a) the alleged offender wounds or maliciously inflicts grievous bodily harm on any person;
- (b) the alleged offender is armed with a dangerous weapon.

SCHEDULE 1—AMENDMENTS—*continued*

(2) The matters referred to in:

- (a) paragraph (c), (d) or (e) of the definition of “circumstances of aggravation”; or
- (b) paragraph (a) of the definition of ‘circumstances of special aggravation’,

can occur immediately before, or at the time of, or immediately after any of the elements of the offence concerned occurred.

(3) The definitions in subsection (1) are not mutually exclusive.

(8) Section 106 (**Breaking and entering place of Divine worship and committing felony**):

Omit the last sentence, insert instead:

(2) **Aggravated offence.** A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 20 years.

(3) **Specially aggravated offence.** A person is guilty of an offence under this subsection if the person commits an offence under subsection (2) in circumstances of special aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 25 years.

(9) Section 107 (**The like with intent to commit felony**):

Omit the last sentence, insert instead:

(2) **Aggravated offence.** A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 14 years.

(3) **Specially aggravated offence.** A person is guilty of an offence under this subsection if the person commits an offence under subsection (2) in circumstances of special

SCHEDULE 1—AMENDMENTS—*continued*

aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 20 years.

- (10) Section 109 (**Entering with intent, or stealing etc. in dwelling-house and breaking out**):

Omit the last sentence, insert instead:

(2) **Aggravated offence.** A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 20 years.

(3) **Specially aggravated offence.** A person is guilty of an offence under this subsection if the person commits an offence under subsection (2) in circumstances of special aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 25 years.

- (11) Section 111 (**Entering dwelling-house**):

(a) Omit “in the night”.

(b) Omit the last sentence, insert instead:

(2) **Aggravated offence.** A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 14 years.

(3) **Specially aggravated offence.** A person is guilty of an offence under this subsection if the person commits an offence under subsection (2) in circumstances of special aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 20 years.

- (12) Section 112 (**Breaking etc. into any house etc. and committing felony**):

Omit the last sentence, insert instead:

(2) **Aggravated offence.** A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of

SCHEDULE 1—AMENDMENTS—*continued*

aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 20 years.

(3) **Specially aggravated offence.** A person is guilty of an offence under this subsection if the person commits an offence under subsection (2) in circumstances of special aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 25 years.

(13) Section 113 (**Breaking etc. into any house etc. with intent to commit felony**):

Omit the last sentence, insert instead:

(2) **Aggravated offence.** A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 14 years.

(3) **Specially aggravated offence.** A person is guilty of an offence under this subsection if the person commits an offence under subsection (2) in circumstances of special aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 20 years.

(14) Section 115A:

After section 115, insert:

**Alternative verdicts**

115A. (1) Aggravated offence reduced to basic offence. If on the trial of a person for an offence under section 106 (2), 107 (2), 109 (2), 111 (2), 112 (2) or 113 (2) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 106 (1), 107 (1), 109 (1), 111 (1), 112 (1) or 113 (1) as appropriate, it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly.



SCHEDULE 1—AMENDMENTS—*continued*

(2) **Specially aggravated offence reduced to aggravated offence.** If on the trial of a person for an offence under section 106 (3), 107 (3), 109 (3), 111 (3), 112 (3) or 113 (3) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 106 (2), 107 (2), 109 (2), 111 (2), 112 (2) or 113 (2) as appropriate, it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly.

(3) **Specially aggravated offence reduced to basic offence.** If on the trial of a person for an offence under section 106 (3), 107 (3), 109 (3), 111 (3), 112 (3) or 113 (3) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 106 (1), 107 (1), 109 (1), 111 (1), 112 (1) or 113 (1) as appropriate, it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly. This subsection does not apply to an offence if the jury proceeds under subsection (2) in relation to it.

(15) Section 476 (**Indictable offences punishable summarily with consent of accused**):

(a) Section 476 (6) (ea):

Omit “109”, insert instead “109 (1)”.

(b) Section 476 (6) (f):

Omit “112”, insert instead “112 (1)”.

(c) Section 476 (6) (g):

Omit “111 or 113”, insert instead “111 (1) or 113 (1)”.

SCHEDULE 1—AMENDMENTS—*continued*(16) Eleventh Schedule (**Savings and Transitional Provisions**):

After Part 5 of the Eleventh Schedule, insert:

**Part 6—Crimes (Home Invasion) Amendment Act  
1994**

**Section 476 (indictable offences punishable summarily  
with consent of accused)**

14. A reference in section 476 (6) (ea), (f) or (g) to an offence mentioned in section 109 (1), 111 (1), 112 (1) or 113 (1) of the kind described in the paragraph concerned is taken to include a reference to an offence mentioned in section 109, 111, 112 or 113 (as in force before the commencement of the amendment made to that paragraph by the Crimes (Home Invasion) Amendment Act 1994) of that kind and committed before that commencement.

---

*[Minister's second reading speech made in—  
Legislative Council on 16 November 1994  
Legislative Assembly on 23 November 1994]*