

## **CRIMES (HOME INVASION) AMENDMENT BILL**

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### EXPLANATORY NOTE

#### *General Policy Statement*

#### **Introduction**

This Bill, which amends the Crimes Act 1961, aims to provide greater protection for people in their homes.

People expect their homes to be a sanctuary, a place where they feel safe. There have, however, been several recent incidents where intruders have broken into occupied homes in order to commit an offence, such as robbery, and in the process have committed acts of serious violence against the occupants. The term “home invasion” is now being used to describe this sort of offending.

As a result of the recent incidents there is heightened awareness that people may sometimes be vulnerable to violence in their homes, which, with the improved security of commercial premises, may be perceived as “easy” targets. There is therefore growing concern that the law may not provide a sufficient deterrent to such offending and, where it does occur, that the offenders are not dealt with severely enough.

The Bill amends the penalty structure of certain offences in the Crimes Act 1961 that are likely to occur in the home invasion context. This will send a strong signal that home invasion will not be tolerated and, if it does occur, it will attract long prison sentences.

#### **Two-tier penalty regime to apply to specified offences**

The Bill provides that certain offences are to have a two tier penalty regime. The existing penalty will continue to apply in cases that do not involve home invasion and a higher maximum penalty will apply in those that do. The main features of the two tier regime are described in the following paragraphs.

#### *Offending must involve violence or harm to a person*

The higher penalty will apply to offences that involve violence or harm to a person and for which the maximum penalty is a finite term of imprisonment. The offences include those involving serious violence to the person, sexual offences, and other specified offences like robbery and aggravated burglary.

#### *Unlawful entry of or presence in an occupied private home*

The higher penalty will apply where there is an unlawful entry of or presence in an occupied private home, as follows:

- It will apply to unlawful entry to “private homes”. This covers not only ordinary houses but also caravans, mobile homes and other structures in which people actually live:
- It will apply only if the dwelling is “occupied”, that is, there was someone else physically and lawfully present in the house at the time of the offending:
- It will apply regardless of whether the offender knew that the dwelling was occupied:
- It will apply both where there is an unlawful entry of the dwelling, such as a forced entry, and where the initial entry is lawful, but then becomes unlawful, for instance, if the occupant initially permits the person to enter but then asks him or her to leave.

*Increase in penalty varies according to existing penalty level*

The increased penalty varies according to the existing penalty level of the particular offence rather than being an increase of a fixed amount that applies to all offences. There are to be increases of 3 and 5 years that apply as follows:

- For offences that currently have maximum penalties of 5, 7, or 10 years, an additional 3 years is added to the maximum, increasing it to 8, 10, and 13 years respectively:
- For offences that currently have maximum penalties of 14 or 20 years, an additional 5 years is added to the maximum, increasing it to 19 and 25 years respectively.

The tables set out in the succeeding pages list the offences concerned, their existing maximum penalties, and the new penalties.

*Sentencing only is affected*

The issue of home invasion will become relevant at the time of sentencing when the court will have to be satisfied that the case is one to which the higher penalty applies. Where the higher penalty does apply the court will decide, in accordance with the usual sentencing principles and criteria, what length of sentence to impose in the particular case.

*Effect on offences for which life imprisonment can be imposed*

A different approach is required to deal with the offences of manslaughter and murder for which the penalty is life imprisonment.

The offence of manslaughter carries a discretionary life sentence but generally results in a finite sentence. To ensure that the court takes home invasion into account, a sentencing guideline is required that directs the court to regard it as an aggravating factor when determining the length of the sentence to be imposed. A longer sentence should therefore be imposed for offences involving home invasion than for those that do not.

The offence of murder carries a mandatory life sentence. Under the amendment contained in the companion measure, the Criminal Justice Amendment Bill (No. 6), the threshold for imposing longer non-parole periods is to be lowered. This will allow the courts to impose longer non-parole periods in a wider range of cases than at present, including, but not limited to, home invasion murder.

*Clause by Clause Analysis*

*Clause 1* relates to the Short Title and commencement.

*Clause 2* inserts into the principal Act new sections 17A to 17D.

*Section 17A* defines certain terms used in the new sections. Attention is drawn to the following:

- “Dwellinghouse” is a term that appears in other parts of the principal Act but is not defined elsewhere in the Act. In the home invasion context, the term is intended to cover only “private” dwellings and for that reason has been defined with some express exclusions, in particular the exclusion of hotels which would otherwise probably be caught by the term according to existing case law:
- “Home invasion” is intended to cover the unlawful entry or presence in an occupied private home. The definition uses the wording from the burglary and entering with intent offences and the terms used have the same meaning as they have in sections 240 to 244 of the principal Act:
- “Occupied” is defined to mean the home must have been occupied at the time of the offending, which means that someone must be present at some point.  
*Section 17B* increases by 3 years the penalties for certain offences that would otherwise carry maximum penalties of 5, 7, or 10 years imprisonment.  
*Section 17c* increases by 5 years the penalties for certain offences that would otherwise carry maximum penalties of 14 or 20 years imprisonment.

*Tabular Summary of New Maximum Penalties*

1. *Section 17B* offences (3-year increase):

Offence Provision	Description of Offence	Usual Maximum (Years)	Home Invasion Maximum (Years)
Section 189 (2)	injuring with intent to injure	5	8
Section 197	disabling	5	8
Section 202c	assault with a weapon	5	8
Section 243	being armed with intent to break or enter	5	8
Section 134	sexual intercourse or indecency with girl between 12 and 16	7	10
Section 135	indecent assault on woman or girl over 16 years	7	10
Section 139	indecent act between a woman and girl	7	10
Section 140A	indecency with boy between 12 and 16	7	10
Section 141	indecent assault on man or boy	7	10
Section 142 (1) and (3) (b)	anal intercourse	7	10
Section 188 (2)	wounding with intent to injure	7	10
Section 191 (2)	aggravated injuring	7	10
Section 198 (2)	discharging firearm or doing dangerous act with intent	7	10
Section 237	assault with intent to rob	7	10

Offence Provision	Description of Offence	Usual Maximum (Years)	Home Invasion Maximum (Years)
Section 129	attempt to commit sexual violation or assault with intent	10	13
Section 132 (2)	attempt to have sexual intercourse with girl under 12	10	13
Section 133	indecenty with girl under 12 years old	10	13
Section 140	indecenty with boy under 12	10	13
Section 189 (1)	injuring with intent to cause grievous bodily harm	10	13
Section 198B	commission of crime with firearm	10	13
Section 234	robbery	10	13

2. *Section 17c offences (5-year increase):*

Offence Provision	Description of Offence	Usual Maximum (Years)	Home Invasion Maximum (Years)
Section 138 (1)	sexual intercourse with girl under 12	14	19
Section 142 (1) and (3) (a)	anal intercourse	14	19
Section 142A	compelling an indecent act with an animal	14	19
Section 173	attempt to murder	14	19
Section 188 (1)	wounding with intent to cause grievous bodily harm	14	19
Section 191 (1)	aggravated wounding	14	19
Section 198 (1)	discharging firearm or doing dangerous act with intent	14	19
Section 199	acid throwing	14	19
Section 200 (1)	poisoning with intent	14	19
Section 208	abduction of a woman or girl	14	19
Section 209	kidnapping	14	19
Section 235	aggravated robbery	14	19
Section 240A	aggravated burglary	14	19
Section 128	sexual violation	20	25

*Section 17D* is added to clarify that the home invasion provisions apply in relation to sentencing only and do not affect a court's jurisdiction to hear and determine matters relating to a charge at any earlier stage in the proceedings.

*Clause 3* amends section 177 of the principal Act, which relates to the punishment of manslaughter. A new subsection is added to require the courts to take home invasion into account in determining the length of any finite sentence imposed. It is therefore an aggravating factor.

*Clause 4* consequentially amends the principal Act by inserting, in the relevant offence provisions, cross references to the home invasion penalties. The actual amendments are set out in the *Schedule*.

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Hon Tony Ryall

## CRIMES (HOME INVASION) AMENDMENT

### ANALYSIS

Title	17D. Maximum penalties for offences involving home invasion do not affect jurisdiction of trial court
1. Short Title and commencement	3. Punishment of manslaughter
2. New heading and sections inserted	4. Consequential amendments to principal Act
<i>Penalties for Certain Offences Involving Home Invasion</i>	
17A. Interpretation	
17B. Maximum terms of imprisonment for offences involving home invasion: offences otherwise carrying maximum term of 5, 7, or 10 years imprisonment	
17C. Maximum terms of imprisonment for offences involving home invasion: offences otherwise carrying maximum term of 14 or 20 years imprisonment	

### SCHEDULE

Consequential Amendments to Principal Act

### A BILL INTITULED

#### **An Act to amend the Crimes Act 1961 to increase penalties for certain offences involving home invasion**

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Crimes (Home Invasion) Amendment Act 1999, and is part of the Crimes Act 1961\* (“the principal Act”).

(2) This Act comes into force on the day after the date on which it receives the Royal assent.

\*R.S. Vol. 1, p. 635

Amendments: 1979, Nos. 5, 127; 1980, Nos. 63, 85; 1982, Nos. 46, 157; 1985, Nos. 82, 121, 160, 171; 1986, Nos. 4, 33, 71, 75, 82; 1987, Nos. 1, 167; 1988, No. 114; 1989, Nos. 22, 103; 1991, Nos. 63, 106; 1993, Nos. 33, 46, 62; 1994, No. 27; 1995, Nos. 49, 68, 88; 1997, Nos. 88, 93, 99; 1998, Nos. 35, 79

**2. New heading and sections inserted**—The principal Act is amended by inserting, after section 17, the following heading and sections:

*“Penalties for Certain Offences Involving Home Invasion*

- “17A. Interpretation**—(1) In this section and in **sections 17B and 17C**, unless the context otherwise requires,—
- “ ‘Dwellinghouse’—
- “ (a) Means—
- “ (i) A permanent building or structure, if the whole or any part of it is used by the owner or occupier as a residence (including a residence that is not in constant use); or
- “ (ii) A temporary building, erection, or structure, including a tent, that is fixed or attached to the soil and used by the owner or occupier as a residence; or
- “ (iii) A mobile home, caravan, or houseboat used by the owner or occupier as a residence; or
- “ (iv) An enclosed yard or grounds, or an outbuilding, garage, shed, or other building connected to or used in connection with any building or structure referred to in **subparagraph (i)**; but
- “ (b) Does not include—
- “ (i) A building or structure, or part of a building or structure, that is used solely for commercial purposes; or
- “ (ii) Part of any hotel or motel that is used for temporary or transient accommodation; or
- “ (iii) A hospital or similar institution; or
- “ (iv) Land that is appurtenant to the dwellinghouse (other than land referred to in **paragraph (a) (iv)**):
- “ ‘Home invasion’, when used in the expression ‘the offence involved home invasion’ or in any other provision, means that the person who committed the offence did so—
- “ (a) While breaking and entering, or otherwise unlawfully entering, an occupied dwellinghouse; or

“(b) While unlawfully in an occupied dwellinghouse, after having broken and entered, or otherwise unlawfully entered, the dwellinghouse; or

5 “(c) While breaking out of an occupied dwellinghouse; or

“(d) While otherwise unlawfully in an occupied dwellinghouse:

10 “‘Occupied’, in relation to a dwellinghouse in which a home invasion occurred, means that a person (other than the person convicted of the offence concerned or any co-offender) was lawfully present in the dwellinghouse for all or part of the time that the offender was in the dwellinghouse.

15 “(2) In the definition of the term ‘home invasion’ in **subsection (1)**, terms used in any of **paragraphs (a) to (d)** of that definition have the same meaning as they have in sections 240 to 244 (whether or not defined for the purposes of any of those sections).

20 “(3) **Sections 17B and 17C** do not apply to an offence committed by an offender against a co-offender in circumstances described in any of **paragraphs (a) to (d)** of the definition of the term ‘home invasion’ in **subsection (1)**.

25 “**17B. Maximum terms of imprisonment for offences involving home invasion: offences otherwise carrying maximum term of 5, 7, or 10 years imprisonment**—(1) If a person is convicted of an offence against any of the following provisions of this Act and the sentencing court is satisfied that the offence involved home invasion, the person is liable to imprisonment for a term not exceeding 8 years:

30 “(a) Section 189 (2) (injuring with intent to injure):

“(b) Section 197 (disabling):

“(c) Section 202C (assault with a weapon):

“(d) Section 243 (being armed with intent to break or enter).

35 “(2) If a person is convicted of an offence against any of the following provisions of this Act and the sentencing court is satisfied that the offence involved home invasion, the person is liable to imprisonment for a term not exceeding 10 years:

“(a) Section 134 (sexual intercourse or indecency with girl between 12 and 16):

40 “(b) Section 135 (indecent assault on woman or girl over 16 years):

“(c) Section 139 (indecent act between a woman and girl):

“(d) Section 140A (indecency with boy between 12 and 16):

“(e) Section 141 (indecent assault on man or boy):



- “(f) Section 142 (1) and (3) (b) (anal intercourse):
- “(g) Section 188 (2) (wounding with intent to injure):
- “(h) Section 191 (2) (aggravated injuring):
- “(i) Section 198 (2) (discharging firearm or doing dangerous act with intent): 5
- “(j) Section 237 (assault with intent to rob).
- “(3) If a person is convicted of an offence against any of the following provisions of this Act and the sentencing court is satisfied that the offence involved home invasion, the person is liable to imprisonment for a term not exceeding 13 years: 10
- “(a) Section 129 (attempt to commit sexual violation or assault with intent):
- “(b) Section 132 (2) (attempt to have sexual intercourse with girl under 12):
- “(c) Section 133 (indecent with girl under 12 years old): 15
- “(d) Section 140 (indecent with boy under 12):
- “(e) Section 189 (1) (injuring with intent to cause grievous bodily harm):
- “(f) Section 198B (commission of crime with firearm):
- “(g) Section 234 (robbery). 20
- “17C. Maximum terms of imprisonment for offences involving home invasion: offences otherwise carrying maximum term of 14 or 20 years imprisonment—**(1) If a person is convicted of an offence against any of the following provisions of this Act and the sentencing court is satisfied that the offence involved home invasion, the person is liable to imprisonment for a term not exceeding 19 years: 25
- “(a) Section 132 (1) (sexual intercourse with girl under 12):
- “(b) Section 142 (1) and (3) (a) (anal intercourse):
- “(c) Section 142A (compelling an indecent act with an animal): 30
- “(d) Section 173 (attempt to murder):
- “(e) Section 188 (1) (wounding with intent to cause grievous bodily harm):
- “(f) Section 191 (1) (aggravated wounding): 35
- “(g) Section 198 (1) (discharging firearm or doing dangerous act with intent):
- “(h) Section 199 (acid throwing):
- “(i) Section 200 (1) (poisoning with intent):
- “(j) Section 208 (abduction of a woman or girl): 40
- “(k) Section 209 (kidnapping):
- “(l) Section 235 (aggravated robbery):
- “(m) Section 240A (aggravated burglary).

“(2) If a person is convicted of an offence against section 128 (sexual violation) and the sentencing court is satisfied that the offence involves home invasion, the person is liable to imprisonment for a term not exceeding 25 years.

5       “17D. **Maximum penalties for offences involving home invasion do not affect jurisdiction of trial court**—The provisions of sections 17B and 17C apply in relation to sentencing only and do not affect the jurisdiction of a court to make any pre-sentence order or determination relating to a charge for an  
10 offence specified in either of those sections.”

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

“(2) If—

“(a) A person is convicted of manslaughter; and

15       “(b) The sentencing court proposes to impose a determinate sentence of imprisonment; and

      “(c) The sentencing court is satisfied that the offence involved home invasion (as defined in section 17A),—  
20 the court, in determining the length of the sentence to be imposed, must regard the home invasion as a factor that justifies the imposition of a longer sentence than might otherwise be appropriate.”

**4. Consequential amendments to principal Act**—The principal Act is consequentially amended in the manner set out  
25 in the **Schedule**.

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## Section 4

## SCHEDULE

## CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT

Provision	Amendment
Section 128B	By adding the following subsection: “(3) This section is subject to <b>section 17c (2)</b> (which sets out a higher maximum penalty for an offence against this section involving home invasion).”
Section 129	By adding the following subsection: “(2) This section is subject to <b>section 17b (3)</b> (which sets out a higher maximum penalty for an offence against this section involving home invasion).”
Section 132	By adding the following subsection: “(5) This section is subject to <b>sections 17b (3) and 17c (1)</b> (which set out higher maximum penalties for offences against this section involving home invasion).”
Section 133	By adding the following subsection: “(4) This section is subject to <b>section 17b (3)</b> (which sets out a higher maximum penalty for an offence against this section involving home invasion).”
Section 134	By adding the following subsection: “(8) 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 135	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 139	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 140	By adding the following subsection: “(4) This section is subject to <b>section 17b (3)</b> (which sets out a higher maximum penalty for an offence against this section involving home invasion).”
Section 140A	By adding the following subsection: “(7) 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).”

## SCHEDULE—continued

## CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT—continued

Provision	Amendment
Section 141	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 142	By adding the following subsection: “(11) This section is subject to <b>sections 17b (2) and 17c (1)</b> (which set out higher maximum penalties for offences against this section involving home invasion).”
Section 142A	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 173	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 188	By adding the following subsection: “(3) This section is subject to <b>sections 17b (2) and 17c (1)</b> (which set out higher maximum penalties for offences against this section involving home invasion).”
Section 189	By adding the following subsection: “(3) This section is subject to <b>section 17b (1) and (3)</b> (which provisions set out higher maximum penalties for offences against this section involving home invasion).”
Section 191	By adding the following subsection: “(3) This section is subject to <b>sections 17b (2) and 17c (1)</b> (which set out higher maximum penalties for offences against this section involving home invasion).”
Section 197	By adding the following subsection: “(2) This section is subject to <b>section 17b (1)</b> (which sets out a higher maximum penalty for an offence against this section involving home invasion).”
Section 198	By adding the following subsection: “(3) This section is subject to <b>sections 17b (2) and 17c (1)</b> (which set out higher maximum penalties for offences against this section involving home invasion).”

SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision	Amendment
Section 198B	By adding the following subsection: “(2) This section is subject to <b>section 17B (3)</b> (which sets out a higher maximum penalty for an offence against this section involving home invasion).”
Section 199	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 200	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 involving home invasion).”
Section 202C	By adding the following subsection: “(2) This section is subject to <b>section 17B (1)</b> (which sets out a higher maximum penalty for an offence against this section involving home invasion).”
Section 208	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 209	By adding the following subsection: “(4) 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 234	By adding the following subsection: “(3) This section is subject to <b>section 17B (3)</b> (which sets out a higher maximum penalty for an offence against this section involving home invasion).”
Section 235	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 involving home invasion).”
Section 237	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).”

SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision	Amendment
Section 240A	By adding the following subsection: “(2) This section is subject to <b>section 17c</b> (1) (which sets out a higher maximum penalty for an offence against this section involving home invasion).”
Section 243	By adding the following subsection: “(2) This section is subject to <b>section 17b</b> (1) (which sets out a higher maximum penalty for an offence against this section involving home invasion).”