

# **Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014**

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Western Australia

LEGISLATIVE ASSEMBLY

**Criminal Law Amendment (Home Burglary and  
Other Offences) Bill 2014**

**A Bill for**

**An Act to amend *The Criminal Code* and the *Sentencing Act 1995*.**

The Parliament of Western Australia enacts as follows:

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## **Part 1 — Preliminary**

### **1. Short title**

This is the *Criminal Law Amendment (Home Burglary and Other Offences) Act 2014*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

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**Part 2 — *The Criminal Code* amended**

**Division 1 — Preliminary**

**3. Act amended**

This Part amends *The Criminal Code*.

**Division 2 — Amendments relating to offences committed in the course of aggravated home burglary**

**4. Section 1 amended**

In section 1(1) insert in alphabetical order:

The term ***adult offender*** means, with respect to a person convicted of an offence, a person who had reached 18 years of age when the offence was committed;

The term ***aggravated home burglary*** means a home burglary committed in circumstances of aggravation (within the meaning given in section 400(1));

The term ***home burglary*** means an offence against any provision of Chapter XXXIX (as enacted at any time) other than section 407 committed in respect of a place (within the meaning given in section 400(1)) ordinarily used for human habitation;

The term ***juvenile offender*** means, with respect to a person convicted of an offence, a person who had reached 16 but not 18 years of age when the offence was committed;

1 **5. Section 279 amended**

2 (1) In section 279(4) delete “case” and insert:

3

4 case, subject to subsection (5A),

5

6 (2) After section 279(4) insert:

7

8 (5A) If the offence is committed by an adult offender in the  
9 course of conduct that constitutes an aggravated home  
10 burglary, the court sentencing the offender, if it does  
11 not impose a term of life imprisonment must,  
12 notwithstanding any other written law, impose a term  
13 of imprisonment of at least 15 years.

14

15 (3) After section 279(5) insert:

16

17 (6A) If the offence is committed by a juvenile offender in  
18 the course of conduct that constitutes an aggravated  
19 home burglary and the court sentences the offender  
20 under subsection (5)(a) but does not impose a term of  
21 life imprisonment, it —

22 (a) must, notwithstanding the *Young Offenders*  
23 *Act 1994* section 46(5a), impose either —

24 (i) a term of imprisonment of at least  
25 3 years; or

26 (ii) a term of detention under the *Young*  
27 *Offenders Act 1994* of at least 3 years,

28 as the court thinks fit; and

29 (b) must not suspend any term of imprisonment  
30 imposed; and

31 (c) must record a conviction against the offender.

- 1 (6B) Subsection (6A) does not prevent a court from —  
2 (a) making a direction under the *Young Offenders*  
3 *Act 1994* section 118(4); or  
4 (b) making a special order under Part 7 Division 9  
5 of that Act.  
6

7 **6. Section 280 amended**

- 8 (1) In section 280 delete “If” and insert:  
9

10 (1) If  
11

- 12 (2) At the end of section 280 insert:  
13

14 (2) If the offence is committed by an adult offender in the  
15 course of conduct that constitutes an aggravated home  
16 burglary, the court sentencing the offender, if it does  
17 not impose a term of imprisonment for life must,  
18 notwithstanding any other written law, impose a term  
19 of imprisonment of at least 15 years.

20 (3) If the offence is committed by a juvenile offender in  
21 the course of conduct that constitutes an aggravated  
22 home burglary, the court sentencing the offender —

23 (a) if it does not impose a term of imprisonment for  
24 life must, notwithstanding the *Young Offenders*  
25 *Act 1994* section 46(5a), impose either —

26 (i) a term of imprisonment of at least  
27 3 years; or

28 (ii) a term of detention under the *Young*  
29 *Offenders Act 1994* of at least 3 years,

30 as the court thinks fit; and

**Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014**

**Part 2** The Criminal Code amended

**Division 2** Amendments relating to offences committed in the course of aggravated home burglary

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- 1 (b) must not suspend any term of imprisonment  
2 imposed; and  
3 (c) must record a conviction against the offender.  
4 (4) Subsection (3) does not prevent a court from —  
5 (a) making a direction under the *Young Offenders*  
6 *Act 1994* section 118(4); or  
7 (b) making a special order under Part 7 Division 9  
8 of that Act.  
9

10 **7. Section 281 amended**

11 After section 281(2) insert:  
12

- 13 (3) If the offence is committed by an adult offender in the  
14 course of conduct that constitutes an aggravated home  
15 burglary, the court sentencing the offender must,  
16 notwithstanding any other written law, impose a term  
17 of imprisonment of at least 75% of the term specified  
18 in subsection (1).  
19 (4) If the offence is committed by a juvenile offender in  
20 the course of conduct that constitutes an aggravated  
21 home burglary, the court sentencing the offender —  
22 (a) must, notwithstanding the *Young Offenders*  
23 *Act 1994* section 46(5a), impose either —  
24 (i) a term of imprisonment of at least  
25 3 years; or  
26 (ii) a term of detention under the *Young*  
27 *Offenders Act 1994* of at least 3 years,  
28 as the court thinks fit; and  
29 (b) must not suspend any term of imprisonment  
30 imposed; and  
31 (c) must record a conviction against the offender.

- 1 (5) Subsection (4) does not prevent a court from —  
2 (a) making a direction under the *Young Offenders*  
3 *Act 1994* section 118(4); or  
4 (b) making a special order under Part 7 Division 9  
5 of that Act.  
6

7 **8. Section 283 amended**

- 8 (1) In section 283 delete “Any person” and insert:  
9

10 (1) Any person  
11

- 12 (2) In section 283:

13 (a) delete “(1) Attempts” and insert:  
14

15 (a) attempts  
16

17 (b) delete “(2) With” and insert:  
18

19 (b) with  
20

- 21 (3) At the end of section 283 insert:  
22

23 (2) If the offence is committed by an adult offender in the  
24 course of conduct that constitutes an aggravated home  
25 burglary, the court sentencing the offender, if it does  
26 not impose a term of life imprisonment must,  
27 notwithstanding any other written law, impose a term  
28 of imprisonment of at least 15 years.

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**Division 2** Amendments relating to offences committed in the course of aggravated home burglary

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- 1 (3) If the offence is committed by a juvenile offender in  
2 the course of conduct that constitutes an aggravated  
3 home burglary, the court sentencing the offender —  
4 (a) if it does not impose a term of imprisonment for  
5 life, must, notwithstanding the *Young Offenders*  
6 *Act 1994* section 46(5a), impose either —  
7 (i) a term of imprisonment of at least  
8 3 years; or  
9 (ii) a term of detention under the *Young*  
10 *Offenders Act 1994* of at least 3 years,  
11 as the court thinks fit; and  
12 (b) must not suspend any term of imprisonment  
13 imposed; and  
14 (c) must record a conviction against the offender.  
15 (4) Subsection (3) does not prevent a court from —  
16 (a) making a direction under the *Young Offenders*  
17 *Act 1994* section 118(4); or  
18 (b) making a special order under Part 7 Division 9  
19 of that Act.  
20

21 **9. Section 294 amended**

- 22 (1) In section 294 delete “Any person who,” and insert:  
23  
24 (1) Any person who,  
25  
26 (2) In section 294:  
27 (a) delete “(1) unlawfully” and insert:  
28  
29 (a) unlawfully  
30

- 
- 1 (b) delete “(2) unlawfully” and insert:  
2  
3 (b) unlawfully  
4  
5 (c) delete “(3) unlawfully” and insert:  
6  
7 (c) unlawfully  
8  
9 (d) delete “(4) sends” and insert:  
10  
11 (d) sends  
12  
13 (e) delete “(5) causes” and insert:  
14  
15 (e) causes  
16  
17 (f) delete “(6) puts” and insert:  
18  
19 (f) puts  
20  
21 (g) delete “(7) unlawfully” and insert:  
22  
23 (g) unlawfully  
24  
25 (h) delete “(8) does” and insert:  
26  
27 (h) does  
28

29 (3) At the end of section 294 insert:  
30

- 31 (2) If the offence is committed by an adult offender in the  
32 course of conduct that constitutes an aggravated home

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**Part 2** The Criminal Code amended

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- 1 burglary, the court sentencing the offender must,  
2 notwithstanding any other written law, impose a term  
3 of imprisonment of at least 75% of the term specified  
4 in subsection (1).
- 5 (3) If the offence is committed by a juvenile offender in  
6 the course of conduct that constitutes an aggravated  
7 home burglary, the court sentencing the offender —
- 8 (a) must, notwithstanding the *Young Offenders*  
9 *Act 1994* section 46(5a), impose either —
- 10 (i) a term of imprisonment of at least  
11 3 years; or
- 12 (ii) a term of detention under the *Young*  
13 *Offenders Act 1994* of at least 3 years,  
14 as the court thinks fit; and
- 15 (b) must not suspend any term of imprisonment  
16 imposed; and
- 17 (c) must record a conviction against the offender.
- 18 (4) Subsection (3) does not prevent a court from —
- 19 (a) making a direction under the *Young Offenders*  
20 *Act 1994* section 118(4); or
- 21 (b) making a special order under Part 7 Division 9  
22 of that Act.  
23

24 **10. Section 297 amended**

- 25 (1) Delete section 297(5), (6) and (7) and insert:  
26
- 27 (5) If the offence is committed by an adult offender, then  
28 the court sentencing the offender —
- 29 (a) if the offence is committed in the course of  
30 conduct that constitutes an aggravated home  
31 burglary, must, notwithstanding any other

- 1 written law, impose a term of imprisonment  
2 of —
- 3 (i) at least 75% of the term specified in  
4 subsection (3), where the offence is  
5 committed in circumstances of  
6 aggravation; or
- 7 (ii) at least 75% of the term specified in  
8 subsection (1), in any other case;
- 9 and
- 10 (b) if the offence is committed in prescribed  
11 circumstances, must, notwithstanding any other  
12 written law, impose a term of imprisonment of  
13 at least 12 months, and must not suspend the  
14 term of imprisonment imposed.
- 15 (6) If the offence is committed by a juvenile offender, then  
16 the court sentencing the offender —
- 17 (a) if the offence is committed in the course of  
18 conduct that constitutes an aggravated home  
19 burglary, must, notwithstanding the *Young*  
20 *Offenders Act 1994* section 46(5a), impose  
21 either —
- 22 (i) a term of imprisonment of at least  
23 3 years; or
- 24 (ii) a term of detention under the *Young*  
25 *Offenders Act 1994* of at least 3 years,  
26 as the court thinks fit; and
- 27 (b) if the offence is committed in prescribed  
28 circumstances, must, notwithstanding the  
29 *Young Offenders Act 1994*, impose either —
- 30 (i) a term of imprisonment of at least  
31 3 months, notwithstanding the  
32 *Sentencing Act 1995* section 86; or

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**Part 2** The Criminal Code amended

**Division 2** Amendments relating to offences committed in the course of aggravated home burglary

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- 1 (ii) a term of detention under the *Young*  
2 *Offenders Act 1994* of at least 3 months,  
3 as the court thinks fit,  
4 and in either case must not suspend any term of  
5 imprisonment imposed and must record a conviction.
- 6 (7) Subsection (6) does not prevent a court from —  
7 (a) making a direction under the *Young Offenders*  
8 *Act 1994* section 118(4); or  
9 (b) making a special order under Part 7 Division 9  
10 of that Act.  
11
- 12 (2) In section 297(8) delete “subsections (5) and (7)” and insert:  
13  
14 subsections (5) and (6)  
15
- 16 **11. Section 320 amended**  
17 After section 320(6) insert:  
18
- 19 (7) If an offence under this section is committed by an  
20 adult offender in the course of conduct that constitutes  
21 an aggravated home burglary, the court sentencing the  
22 offender must, notwithstanding any other written law,  
23 impose a term of imprisonment of at least 75% of the  
24 term specified in whichever of subsection (2), (3), (4),  
25 (5) or (6) constitutes the offence.
- 26 (8) If an offence under this section is committed by a  
27 juvenile offender in the course of conduct that  
28 constitutes an aggravated home burglary, the court  
29 sentencing the offender —  
30 (a) must, notwithstanding the *Young Offenders*  
31 *Act 1994* section 46(5a), impose either —  
32 (i) a term of imprisonment of at least  
33 3 years; or

- 1 (ii) a term of detention under the *Young*  
2 *Offenders Act 1994* of at least 3 years,  
3 as the court thinks fit; and  
4 (b) must not suspend any term of imprisonment  
5 imposed; and  
6 (c) must record a conviction against the offender.  
7 (9) Subsection (8) does not prevent a court from making a  
8 direction under the *Young Offenders Act 1994*  
9 section 118(4).  
10

11 **12. Section 321 amended**

12 After section 321(13) insert:  
13

- 14 (14) If an offence under this section is committed by an  
15 adult offender in the course of conduct that constitutes  
16 an aggravated home burglary, the court sentencing the  
17 offender must, notwithstanding any other written law,  
18 impose a term of imprisonment of at least 75% of the  
19 term specified in whichever of subsection (7) or (8)  
20 applies to the offence.
- 21 (15) If an offence under this section is committed by a  
22 juvenile offender in the course of conduct that  
23 constitutes an aggravated home burglary, the court  
24 sentencing the offender —
- 25 (a) must, notwithstanding the *Young Offenders*  
26 *Act 1994* section 46(5a), impose either —
- 27 (i) a term of imprisonment of at least  
28 3 years; or  
29 (ii) a term of detention under the *Young*  
30 *Offenders Act 1994* of at least 3 years,  
31 as the court thinks fit; and

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**Part 2** The Criminal Code amended

**Division 2** Amendments relating to offences committed in the course of aggravated home burglary

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- 1 (b) must not suspend any term of imprisonment  
2 imposed; and  
3 (c) must record a conviction against the offender.  
4 (16) Subsection (15) does not prevent a court from making a  
5 direction under the *Young Offenders Act 1994*  
6 section 118(4).  
7

8 **13. Section 324 amended**

- 9 (1) In section 324 delete “A person” and insert:  
10  
11 (1) A person  
12  
13 (2) At the end of section 324 insert:  
14  
15 (2) If the offence is committed in the course of conduct  
16 that constituted an aggravated home burglary it is not  
17 to be dealt with summarily.  
18 (3) If the offence is committed by an adult offender in the  
19 course of conduct that constitutes an aggravated home  
20 burglary, the court sentencing the offender must,  
21 notwithstanding any other written law, impose a term  
22 of imprisonment of at least 75% of the term specified  
23 in subsection (1) (not being the term specified in the  
24 summary conviction penalty in that subsection).  
25 (4) If the offence is committed by a juvenile offender in  
26 the course of conduct that constitutes an aggravated  
27 home burglary, the court sentencing the offender —  
28 (a) must, notwithstanding the *Young Offenders*  
29 *Act 1994* section 46(5a), impose either —  
30 (i) a term of imprisonment of at least  
31 3 years; or

- 1 (ii) a term of detention under the *Young*  
2 *Offenders Act 1994* of at least 3 years,  
3 as the court thinks fit; and  
4 (b) must not suspend any term of imprisonment  
5 imposed; and  
6 (c) must record a conviction against the offender.  
7 (5) Subsection (4) does not prevent a court from —  
8 (a) making a direction under the *Young Offenders*  
9 *Act 1994* section 118(4); or  
10 (b) making a special order under Part 7 Division 9  
11 of that Act.  
12

13 **14. Section 325 amended**

- 14 (1) In section 325 delete “A person” and insert:  
15  
16 (1) A person  
17  
18 (2) At the end of section 325 insert:  
19  
20 (2) If the offence is committed by an adult offender in the  
21 course of conduct that constitutes an aggravated home  
22 burglary, the court sentencing the offender must,  
23 notwithstanding any other written law, impose a term  
24 of imprisonment of at least 75% of the term specified  
25 in subsection (1).  
26 (3) If the offence is committed by a juvenile offender in  
27 the course of conduct that constitutes an aggravated  
28 home burglary, the court sentencing the offender —  
29 (a) must, notwithstanding the *Young Offenders*  
30 *Act 1994* section 46(5a), impose either —  
31 (i) a term of imprisonment of at least  
32 3 years; or

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**Part 2** The Criminal Code amended

**Division 2** Amendments relating to offences committed in the course of aggravated home burglary

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- 1 (ii) a term of detention under the *Young*  
2 *Offenders Act 1994* of at least 3 years,  
3 as the court thinks fit; and  
4 (b) must not suspend any term of imprisonment  
5 imposed; and  
6 (c) must record a conviction against the offender.  
7 (4) Subsection (3) does not prevent a court from —  
8 (a) making a direction under the *Young Offenders*  
9 *Act 1994* section 118(4); or  
10 (b) making a special order under Part 7 Division 9  
11 of that Act.  
12

13 **15. Section 326 amended**

- 14 (1) In section 326 delete “A person” and insert:  
15  
16 (1) A person  
17  
18 (2) At the end of section 326 insert:  
19  
20 (2) If the offence is committed by an adult offender in the  
21 course of conduct that constitutes an aggravated home  
22 burglary, the court sentencing the offender must,  
23 notwithstanding any other written law, impose a term  
24 of imprisonment of at least 75% of the term specified  
25 in subsection (1).  
26 (3) If the offence is committed by a juvenile offender in  
27 the course of conduct that constitutes an aggravated  
28 home burglary, the court sentencing the offender —  
29 (a) must, notwithstanding the *Young Offenders*  
30 *Act 1994* section 46(5a), impose either —  
31 (i) a term of imprisonment of at least  
32 3 years; or

- 1 (ii) a term of detention under the *Young*  
2 *Offenders Act 1994* of at least 3 years,  
3 as the court thinks fit; and  
4 (b) must not suspend any term of imprisonment  
5 imposed; and  
6 (c) must record a conviction against the offender.  
7 (4) Subsection (3) does not prevent a court from —  
8 (a) making a direction under the *Young Offenders*  
9 *Act 1994* section 118(4); or  
10 (b) making a special order under Part 7 Division 9  
11 of that Act.  
12

13 **16. Section 327 amended**

- 14 (1) In section 327 delete “A person” and insert:  
15  
16 (1) A person  
17  
18 (2) At the end of section 327 insert:  
19  
20 (2) If the offence is committed by an adult offender in the  
21 course of conduct that constitutes an aggravated home  
22 burglary, the court sentencing the offender must,  
23 notwithstanding any other written law, impose a term  
24 of imprisonment of at least 75% of the term specified  
25 in subsection (1).  
26 (3) If the offence is committed by a juvenile offender in  
27 the course of conduct that constitutes an aggravated  
28 home burglary, the court sentencing the offender —  
29 (a) must, notwithstanding the *Young Offenders*  
30 *Act 1994* section 46(5a), impose either —  
31 (i) a term of imprisonment of at least  
32 3 years; or

**Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014**

**Part 2** The Criminal Code amended

**Division 2** Amendments relating to offences committed in the course of aggravated home burglary

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- 1 (ii) a term of detention under the *Young*  
2 *Offenders Act 1994* of at least 3 years,  
3 as the court thinks fit; and  
4 (b) must not suspend any term of imprisonment  
5 imposed; and  
6 (c) must record a conviction against the offender.  
7 (4) Subsection (3) does not prevent a court from making a  
8 direction under the *Young Offenders Act 1994*  
9 section 118(4).  
10
- 11 **17. Section 328 amended**
- 12 (1) In section 328 delete “A person” and insert:  
13  
14 (1) A person  
15  
16 (2) At the end of section 328 insert:  
17  
18 (2) If the offence is committed by an adult offender in the  
19 course of conduct that constitutes an aggravated home  
20 burglary, the court sentencing the offender must,  
21 notwithstanding any other written law, impose a term  
22 of imprisonment of at least 75% of the term specified  
23 in subsection (1).  
24 (3) If the offence is committed by a juvenile offender in  
25 the course of conduct that constitutes an aggravated  
26 home burglary, the court sentencing the offender —  
27 (a) must, notwithstanding the *Young Offenders*  
28 *Act 1994* section 46(5a), impose either —  
29 (i) a term of imprisonment of at least  
30 3 years; or

- 1 (ii) a term of detention under the *Young*  
2 *Offenders Act 1994* of at least 3 years,  
3 as the court thinks fit; and  
4 (b) must not suspend any term of imprisonment  
5 imposed; and  
6 (c) must record a conviction against the offender.  
7 (4) Subsection (3) does not prevent a court from making a  
8 direction under the *Young Offenders Act 1994*  
9 section 118(4).  
10

11 **18. Section 330 amended**

12 After section 330(9) insert:  
13

- 14 (10) If an offence under this section is committed by an  
15 adult offender in the course of conduct that constitutes  
16 an aggravated home burglary, the court sentencing the  
17 offender must, notwithstanding any other written law,  
18 impose a term of imprisonment of at least 75% of the  
19 term specified in whichever of subsection (7) or (8)  
20 applies to the offence.  
21 (11) If an offence under this section is committed by a  
22 juvenile offender in the course of conduct that  
23 constitutes an aggravated home burglary, the court  
24 sentencing the offender —  
25 (a) must, notwithstanding the *Young Offenders*  
26 *Act 1994* section 46(5a), impose either —  
27 (i) a term of imprisonment of at least  
28 3 years; or  
29 (ii) a term of detention under the *Young*  
30 *Offenders Act 1994* of at least 3 years,  
31 as the court thinks fit; and

- 1 (b) must not suspend any term of imprisonment  
2 imposed; and  
3 (c) must record a conviction against the offender.  
4 (12) Subsection (11) does not prevent a court from making a  
5 direction under the *Young Offenders Act 1994*  
6 section 118(4).  
7

8 **Division 3 — Amendments relating to home burglary**  
9 **repeat offenders**

10 **19. Section 400 amended**

- 11 (1) In section 400(1) insert in alphabetical order:  
12

13 *commencement day* means the day on which the  
14 *Criminal Law Amendment (Home Burglary and Other*  
15 *Offences) Act 2014* section 19 comes into operation;  
16

- 17 (2) Delete section 400(3) and (4).

18 **20. Sections 401A and 401B inserted**

19 After section 400 insert:  
20

21 **401A. Term used: relevant conviction**

- 22 (1) For the purposes of this Chapter, subject to  
23 subsections (2), (3) and (4), a person's conviction for a  
24 home burglary is a *relevant conviction* for that person  
25 if—  
26 (a) the home burglary was committed before the  
27 commencement day and either —  
28 (i) it is the person's first conviction for a  
29 home burglary (the person's *first*  
30 *relevant conviction*); or

- 1 (ii) it is the person's first conviction for a  
2 home burglary committed after the date  
3 on which the person's first relevant  
4 conviction was recorded (the person's  
5 **second relevant conviction**); or  
6 (iii) it is a conviction for a home burglary  
7 committed after the date on which the  
8 person's second relevant conviction was  
9 recorded;
- 10 or
- 11 (b) the home burglary was committed on or after  
12 the commencement day and —
- 13 (i) the person is an adult offender with  
14 respect to the home burglary; or
- 15 (ii) the person is a juvenile offender with  
16 respect to the home burglary and  
17 either —
- 18 (I) it is the person's first  
19 conviction for a home burglary;  
20 or
- 21 (II) at the time of the home  
22 burglary, the person already  
23 had a conviction for a previous  
24 home burglary;
- 25 or
- 26 (iii) at the time of the home burglary the  
27 person had not reached 16 years of age,  
28 and either —
- 29 (I) it is the person's first  
30 conviction for a home burglary  
31 (the person's **first relevant**  
32 **conviction**); or
- 33 (II) it is the person's first  
34 conviction for a home burglary

- 1 committed after the date on  
2 which the person's first  
3 relevant conviction was  
4 recorded (the person's **second**  
5 **relevant conviction**); or  
6 (III) it is a conviction for a home  
7 burglary committed after the  
8 date on which the person's  
9 second relevant conviction was  
10 recorded.
- 11 (2) In this section —
- 12 (a) a conviction includes a finding or admission of  
13 guilt that leads to a punishment being imposed  
14 on, or an order being made in respect of, the  
15 person, whether or not a conviction was  
16 recorded; and
- 17 (b) a conviction does not include a conviction that  
18 has been set aside or quashed.
- 19 (3) For the purposes of this section, convictions for 2 or  
20 more home burglaries committed on the same day on  
21 or after the commencement day are to be treated as a  
22 single conviction.
- 23 (4) Where —
- 24 (a) a person has 2 or more relevant convictions (the  
25 **prior relevant convictions**); and
- 26 (b) after the sentence completion date for the latest  
27 of the prior relevant convictions, the person is  
28 convicted for another home burglary (the **new**  
29 **conviction**); and
- 30 (c) the new conviction relates to a home burglary  
31 which was committed before the date on which  
32 the home burglary to which the latest of the  
33 prior relevant convictions relates was  
34 committed; and

- 1 (d) the court sentencing the offender for the home  
2 burglary to which the new conviction relates  
3 (the *sentencing court*) considers that  
4 exceptional circumstances exist which justify  
5 imposing a lesser sentence than would be  
6 required by section 401(4),  
7 the sentencing court may decide to impose a lesser  
8 sentence than would be required by section 401(4).
- 9 (5) In subsection (4) —  
10 *sentence completion date* for a conviction means —
- 11 (a) where no sentence or other punishment is  
12 imposed in respect of the conviction, the date of  
13 the conviction; and
- 14 (b) where a conditional release order is imposed  
15 under the *Sentencing Act 1995* Part 7 in respect  
16 of the conviction, the date on which the  
17 conditional release order ceases to be in force  
18 under section 48(2) of that Act; and
- 19 (c) where a fine is imposed under the *Sentencing*  
20 *Act 1995* Part 8 in respect of the conviction, the  
21 earlier of —
- 22 (i) the date on which the fine is paid; or  
23 (ii) the date on which the offender's liability  
24 to pay the fine is discharged under  
25 section 58(6) or 59(1) of that Act;
- 26 and
- 27 (d) where a community based order is imposed  
28 under the *Sentencing Act 1995* Part 9 in respect  
29 of the conviction, the date on which the  
30 community based order ceases to be in force  
31 under section 62(4) of that Act; and
- 32 (e) where an intensive supervision order is  
33 imposed under the *Sentencing Act 1995* Part 10  
34 in respect of the conviction, the date on which

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- 1 the intensive supervision order ceases to be in  
2 force under section 69(5) of that Act; and
- 3 (f) where suspended imprisonment is imposed  
4 under the *Sentencing Act 1995* Part 11 in  
5 respect of the conviction, the date on which the  
6 offender is taken to be discharged under  
7 section 77(4) of that Act; and
- 8 (g) where conditional suspended imprisonment is  
9 imposed under the *Sentencing Act 1995* Part 12  
10 in respect of the conviction, the date on which  
11 the offender is taken to be discharged under  
12 section 82(4) of that Act; and
- 13 (h) where a term of imprisonment is imposed under  
14 the *Sentencing Act 1995* Part 13 in respect of  
15 the conviction, the date on which the offender  
16 is discharged under section 93(3) or 95 of that  
17 Act or the *Sentence Administration Act 2003*  
18 section 66(2); and
- 19 (i) where a youth community based order is  
20 imposed under the *Young Offenders Act 1994*  
21 Part 7 Division 6 in respect of the conviction,  
22 the date on which the order ceases to be in  
23 force under section 76(2) of that Act; and
- 24 (j) where an intensive youth supervision order is  
25 imposed under the *Young Offenders Act 1994*  
26 Part 7 Division 7 in respect of the conviction  
27 without a sentence of detention, the date on  
28 which the order ceases to be in force under  
29 section 76(2) of that Act; and
- 30 (k) where a term of detention is imposed under the  
31 *Young Offenders Act 1994* section 118(1)(b) in  
32 respect of the conviction, whether or not an  
33 intensive youth supervision order is also  
34 imposed under Part 7 Division 7 of that Act, the  
35 last day of that term.

- 1           (6) A court making the decision referred to in  
2           subsubsection (4) must give written reasons why the  
3           decision was made.

4           **401B. Term used: repeat offender**

- 5           (1) For the purposes of this Chapter, a person who is being  
6           sentenced for a home burglary (the *current offence*) is  
7           a *repeat offender* if the person has at least 3 relevant  
8           convictions.
- 9           (2) For the purposes of subsection (1) —
- 10           (a) the person's conviction for the current offence,  
11           if it is a relevant conviction, is to be counted;  
12           and
- 13           (b) each of the person's relevant convictions is to  
14           be counted, regardless of whether the home  
15           burglary to which it relates was committed  
16           before or after the date of any previous relevant  
17           conviction; and
- 18           (c) each of the person's relevant convictions is to  
19           be counted, regardless of whether it has been  
20           counted on the occasion of sentencing for a  
21           previous home burglary to determine whether  
22           the person was, on that occasion, a repeat  
23           offender.

24

25           **21. Section 401 amended**

- 26           (1) In section 401(1) delete paragraphs (a) and (b) and insert:  
27
- 28           (a) if the offence is an aggravated home burglary,  
29           to imprisonment for 20 years; or
- 30           (ba) if the offence is not a home burglary but is  
31           committed in circumstances of aggravation, to  
32           imprisonment for 20 years; or

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- 1 (b) if the offence is a home burglary not committed  
2 in circumstances of aggravation, to  
3 imprisonment for 18 years; or  
4
- 5 (2) In section 401(1) in the summary conviction penalty after  
6 paragraph (a) insert:  
7
- 8 (ba) in a case to which paragraph (ba) applies  
9 where the only circumstance of aggravation  
10 is that the offender is in company with  
11 another person or other persons —  
12 imprisonment for 3 years and a fine of  
13 \$36 000; or  
14
- 15 (3) In section 401(2) delete paragraphs (a) and (b) and insert:  
16
- 17 (a) if the offence is an aggravated home burglary,  
18 to imprisonment for 20 years; or
- 19 (ba) if the offence is not a home burglary but is  
20 committed in circumstances of aggravation, to  
21 imprisonment for 20 years; or
- 22 (b) if the offence is a home burglary not committed  
23 in circumstances of aggravation, to  
24 imprisonment for 18 years; or  
25
- 26 (4) In section 401(2) in the summary conviction penalty after  
27 paragraph (a) insert:  
28
- 29 (ba) in a case to which paragraph (ba) applies  
30 where the only circumstance of aggravation  
31 is that the offender is in company with  
32 another person or other persons —  
33 imprisonment for 3 years and a fine of  
34 \$36 000; or  
35

- 1 (5) Delete section 401(4) and insert:  
2
- 3 (4) Subject to section 401A(4), where a person convicted  
4 under this section of a home burglary (the *current*  
5 *offence*) is a repeat offender, whether or not the  
6 conviction for the current offence is a relevant  
7 conviction the court sentencing the person for the  
8 current offence —
- 9 (a) if the current offence was committed before the  
10 commencement day —
- 11 (i) if the person is an adult offender,  
12 notwithstanding any other written law,  
13 must impose a term of imprisonment of  
14 at least 12 months; or
- 15 (ii) if the person had not reached 18 years of  
16 age when the current offence was  
17 committed, notwithstanding the *Young*  
18 *Offenders Act 1994* section 46(5a), must  
19 impose either —
- 20 (I) a term of imprisonment of at  
21 least 12 months; or
- 22 (II) a term of detention under the  
23 *Young Offenders Act 1994* of at  
24 least 12 months,  
25 as the court thinks fit;
- 26 or
- 27 (b) if the current offence was committed on or after  
28 the commencement day —
- 29 (i) if the person is an adult offender,  
30 notwithstanding any other written law,  
31 must impose a term of imprisonment of  
32 at least 2 years; or
- 33 (ii) if the person had not reached 18 years of  
34 age when the current offence was

1 committed, notwithstanding the *Young*  
2 *Offenders Act 1994* section 46(5a), must  
3 impose either —  
4 (I) a term of imprisonment of at  
5 least 12 months; or  
6 (II) a term of detention under the  
7 *Young Offenders Act 1994* of at  
8 least 12 months,  
9 as the court thinks fit.  
10

11 (6) In section 401(5) delete “shall” and insert:

12 must  
13

14

15 (7) Delete section 401(6) and insert:

16

17 (6) Subsection (4) does not prevent a court from —  
18 (a) making a direction under the *Young Offenders*  
19 *Act 1994* section 118(4); or  
20 (b) making a special order under Part 7 Division 9  
21 of that Act.  
22

23

**Division 4 — Other amendments**

24 **22. Section 740B inserted**

25 After section 740A insert:

26

27 **740B. Review of certain amendments relating to home**  
28 **burglary**

29 (1) In this section —

30 *review date* means the fifth anniversary of the day on  
31 which the *Criminal Law Amendment (Home Burglary*

- 1                    *and Other Offences) Act 2014* section 4 comes into  
2                    operation.
- 3                    (2) As soon as practicable after the review date the  
4                    Minister is to review the operation and effectiveness  
5                    of —
- 6                    (a) the amendments made to this Code by the  
7                    *Criminal Law Amendment (Home Burglary and*  
8                    *Other Offences) Act 2014* Part 2 Divisions 2  
9                    and 3; and
- 10                    (b) the amendment made to the *Sentencing*  
11                    *Act 1995* by the *Criminal Law Amendment*  
12                    *(Home Burglary and Other Offences) Act 2014*  
13                    Part 3.
- 14                    (3) The Minister is to cause a report of the review to be  
15                    laid before each House of Parliament as soon as  
16                    practicable after it is done.  
17

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**Part 3 — *Sentencing Act 1995* amended**

**23. Act amended**

This Part amends the *Sentencing Act 1995*.

**24. Section 90 amended**

Delete section 90(1)(a) and insert:

- (a) set a minimum period of —
  - (i) at least 15 years, if the offence is committed by an adult offender (within the meaning given in *The Criminal Code* section 1(1)) in the course of conduct that constitutes an aggravated home burglary (within the meaning given in that section); or
  - (ii) at least 10 years, in any other case, that the offender must serve before being eligible for release on parole; or

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