

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

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AS REPORTED FROM THE JUSTICE AND LAW REFORM  
COMMITTEE

### **COMMENTARY**

#### **Majority view not reached**

The Justice and Law Reform Committee has examined the Crimes (Home Invasion) Amendment Bill and reports that it has been unable to reach a majority decision whether to recommend that the bill proceed. The committee was split between two diametrically opposed views on this bill. The Government members of the committee, together with the member for Mauri Pacific and the member for ACT, believe that the bill should proceed so that crime that occurs in the sanctuary of the home will be dealt with more harshly by the courts. The Labour, Alliance and New Zealand First members of the committee believe that the bill should not proceed because it does not effectively achieve its intention of protecting the sanctuary of the home.

The split in the committee is reflected in the commentary which sets out our discussion on the issues surrounding the bill and outlines proposed amendments that may be adopted should the House decide that the bill proceed. Clause 2, clause 4 and the Schedule of the bill are shown as recommended to be struck out because there was not a majority of the committee in favour of them.

#### **Conduct of the examination**

The Crimes (Home Invasion) Amendment Bill (the bill) was referred to the Justice and Law Reform Committee on 2 March 1999. The closing date for submissions on the bill was 9 April 1999.

This bill was introduced as a companion measure to the Criminal Justice Amendment Bill (No. 6). As a result, many submissions received related to both bills. We received and considered 32 submissions from interested groups and individuals. We heard oral evidence on the bills together, hearing 17 submissions. Hearing evidence took four hours and 45 minutes. We also considered these bills together, and this consideration took seven hours and 24 minutes. Advice was received from the Ministry of Justice.

## **Purpose of the bill and its companion measure**

The term “home invasion” has recently been adopted to describe offending that involves breaking into occupied homes. Public concern has been sparked by several recent home invasion incidents. In the course of these incidents, acts of serious violence, including murder, have been committed against the occupants of those homes. This has led to a sense of vulnerability in New Zealand communities, and concern that the home is now not the safe and secure sanctuary that it once was.

There is public concern that penalties for offences involving home invasion are not severe enough and should be increased. The bill and its companion measure, the Criminal Justice Amendment Bill (No. 6), seek to impose more severe penalties on those who commit offences in the home. The Crimes (Home Invasion) Amendment Bill does this by increasing the maximum penalties for offences occurring in a home invasion situation. The Criminal Justice Amendment Bill (No. 6) changes the threshold for imposing non-parole periods under section 80 of the Criminal Justice Act 1985.

The Crimes (Home Invasion) Amendment Bill does not create a discrete offence of “home invasion”. It amends the Crimes Act 1961 to provide that certain offences are to have a two-tier penalty structure, under which a higher maximum penalty will apply in those cases that involve home invasion. The amended offences are those considered likely to occur in the context of a home invasion. If a conviction is entered against an offender for one of the specified home invasion offences, and if the sentencing court “is satisfied” under new sections 17B and 17C, as inserted by clause 2, that the offence did in fact involve home invasion, then the offender will be liable to a higher maximum penalty than if the offence had not involved home invasion.

### **Application of the penalty regime**

The two-tier penalty regime applies only where an offender is convicted of a specified offence and the offending involved unlawful entry of, or presence in, a dwellinghouse. The bill covers offences that involve a comparatively serious degree of violence or harm to a person, and for which the maximum penalty is a finite term of imprisonment. The offences are listed in new sections 17B and 17C.

The offence of manslaughter already carries a maximum penalty of life imprisonment. In practice, however, most offenders receive a finite sentence. Clause 3 of the present bill amends section 177 of the principal Act to provide that home invasion is to be considered by the court to be an aggravating factor, justifying a longer sentence than might otherwise be appropriate.

The Crimes (Home Invasion) Amendment Bill does not cover the offence of murder, which carries a mandatory sentence of life imprisonment. The Criminal Justice Act currently allows a court to impose a minimum non-parole period that is longer than the statutory minimum period on the three most serious categories of offenders, including those convicted of murder. The non-parole period may be imposed only if the circumstances of the offence are “so exceptional” as to warrant a longer than usual minimum period. The Criminal Justice Amendment Bill (No. 6) lowers this threshold, allowing non-parole periods to be imposed for a wider range of offending within these three categories than at present.

### **Effect of the two-tier penalty regime on specific offences**

Where a specified offence is committed as part of a home invasion, a higher maximum penalty will apply. Under new section 17B, offences that currently

carry maximum penalties of five, seven or ten years will have an additional three years added to the maximum. Under new section 17C, offences that currently carry maximum penalties of 14 or 20 years will have an additional five years added to the maximum.

### **Defining home invasion**

The definition of “home invasion” in new section 17A (1), as inserted by clause 2, is intended to cover all situations where an offender commits an offence in the process of entering, while inside, and while leaving, places where people live. In order to define “home invasion”, therefore, the bill must also define places where people live. In the bill as introduced, a home invasion must occur in a “dwellinghouse”. The two-tier penalty regime applies to any home where a specified offence occurs, regardless of whether that offence is committed against the occupier of the home or against a visitor.

In the bill as introduced, the definition of “dwellinghouse” is contained in new section 17A (1), as inserted by clause 2. It is intended to encompass the variety of places in which people can live, including caravans, mobile homes and other structures. It focuses on the use to which a building is put, and is therefore not intended to include buildings or parts of buildings that have some other primary purpose, such as commercial buildings or hospitals. New section 17A (1)(a) defines what is included in the definition of “dwellinghouse”. New section 17A (1)(b) excludes certain buildings or structures, or parts of them, from the definition.

## **Examination of the policy of the bill**

### **Support for philosophy behind the bill**

The bill is based on the philosophy that the right of a person to be secure within the home is deserving of special attention under the law. The bill aims to provide that protection by setting higher maximum penalties for violent crimes that occur when an offender unlawfully enters or is in a home. Some of us believe that this is a sound philosophy, and that the bill will provide real protection for people in their homes.

The primary objective of the bill is to preserve the home as a sanctuary, a place where people feel safe. The bill therefore aims to provide greater protection from offending in the home by setting higher maximum penalties for violent crimes that occur when an offender unlawfully enters or is in a home. This responds to public concern that the penalties for offences involving home invasion are not severe enough.

The bill (and its companion measure, the Criminal Justice Amendment Bill (No. 6)) comprises one of a number of initiatives with which the Government is targeting crime. The other measures include longer-term strategies directed at preventing entry to the criminal justice system.

The bill does not intend to imply that offending which does not involve home invasion is now to be regarded, or treated, as less serious than before. Rather its objective is to send a strong signal to offenders who choose to enter homes that part of the risk that carries is that a longer prison sentence will be imposed. In other words, it raises the stakes for home invasion offending. In this way it seeks to reassure the public that the home remains a place that will receive special protection under the law and, accordingly, where they can continue to feel safe.

Drawing a demarcation line between what is defined as “home” and what is outside that concept presents a number of difficult issues. Inevitably, some cases

will fall just outside that line, wherever it is drawn. We accept that this is a consequence of drawing a line, but consider that the central concern of the bill is the sanctity of the home and the gravity of its intrusion, and such an approach is justified.

### **Concerns about the philosophy of the bill**

However, others of us believe that the bill should not proceed in its present form. We believe that the home ought to be regarded as a place of sanctuary, but we do not believe that the bill as introduced achieves its purpose of providing greater protection in the home. It also means that offending that occurs outside a dwellinghouse will inevitably attract a less severe maximum penalty.

Under this bill, an offender who commits a brutal offence in the street or in a place of business will be liable to a lesser maximum penalty than an offender who is charged with the same offence, involving an equal level of brutality, but which occurred in the home. For example, we believe the brutal attack on Nan Withers should not be treated as any less serious because it occurred in her son's shop. Furthermore, a brutal offence committed on the front lawn of the home may result in a shorter sentence than will a lesser attack that occurred inside the home. We do not feel it can be said that a victim who is attacked outside the home will feel any less violated than a victim attacked inside the home. The primary factor in determining the length of the sentence should be the level of violence involved in the attack. Location should be only an aggravating factor at the sentencing stage, rather than the factor that determines whether a higher maximum penalty applies.

We believe that the bill will not achieve clear and justifiable outcomes because of the many anomalies and inconsistencies created by the approach adopted in the bill. We also believe that the bill could have an unintended side effect, in that it will diminish the seriousness of criminal offences that occur outside the home. The attack which provoked the petition presented by Mr Norm Withers is a case in point.

Some of us also feel that a consequence of the artificial way in which the bill distinguishes between crime inside and outside the home is demonstrated by the example of the "typical" corner dairy. Under the bill, where a person lives in a home that is attached to his or her place of business, as is the case with many small businesses, including dairies, any offence committed within the place of business does not fall within the parameters of the bill. This is the case even where the place of business is separated from the living area by only a doorway. Even where the offence occurs after the business is closed, it is still not defined as a home invasion if it occurs within the place of business.

Some of us are also concerned that there is no empirical evidence to indicate whether the rate of home invasion crimes is increasing, decreasing or static. Correspondence with the former Minister of Justice and the current Minister of Police confirms that, because of the way in which data is collected, there is no empirical evidence that the rate of home invasion is increasing, whereas there is clear empirical evidence of an increase in the rates of offences such as armed robbery. Crime statistics do not record where an offence occurred.

### **Support for effectiveness of longer sentences**

Some of us believe that the threat of higher maximum sentences in relation to home invasion offences will serve as an effective deterrent to potential violent offenders and will decrease the incidence of home invasion offences. However, where such offences are committed, we believe the bill will still give greater

protection to the public by incapacitating violent offenders for longer periods of time, thus keeping them off the streets. It will also ensure that the severity of the punishment given reflects society's abhorrence of such crime.

The policy of the bill reflects several sentencing objectives. The higher maximum penalties will result in longer sentences being imposed. This will punish the individual offender. The longer sentences will also help to protect the public by taking the offender out of circulation, thereby preventing re-offending during the time spent in prison. In this way it may also help to deter other would-be offenders.

The measures in the bill are backed up by a variety of non-legislative initiatives within the criminal justice system which aim to prevent crime in the first instance, and hence entry into the system, and to rehabilitate those who do enter. These initiatives include the Department of Corrections' Integrated Offender Management project, which involves risk assessment and matches offender needs to an appropriate rehabilitative intervention.

The bill does not set out to be a panacea for all offending nor does it seek to assert that longer sentences are an ideal option to all offending. What is undeniable is the fact that while offenders are confined in a prison society has some respite from their depredations. We note the sentiments expressed in the submissions, but for the purpose of this bill, society is entitled to register by way of lengthy prison sentences its grave concern for this kind of offending. The bill is a reflection of society's denunciation of this kind of offending and the expectation that it will be severely punished.

### **Longer sentences unlikely to deter offenders**

Some of us, however, believe that the bill will do little to achieve its purpose of decreasing offences involving home invasion. Most studies show that longer sentences do not deter potential offenders. We note the submission of the Law Commission, that it is aware of no empirical evidence to support the proposition that increasing sentences in fact operates as an effective deterrent. People who commit crimes do not expect to be caught; crime is not a rational act. An increased likelihood of apprehension is regarded as a more effective deterrent to offending. The submission of the New Zealand Police Association notes that there is a greater deterrence in "instilling in offenders a belief that they will get caught".

Furthermore, it is not clear that longer sentences prevent re-offending. A determinate sentence will eventually expire and the offender will have to be released back into the community. Accordingly, society should focus resources on ways of addressing anti-social behaviour during the course of a sentence, rather than merely increasing sentences without addressing the cause of the offending. We note that many of the submissions we received express the view that reduced offending will result from attention to the long-term causes of crime.

### **Support for increased penalty for offence of sexual violation in home invasion cases**

The bill will increase the penalty for the offence of sexual violation from 20 to 25 years where home invasion is involved. Some of us consider that sexual violation that occurs as part of a home invasion warrants a particularly severe penalty.

The Law Commission considered that, under this bill, sexual offenders could receive a longer sentence than offenders convicted of offences carrying a life sentence. Their comments do not, however, take account of the nature of a life sentence—that is, an indeterminate sentence in which ten years is the minimum

period to be served. An offender can be detained for much longer and, indeed, need never be released. This contrasts with offences for which a finite sentence is imposed. That sentence eventually will expire.

As noted above, the Criminal Justice Amendment Bill (No. 6) is to lower the threshold for imposing longer non-parole periods, which will mean that the courts will be able to impose longer minimum non-parole periods for murder and other serious offences in a broader range of circumstances than is currently possible. This additional flexibility should help to ensure that the potential difficulties identified in the submission do not arise in practice.

As with the demarcation issue when defining the concept of home, so too issues will inevitably arise in terms of sentence length. These we suggest are outweighed by the primary intent of the bill.

### **Implications of increase in penalty for sexual violation**

However, some of us are concerned by the implications of the bill for victims of sexual violation, as expressed by the Law Commission and Rape Crisis. The Law Commission noted the increase in the penalty and stated that, if it is implemented, the Court of Appeal may find it necessary to direct that the average sentence should rise to close to ten years, which is the statutory minimum non-parole period for murder. This may mean that some offenders who commit rape in a home invasion could serve terms of imprisonment longer than those they would have served if, instead of raping their victims, they had murdered them outside the house. Rape Crisis expressed concern that a rapist could consider that the risk of apprehension could warrant murdering the victim, given that the penalty for this more serious offence will not be significantly higher than the penalty faced for the offence of rape alone.

We are aware that this is currently possible with the present 20 year maximum penalty for sexual violation. We note that the effect of the Criminal Justice Amendment Bill (No. 6), if passed, will be to lower the threshold for imposing minimum non-parole periods, meaning that they can be imposed in a broader range of circumstances than is currently possible. However, we remain concerned that the possible sentencing consequences of the increased penalty for sexual violation have not been adequately addressed.

### **Application of bill to domestic violence supported**

The bill will apply to some, but not all, violence that occurs between people who are or have been in domestic relationships. For instance, it will apply where a protection order is in place preventing the offender approaching the victim, or limiting the circumstances in which this can happen. It will not apply where both parties are entitled to be in the home and violence subsequently occurs there. In that case, the general law applies.

While the bill gives particular emphasis to offences involving home invasion, the penalties for other serious offending remain high. Within those penalties the courts continue to have flexibility to impose long sentences for particularly abhorrent offending, including offending that occurs within the home but is not a "home invasion". Moreover the fact that home invasion is being given priority now does not preclude other measures being adopted in the future to deal with different sorts of offending.

While acknowledging the view raised by Rape Crisis and their belief that the bill will marginalise domestic violence, we have no evidence that such a view is widely held by either those making submissions to the bill or the public at large.

### **Concerns bill may ‘marginalise’ domestic violence**

Some of us are concerned that the bill fails to acknowledge the reality of domestic violence. The bill will not cover most forms of domestic violence. We heard a strong submission from Rape Crisis that the bill perpetuates the myth that violence is committed by strangers, and that such violence is more traumatic than violence suffered at the hands of relatives or friends. Rape Crisis presented empirical evidence showing that sentences for sexual offences committed by persons lawfully in the home are already considerably shorter than those carried out by assailants unknown to the victim. While the bill responds to society’s denunciation of the invasion of the sanctity of the home, the effect of the longer maximum sentences provided for in the bill may further aggravate this anomaly, and may also serve to marginalise and trivialise domestic violence.

### **Support for approach in the bill**

The approach adopted by the bill is to target the provision to the particular range of offending that is of current concern. This involves identifying offences that are likely to take place in a home invasion context and that involve serious harm.

Some of us consider that the offences currently in the bill do cover offending that is, in practice, likely to occur in a home invasion. The bill includes all the serious violent offences, together with the main sexual offences, and other specified offences such as robbery. We note that home invasion incidents commonly result in a number of different charges being laid, and that at least one charge would probably be an offence currently specified in the bill.

This bill increases maximum penalties for home invasion rather than adopting other possible approaches, such as a sentencing guideline (as advocated in the submission of the Law Commission). A difficulty with the sentencing guideline option is that Parliament would not directly indicate the level of penalty increase that it regards as appropriate. It could therefore take some time, and a number of test cases, before the court sets a new tariff for all the offences to which the bill relates.

The approach in the bill sends a stronger message about the level of increase contemplated. It also provides greater certainty that the sentences will in fact increase, because the judiciary must set the sentences for home invasion offending by reference to the higher maximum penalties. The experience following the increase in the penalty for sexual violation in 1993 illustrates that an increase in the maximum penalty will result in a measurable increase in the length of sentences imposed.

### **Concerns about approach in the bill**

Some of us believe, however, that the approach of the bill is flawed. The bill seeks to exhaustively identify every offence that is possible in a home invasion context. This approach results in inevitable loopholes and anomalies.

The Law Commission described the bill as having “serious drafting problems”, and suggested two alternative methods of addressing the policy behind the bill. Some of us believe that these suggested approaches would more effectively achieve the bill’s aim of a strong denunciation of violent crime that occurs in the home. If these amendments are outside the scope of the Crimes (Home Invasion) Amendment Bill, the appropriate response is to introduce new legislation which would more effectively achieve the intention of the bill.

The first option suggested by the Law Commission is to increase the maximum sentences of the specified offences, without any mention of home invasion in the

bill itself, and leave it to the courts to mark the particular disapproval with which home invasion cases are viewed. This would avoid the difficulties associated with trying to exhaustively define the term “home invasion” and the circumstances in which it should be an aggravating factor. It would also allow the courts to apply the higher maximum penalty when seriously aggravating factors other than home invasion are present. We have determined that, while it would be within the scope of the bill to remove all references to “home invasion”, the remaining skeleton of the bill would be unlikely to make good drafting sense.

The second option put forward by the Law Commission would be to amend the Criminal Justice Act. Part 1 of that Act sets out general sentencing principles, and section 5 establishes a presumption that violent offenders are to be imprisoned unless there are special circumstances. Section 5 (3) could be amended to provide that the court must regard the home invasion element of an offence as a serious aggravating factor in determining the length of any sentence of imprisonment. This option would avoid the difficulty of having to identify every offence which could involve a home invasion context. However, we determined that such an amendment would be outside the scope of the Criminal Justice Amendment Bill (No. 6), and that practical issues may arise regarding its application.

#### **Nature of advice available to committee**

Some of us wish to state our dissatisfaction with the limited nature of the advice available to the committee. We acknowledge the *Public Servants and Select Committees Guidelines* states that “Officials appear before the committees as servants of the Government of the day and are subject to Ministerial direction in terms of answers to be given and information to be supplied to select committees.” Nevertheless, we are concerned that, in the context of this bill, this situation was exacerbated by the refusal of both the Minister and other members of the committee to allow the committee access to the Ministry’s advice to the Minister on the bill. If advisers continue to be compromised in this way, committees may be forced in future to seek independent advice from other sources. While a Minister is entitled to keep officials’ advice confidential while determining Government policy, once the decisions have been made and the bill introduced, access to officials’ advice enables a better informed and more open debate.

The counter view to that argument is that officials and their Ministers are entitled to function in an information exchange environment characterised by a free, frank and confidential exchange of views.

#### **Definition of “dwellinghouse”**

We considered whether particular examples ought to be included in the definition of “dwellinghouse”, and should the bill proceed, the House may wish to consider adopting the amendments as set out in the appendix.

The definition of “dwellinghouse” is contained in new section 17A (1), as inserted by clause 2 of the bill. A number of submissions commented on perceived gaps in the definition of “dwellinghouse”. Concern was expressed that the bill does not cover particular living arrangements. Many of these perceived gaps are in fact intentional omissions. The bill is intended to cover the “typical” New Zealand home, and it is limited to that purpose.

Some of us consider that “dwellinghouse” should be defined as meaning a residence, not including any household land or outbuildings. This new definition would set out more clearly what is and is not covered by the bill.

### **Household land**

We considered whether household land should be included in the definition of “dwellinghouse”. In the bill as introduced, paragraph (a) (iv) of the definition of “dwellinghouse” includes a house’s yard and grounds within the definition only if they are enclosed. Paragraph (b) (iv) expressly excludes all other land from the definition. Hence, an offence that occurs on unenclosed property belonging to a typical suburban home would not be subject to the two-tier penalty regime.

The bill is intended to apply to offending that occurs in a “typical” New Zealand home. We considered whether to include unenclosed property attached to a home, as submissions pointed out that many typical New Zealand homes include unenclosed yards. Some of us consider that the definition of “dwellinghouse” should be limited to the house alone. The test would be whether the building or structure, or part of that building or structure, is used by the occupant principally as a residence. This test will also cover mobile homes, caravans and houseboats used by the occupant principally as a residence.

This would mean that an offence that occurs in an enclosed yard or grounds would not be covered by the bill if amended in this way. As submissions illustrate, there are difficulties when it comes to including only some types of land in the definition of “dwellinghouse”. For instance, in the case of farmland, it may be difficult to determine whether land should be described as part of the homestead or as farmland. Similarly, in the case of outbuildings, there may be difficulties in distinguishing a garage or shed used for household purposes from similar buildings used for farm purposes. Restricting the definition of “dwellinghouse” to the house aids certainty for both the occupants and offenders, as well as the courts.

We leave it up to the House to consider whether to include the amendments set out in the appendix, which would provide that the definition of “dwellinghouse” in new section 17A be substituted with proposed new section 17AA. This would provide a definition of “dwellinghouse” that limits the application of the bill to a building or structure used principally as a residence, which includes houses, caravans and rest homes. Outbuildings and appurtenant land would no longer be included in the definition.

### **Farm outbuildings**

We considered whether farm outbuildings should be excluded from definition. We heard a submission from the Women’s Division of Federated Farmers of New Zealand that the bill does not acknowledge the particular vulnerability to violence of rural people, given that they tend to live in more isolated communities. The Women’s Division believes that the bill should cover farm outbuildings.

This bill is intended to cover the average home, not buildings connected with business, or for other non-residential purposes. For the reasons outlined above, some of us consider the definition of “dwellinghouse” should be limited to include only the house, and not any outbuildings or land attached to the house. We believe that the definition of “dwellinghouse” should not extend to farm outbuildings.

Some of us, however, believe that a serious criminal offence which is committed on the front lawn, in a barn or a cowshed should not be subject to a lesser maximum penalty than a comparable attack that occurs, for example, in an attached garage. The exclusion of the section and of outbuildings from the definition of “dwellinghouse” highlights the anomalies created by the approach of the bill.

### **Long-term accommodation**

We also considered whether long-term accommodation should be included in the definition of dwellinghouse. The Law Commission suggested that the bill is unclear whether rest homes, retirement villages and other places of long-term accommodation, such as boarding schools and university halls of residence, are included in the definition of “dwellinghouse”. The bill currently provides that a dwellinghouse includes a permanent building or structure that is used in part or in whole as a residence. This definition was intended to include places of long-term accommodation, including the examples mentioned above. However, the status of such long-term accommodation does require clarification.

The current definition could be interpreted to mean that a distinction exists between the living and hospital areas of a rest home. The bill is intended to cover hospital areas in a rest or retirement home that provide health care for the occupants.

Should the bill proceed some of us consider that proposed new section 17AA (2) (b) should be adopted to clarify that long-term accommodation is included in the definition of “dwellinghouse”.

### **Hospitals and similar institutions**

We considered whether hospitals and similar institutions should continue to be excluded from the definition of “dwellinghouse”. Paragraph (b)(iii) of the definition of “dwellinghouse” provides that hospitals and similar institutions are not covered by the bill. The Auckland Council for Civil Liberties and Trevor Morley both expressed the view that the bill ought to cover hospitals, in that they may effectively be a place of residence for some people. The Law Commission commented that it is not clear what is included in the phrase “or similar institution”.

Hospitals and similar institutions are excluded from the bill because their inclusion would require a significant extension of the concept of private home that currently underpins the bill. The primary function of hospitals is to provide health care, usually on a short-term basis. It is unlikely that most patients would regard a hospital as their home. If such institutions were included, difficulties would arise as to whether to cover the whole or part of the complex, given that a range of activity not involving inpatients also takes place on hospital sites. Some of us consider that hospitals and similar institutions should continue to be excluded from the definition of “dwellinghouse”, as provided by proposed new section 17AA (3) (c), except as provided in relation to rest homes.

Some of us also consider that the House should consider adopting the Law Commission’s view that the phrase “or similar institution” be clarified.

Proposed new section 17AA (3) (c) also provides that the phrase means an institution that provides inpatient health care.

### **Commercial premises**

We considered whether commercial premises should be excluded from the definition of dwellinghouse. Paragraph (b)(i) of the definition of “dwellinghouse” excludes commercial premises. The submissions of the Wellington Indian Association and the New Zealand Indian Central Association were concerned that the bill does not acknowledge the dangers faced by small business operators, in particular by corner dairy operators.

The objective of the bill is to protect people in their homes. Where commercial and residential premises are attached or are located in the same building, the two-tier penalty regime will apply to offending that occurs in the residential part of the premises, but not to offending in the non-residential part. Some of us consider that this is appropriate in terms of the aims of the bill. We would recommend that the House consider the inclusion of proposed new section 17AA(4) in the definition of “dwellinghouse”. Others of us believe that it is nonsense to specify a higher maximum penalty when a shopkeeper is assaulted in a room behind the shop which is used as a living room, but not in the shop itself, where most assaults and robberies are likely to take place.

Some of us would also recommend the inclusion of proposed new section 17AA(2)(e), clarifying that the definition of “dwellinghouse” includes the situation where one room in a home is used for some non-residential purpose, but the building or structure as a whole is used as a residence.

### **Revocation of visitor’s implied licence**

As a general rule, a person who enters private land is a trespasser unless that entry is authorised by an express or implied “licence”, or permission, from the occupant, or it involves the exercise of an independent right to enter, such as entry pursuant to a statutory power. If a visitor enters a home pursuant to a licence, the general law is clear that express words are sufficient to revoke that licence.

In the bill as introduced, a person who commits a specified offence while “unlawfully in” a home is subject to the two-tier penalty regime. The general law is clear that express words are sufficient to revoke a licence to be in a home. However, it is less clear as to what constitutes an implied revocation of a licence. For example, an offender who is invited inside the home and who then attacks the victim, without that victim having an opportunity to tell the offender to leave the property, may not be subject to the two-tier penalty regime.

Should the bill proceed some of us would recommend an amendment to clause 2 of the bill in the form of new section 17A(2A), clarifying that, if a person has entered a home under an express or implied licence, that licence is regarded as revoked if a specified offence is committed in circumstances that render the person who could revoke the licence unable to do so.

### **Assessment of offences to be included**

New sections 17B and 17C, as inserted by clause 2, list the offences that will be subject to a higher maximum penalty when committed as part of a home invasion. The offences listed are those considered most likely to occur in the context of a home invasion. We assessed the offences listed in terms of whether they were consistent with the purpose of the bill. We also considered whether any offences that are not currently included in the bill ought to be so included. Should the House determine that the bill proceed, the House may wish to consider whether to include the following offences.

#### **Section 129A: inducing sexual connection by coercion (maximum penalty: 14 years)**

Section 129A of the Crimes Act makes it an offence to have sexual connection with another person knowing that the other person has been induced to consent by a threat that the offender or some other person will:

- commit an offence punishable by imprisonment but which does not involve the actual or threatened application of force to any person, or
- make an accusation or disclosure, whether true or false, about misconduct by any person that is likely to damage seriously the person's reputation, or
- make improper use, to the detriment of the other person, of any power or authority arising out of an occupational or vocational position that the offender holds, or a commercial relationship between them.

We note that the third possibility will not arise in the home invasion context. Few charges are laid under this section: a charge of sexual violation would be more usual where sexual connection occurs. However, because this offence is comparatively serious and resulted in two convictions in 1997 and ten convictions in 1998, the House may wish to include a section 129A offence within new section 17C.

**Section 138: sexual intercourse with severely subnormal woman or girl (maximum penalty: 7 years)**

Section 138 makes it an offence for a person to have or attempt to have sexual intercourse with any woman or girl who is severely subnormal, if the person knows or has good reason to believe that she is severely subnormal. Section 142 (1)(b), which makes it an offence to have anal intercourse with a severely subnormal person, is being included within the bill. For reasons of consistency, the House may wish to adopt a section 138 offence within new section 17B.

**Section 201: infecting with disease (maximum penalty: 14 years)**

Section 201 makes it an offence to wilfully and without lawful justification or excuse, cause or produce in any other person any disease or sickness. This provision was excluded from the bill because charges are rarely laid under it. However, given the nature of the harm involved if the offence does occur, and the fact that the offence of poisoning with intent, contained in section 200 (1), is included, some of us consider that the section 201 offence should be included in new section 17C for reasons of consistency.

**Section 202 (1): setting traps with intent to injure (maximum penalty: 5 years)**

Section 202 (1) makes it an offence if a person, with intent to injure, or with reckless disregard for the safety of others, sets or places or causes to be set or placed any trap or device that is likely to injure any person. This offence does not require harm to have actually occurred. If actual harm resulted, the appropriate charge is likely to be one of the violent offences that is already included within the bill. Nevertheless, some of us consider that, for reasons of consistency and inclusiveness, this offence should be included in new section 17B.

**Section 210: abduction of child under 16 (maximum penalty: 7 years)**

Section 210 makes it an offence, with intent to deprive any parent or guardian or other person having the lawful care or charge of a child under 16, of possession of the child, or with intent to have sexual intercourse with any girl under that age, unlawfully:

- to take or entice away or detain the child, or
- to receive the child, knowing that the child has been so taken or enticed away or detained.

This offence is used primarily to deal with child abduction in custody or access cases. It was originally thought that the offences of abduction of a woman or girl and kidnapping would cover the sort of offending likely to arise in the home invasion context. However, given there are several components to the offence, some of us consider that it should be included in new section 17B to ensure more complete coverage of the range of possible offences.

**Section 236: compelling execution of documents by force (maximum penalty: 14 years)**

Section 236 makes it an offence, with intent to defraud, to compel any person by violence to, or restraint of, the person of another, or by the threat that either the offender or any other person will employ such violence or restraint:

- to execute, make, endorse or alter the whole or part of a valuable security, or
- to write, impress or affix a name or seal upon or to any paper so that it can be used or dealt with as a valuable security.

This section is rarely used, with no convictions in recent years. If actual violence were involved, it is likely that other charges included under the bill, based on one of the violent offences, would be laid. However, some of us foresee that this offence could apply to situations arising in the home invasion context, and consider that it should be included in the bill under new section 17C.

**Section 239: demanding with intent to steal (maximum penalty: 7 years)**

Section 239 makes it an offence to demand, with menaces, from any person, either for himself or herself or for any other person, anything capable of being stolen, with intent to steal it. This offence was excluded because it does not require actual violence or harm to have occurred. It is likely that, in a home invasion context, other more serious charges would lie. However, there were 74 convictions under this section in 1997 and 65 in 1998. Some of us consider that this offence should be included within new section 17B to ensure that, in the event that this offence is committed in isolation from any other offence, it is still covered by the bill.

**Section 243: being armed with intent to break or enter (maximum penalty: 5 years)**

Section 243 makes it an offence to be found armed with any dangerous or offensive weapon or instrument whatever, with intent to break or enter any building or ship and to commit any crime therein. Some of us consider that this offence will not arise in the home invasion context, because the definition of "home invasion" requires more than mere intent to break or enter. We consider that section 243 should be excluded from the bill.

**Section 306: threatening to kill or do grievous bodily harm (maximum penalty: 7 years)**

Section 306 makes it an offence to:

- threaten to kill or do grievous bodily harm to any person, or
- send or cause to be received, knowing its contents, any letter or writing containing a threat to kill or do grievous bodily harm to any person.

This section was excluded because it involves threats, rather than actual harm, and because it is an offence that is unlikely to occur in isolation in the home invasion context. Other charges to which the higher penalty applies are likely to be laid. However, there is a comparatively large number of convictions each year,

with 519 in 1997 and 549 in 1998. It is likely that some of these occur in the home invasion context. Given the serious nature of the threat involved, some of us consider that paragraph (a) of section 306 should be included within new section 17B. Paragraph (b) is extremely unlikely to be relevant in a home invasion situation.

### **Clarification of parties, attempts and accessories**

We considered whether the bill is sufficiently clear as to the application of the two-tier penalty regime where a person is convicted as a party to an offence, or of an attempt to commit an offence, or as an accessory after the fact.

#### **Parties to an offence**

The bill as introduced does not specify whether a secondary party to an offence is subject to the higher maximum penalty imposed by new sections 17B and 17C. A person may be convicted as a party to an offence where he or she helps or encourages the commission of an offence. The mental element required is specified in section 66 (1) of the Crimes Act, and involves an intention to help or encourage the principal party. The issue may also arise in relation to party liability, where any offence, although it was not the result aimed at, was known by the parties to be a probable consequence of prosecuting a common unlawful purpose. Some of us support the insertion in clause 2 of proposed new section 17CA (1), as set out in the appendix, which provides that a party who is convicted as a secondary party to a specified offence that involves home invasion is subject to the penalty regime of the bill, regardless of whether he or she personally participated in the home invasion.

#### **Attempted offences**

A person may be convicted of an attempted offence where, for example, an offender enters a property and attempts unsuccessfully to rob the occupants, resulting in a charge of attempted robbery. The uncertainty as to whether attempts are included in the bill arises because the list of specified offences includes a few offences that are themselves attempts. Some of us consider that it is desirable to specify that the attempt provisions of the Crimes Act apply in the usual way to all the listed offences that are not attempted offences. Some of us support an amendment to clause 2, in the form of proposed new section 17CA (2), as set out in the appendix, providing that an attempt to commit a specified offence that involves a home invasion is subject to a penalty calculated by reference to the higher home invasion penalty.

#### **Accessories to an offence**

The bill as introduced does not specify whether a person convicted as an accessory after the fact to a home invasion offence is subject to the higher maximum penalty imposed by new sections 17B and 17C. Section 71 of the Crimes Act provides that an accessory after the fact is anyone who, knowing a person to have been a party to an offence, aids that person in escaping after arrest or in avoiding arrest. Some of us consider that a person who assists an offender who has committed a home invasion crime should be subject to the two-tier penalty regime. Although that person did not take part in the home invasion itself, the higher penalty regime in the bill is intended to apply to all persons who participate in some way in offending that involves home invasion. Some of us propose the insertion in clause 2 of an amendment in the form of proposed new section 17CA (3), as set out in the appendix, to clarify that if, in a home invasion context, a person is convicted as an accessory after the fact, a penalty calculated by reference to the higher home invasion penalty will apply.

### **Clarification of parties in relation to manslaughter**

A new clause 3 is suggested, which concerns the higher sentence to be imposed in a manslaughter case involving home invasion. The amendment is intended to ensure that secondary parties to manslaughter are treated in the same way as the principal party.

### **Conclusion**

We acknowledge that in a bill such as this that sets out to make a powerful denunciation of a kind of criminal behaviour, there will inevitably be demarcation issues of the kind raised by submitters and committee members.

Some of us consider that this bill will respond to the recent increase in public concern about the safety of people in their own homes. The introduction of the two-tier penalty regime with its higher maximum penalty for offences involving home invasion, will signal to offenders that society is not prepared to tolerate offending that involves breaking into occupied homes. The two-tier penalty regime will also send a strong signal to the judiciary that both Parliament and the public want longer sentences imposed on those violent offenders who commit offences in the home.

However, some of us consider that the bill will create an unacceptable number of anomalies in the law and yet do nothing to make people safer in their homes. The threat of longer maximum sentences has not been shown to deter violent offenders. Nor have longer sentences decreased levels of re-offending other than for the actual period in which the offender is incapacitated. Furthermore, the bill places insufficient weight on the level of violence involved in the offence. It fails to recognise that the victim of a violent attack will be no less violated if the attack occurs outside the home or if the offender is legitimately in the home. In fact, the bill may further compromise victims by perpetuating the myth that violence is committed by strangers, and that such violence is more traumatic than violence suffered at the hands of relatives or friends. We share the concern of Rape Crisis that “the introduction of this bill would create a situation where the minority of sexual offences (offender unknown) was treated with more seriousness than the majority (offender known).”

## APPENDIX

**Proposed Amendments to clause 2**

*Clause 2: New section 17A:* To omit the definition of the term “dwellinghouse” (lines 7 to 36 on page 2), and substitute the following definition:

“ ‘Dwellinghouse’ has the meaning set out in **section 17AA**:

To omit subsection (2) (lines 14 to 18 on page 3), 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.

*Proposed new section 17AA:* To insert, after *section 17A*, the following section:

“17AA. **Meaning of ‘dwellinghouse’**—(1) ‘Dwellinghouse’ means—

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

or

“(b) A mobile home, caravan, or houseboat used by the occupant principally as a residence.

“(2) Without limiting **subsection (1)**, ‘dwellinghouse’ includes a residence that—

“(a) Is not in constant use; or

“(b) Is a rest home, retirement village, or similar establishment, including any hospital that forms part of the establishment and is used for the purpose of providing health care for the occupants; or

“(c) Is a hostel or other student accommodation; or

“(d) Is a temporary structure or erection, including a tent, that is fixed or attached to the ground; or

“(e) Is a building or other structure, where a room or area of the building or structure is used by the occupant for any non-residential purpose, but where the principal use of the building or structure as a whole is as a residence.

“(3) **Despite subsections (1) and (2)**, ‘dwellinghouse’ does not include—

“(a) A building or other structure that is used solely for non-residential purposes; or

“(b) A part or unit of a hotel, motel, or similar establishment that is used for temporary or transient accommodation; or

“(c) A hospital or similar institution where inpatient health care is provided, other than a hospital to which **subsection (2) (b)** applies.

“(4) If a building or other structure comprises both a residence and 1 or more separate areas or premises used for non-residential purposes, and **subsection (2) (e)** does not apply, the residence is a dwellinghouse but the other areas or premises are not.

*New section 17B:* To insert, after line 31 on page 3, the following paragraph:

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

To omit paragraph (d) of *new section 17B (1)* (line 33 on that page).  
To insert, after line 41 on that page, the following paragraph:

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

To omit paragraph (f) (line 1 on page 4), and substitute the following paragraph:

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

To insert, after line 5 on that page, the following paragraph:

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

To insert, after line 6 on that page, the following paragraphs:

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

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

*New section 17c*: To insert, after line 27 on page 4, the following paragraph:

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

To omit paragraph (b) (line 29 on that page), and substitute the following paragraph:

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

To insert, after line 39 on that page, the following paragraph:

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

To insert, after line 42 on that page, the following paragraph:

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

To omit from line 3 on page 5 the word “involves”, and substitute the word “involved”.

*Proposed new section 17cA*: To insert, after line 4 on page 5, 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”.

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## KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

*Struck Out (Unanimous)*

Subject to this Act,

Text struck out unanimously

*Struck Out (Majority)*

Subject to this Act,

Text struck out by a majority

*New (Majority)*

Subject to this Act,

Text inserted by a majority



*Struck Out (Majority)*

- 
- “(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 5
- “(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 10
- “(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 15
- “(b) Does not include—
- “(i) A building or structure, or part of a building or structure, that is used solely for commercial purposes; or 20
- “(ii) Part of any hotel or motel that is used for temporary or transient accommodation; or 25
- “(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— 30
- “(a) While breaking and entering, or otherwise unlawfully entering, an occupied dwellinghouse; or 35
- “(b) While unlawfully in an occupied dwellinghouse, after having broken and entered, or otherwise unlawfully entered, the dwellinghouse; or
- “(c) While breaking out of an occupied dwellinghouse; or 40
- “(d) While otherwise unlawfully in an occupied dwellinghouse:
-

*Struck Out (Majority)*

- 5 “ ‘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.
- 10 “(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).
- 15 “(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)**.
- 20 “**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:
- 25 “(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).
- 30 “(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):  
“(b) Section 135 (indecent assault on woman or girl over 16 years):  
35 “(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);  
40 “(g) Section 188 (2) (wounding with intent to injure);  
“(h) Section 191 (2) (aggravated injuring);

*Struck Out (Majority)*

- “(i) Section 198 (2) (discharging firearm or doing dangerous act with intent):
- “(j) Section 237 (assault with intent to rob). 5
- “(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:
- “(a) Section 129 (attempt to commit sexual violation or assault with intent): 10
- “(b) Section 132 (2) (attempt to have sexual intercourse with girl under 12):
- “(c) Section 133 (indecent with girl under 12 years old):
- “(d) Section 140 (indecent with boy under 12):
- “(e) Section 189 (1) (injuring with intent to cause grievous bodily harm): 15
- “(f) Section 198B (commission of crime with firearm):
- “(g) Section 234 (robbery).
- “**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: 20
- “(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):
- “(d) Section 173 (attempt to murder): 30
- “(e) Section 188 (1) (wounding with intent to cause grievous bodily harm):
- “(f) Section 191 (1) (aggravated wounding):
- “(g) Section 198 (1) (discharging firearm or doing dangerous act with intent): 35
- “(h) Section 199 (acid throwing):
- “(i) Section 200 (1) (poisoning with intent):
- “(j) Section 208 (abduction of a woman or girl):
- “(k) Section 209 (kidnapping):
- “(l) Section 235 (aggravated robbery): 40
- “(m) Section 240A (aggravated burglary).

*Struck Out (Majority)*

5 “(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.

10 “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 offence specified in either of those sections.”

*Struck Out (Unanimous)*

15 **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

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

20 “(c) The sentencing court is satisfied that the offence involved home invasion (as defined in **section 17A**),— 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.”

25

*New (Majority)*

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

30 “(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

*New (Majority)*

“(b) The sentencing court proposes to impose a sentence other than imprisonment for life; and  
“(c) The sentencing court is satisfied that the offence involved home invasion.  
“(4) For the purposes of **subsection (3) (c), sections 17A, 17AA, and 17CA** apply as if manslaughter were an offence specified in **section 17c.**”

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*Struck Out (Majority)*

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

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*Struck Out (Majority)*

## SCHEDULE

Section 4

## 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).”

## Struck Out (Majority)

## SCHEDULE—continued

## CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT—continued

Provision	Amendment
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).”
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).”

*Struck Out (Majority)*SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision	Amendment
Section 197	By adding the following subsection: “(2) This section is subject to <b>section 17a (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 17a (2) and 17c (1)</b> (which set out higher maximum penalties for offences against this section involving home invasion).”
Section 198B	By adding the following subsection: “(2) This section is subject to <b>section 17a (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 17a (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).”

*Struck Out (Majority)*SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision	Amendment
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).”
Section 240A	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 243	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).”