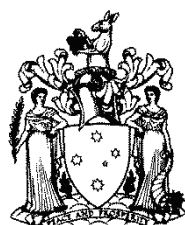


**Authorised Version**  
**Crimes Amendment (Carjacking and Home  
Invasion) Act 2016**  
**No. 50 of 2016**

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Authorised Version



Victoria

# Crimes Amendment (Carjacking and Home Invasion) Act 2016<sup>†</sup>

No. 50 of 2016

[Assented to 18 October 2016]

The Parliament of Victoria enacts:

## Part 1—Preliminary

### 1 Purposes

The main purposes of this Act are—

- (a) to amend the **Crimes Act 1958** to create new offences of carjacking and home invasion and consequentially amend Schedule 2 to the **Criminal Procedure Act 2009**; and

- (b) to amend the **Sentencing Act 1991** to provide that minimum terms of imprisonment apply to the offences of aggravated carjacking and aggravated home invasion; and
- (c) to amend the **Bail Act 1977** to include aggravated carjacking, home invasion and aggravated home invasion as show cause offences under that Act.

## 2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 July 2017, it comes into operation on that day.

## **Part 2—Amendment of Crimes Act 1958**

### **3 New sections 77A, 77B and 77C inserted**

After section 77 of the **Crimes Act 1958** insert—

#### **"77A Home invasion**

- (1) A person commits a home invasion if—
- (a) the person enters a home as a trespasser with intent—
    - (i) to steal anything in the home; or
    - (ii) to commit an offence, punishable by imprisonment for a term of 5 years or more—
      - (A) involving an assault to a person in the home; or
      - (B) involving any damage to the home or to property in the home; and
  - (b) the person enters the home in company with one or more other persons; and
  - (c) either—
    - (i) at the time the person enters the home, the person has with them a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive; or
    - (ii) at any time while the person is present in the home, another person (other than a person referred to in paragraph (b)) is present in the home.
- (2) For the purpose of subsection (1)(c)(ii), it is immaterial whether or not the person knew that there was, or would be, another person present in the home.

- (3) A person who commits a home invasion commits an offence and is liable to level 2 imprisonment (25 years maximum).
- (4) A person may be found guilty of an offence against this section whether or not any other person is prosecuted for or found guilty of the offence.
- (5) In this section—

*explosive, firearm, imitation explosive, imitation firearm, and offensive weapon* have the same meanings as in section 77;

*home* means any building, part of a building or other structure intended for occupation as a dwelling and includes the following—

- (a) any part of commercial or industrial premises that is used as residential premises;
- (b) a motel room or hotel room or other temporary accommodation provided on a commercial basis;
- (c) a rooming house within the meaning of the **Residential Tenancies Act 1997**;
- (d) a room provided to a person as accommodation in a residential care service, hospital or any other premises involved in the provision of health services to the person;
- (e) a caravan within the meaning of the **Residential Tenancies Act 1997** or any vehicle or vessel used as a residence.

**77B Aggravated home invasion**

- (1) A person commits an aggravated home invasion if—
- (a) the person enters a home as a trespasser with intent—
    - (i) to steal anything in the home; or
    - (ii) to commit an offence, punishable by imprisonment for a term of 5 years or more—
      - (A) involving an assault to a person in the home; or
      - (B) involving any damage to the home or to property in the home; and
  - (b) the person enters the home in company with 2 or more other persons; and
  - (c) at the time the person enters the home—
    - (i) the person has with them a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive; and
    - (ii) the person knows or is reckless as to whether there is or will be another person (other than a person referred to in paragraph (b)) present in the home while the person is present in the home; and
  - (d) at any time while the person is present in the home, another person (other than a person referred to in paragraph (b)) is present in the home.

- (2) A person who commits an aggravated home invasion commits an offence and is liable to level 2 imprisonment (25 years maximum).
- (3) A person may be found guilty of an offence against this section whether or not any other person is prosecuted for or found guilty of the offence.
- (4) In this section—  
*explosive, firearm, imitation explosive, imitation firearm, and offensive weapon* have the same meanings as in section 77;  
*home* has the same meaning as in section 77A.

**Notes**

- 1 Section 10AC of the **Sentencing Act 1991** requires that a term of imprisonment be imposed for an offence against section 77B and that a non-parole period of not less than 3 years be fixed under section 11 of that Act unless the court finds under section 10A of that Act that a special reason exists.
- 2 If a court makes a finding under section 10A of the **Sentencing Act 1991** that a special reason exists, the requirements of section 10AC of that Act do not apply and the court has full sentencing discretion.

**77C Alternative verdict for charge of aggravated home invasion**

If on the trial of a person charged with an offence against section 77B (aggravated home invasion) the jury are not satisfied that the person is guilty of the offence charged but are satisfied that the person is guilty of an offence against section 77A (home invasion), the jury may acquit the person of the offence charged and find the person guilty of the offence

against section 77A and the person is liable to punishment accordingly."

#### **4 New sections 79 and 79A inserted**

After section 78 of the **Crimes Act 1958** insert—

##### **"79 Carjacking**

- (1) A person (A) commits a carjacking if—
  - (a) A steals a vehicle; and
  - (b) immediately before or at the time of doing so, and in order to do so, A—
    - (i) uses force on another person; or
    - (ii) puts or seeks to put another person (B) in fear that B or anyone else will then and there be subjected to force.
- (2) A person who commits a carjacking commits an offence and is liable to level 4 imprisonment (15 years maximum).
- (3) In this section—

**vehicle** includes—

  - (a) a motor vehicle;
  - (b) a vessel within the meaning of the **Marine Safety Act 2010**.

##### **79A Aggravated carjacking**

- (1) A person commits an aggravated carjacking if the person commits a carjacking and—
  - (a) at the time the person has with them a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive; or
  - (b) in the course of the carjacking the person causes injury to another person.



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Part 2—Amendment of Crimes Act 1958

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- (2) A person who commits an aggravated carjacking commits an offence and is liable to level 2 imprisonment (25 years maximum).
- (3) In this section—  
*explosive, firearm, imitation explosive, imitation firearm, and offensive weapon* have the same meanings as in section 77;  
*injury* has the same meaning as in section 15.

**Notes**

- 1 Section 10AD of the **Sentencing Act 1991** requires that a term of imprisonment be imposed for an offence against section 79A and that a non-parole period of not less than 3 years be fixed under section 11 of that Act unless the court finds under section 10A of that Act that a special reason exists.
- 2 If a court makes a finding under section 10A of the **Sentencing Act 1991** that a special reason exists, the requirements of section 10AD of that Act do not apply and the court has full sentencing discretion."

## **Part 3—Amendment of Sentencing Act 1991**

### **5 New sections 10AC and 10AD inserted**

After section 10AB of the **Sentencing Act 1991**  
**insert—**

#### **"10AC Custodial sentence must be imposed for offence of aggravated home invasion**

- (1) In sentencing an offender (whether on appeal or otherwise) for an offence against section 77B of the **Crimes Act 1958**, a court must impose a term of imprisonment and fix under section 11 a non-parole period of not less than 3 years unless the court finds under section 10A that a special reason exists.

#### **Note**

Section 11(3) requires that a non-parole period must be at least 6 months less than the term of the sentence.

- (2) Subsection (1) does not apply to an offender who is under the age of 18 years at the time of the offence.

#### **10AD Custodial sentence must be imposed for offence of aggravated carjacking**

- (1) In sentencing an offender (whether on appeal or otherwise) for an offence against section 79A of the **Crimes Act 1958**, a court must impose a term of imprisonment and fix under section 11 a non-parole period of not less than 3 years unless the court finds under section 10A that a special reason exists.

#### **Note**

Section 11(3) requires that a non-parole period must be at least 6 months less than the term of the sentence.

- (2) Subsection (1) does not apply to an offender who is under the age of 18 years at the time of the offence."

**6 Special reasons relevant to imposing minimum non-parole periods**

- (1) In section 10A(2) of the **Sentencing Act 1991**, for "or 10AB" **substitute** ", 10AB, 10AC or 10AD".
- (2) In section 10A(3) of the **Sentencing Act 1991**, after paragraph (ac) **insert**—
- "(ad) the Parliament's intention that a sentence of imprisonment of not less than 3 years should ordinarily be imposed for an offence covered by section 10AC; and
- (ae) the Parliament's intention that a sentence of imprisonment of not less than 3 years should ordinarily be imposed for an offence covered by section 10AD; and".

## **Part 4—Amendment of Bail Act 1977**

### **7 Amendment of section 4**

(1) After section 4(4)(bb) of the **Bail Act 1977**  
**insert—**

"(bc) with an offence of aggravated burglary under section 77 of the **Crimes Act 1958**, an offence of home invasion under section 77A of that Act, an offence of aggravated home invasion under section 77B of that Act or an offence of aggravated carjacking under section 79A of that Act; or".

(2) In section 4(4)(c) of the **Bail Act 1977—**

(a) for "with an offence of aggravated burglary under section 77 of the **Crimes Act 1958** or any other indictable offence" **substitute** "with any indictable offence";

(b) for "the said section 77" **substitute** "section 77 of the **Crimes Act 1958**".

## **Part 5—Amendment of Criminal Procedure Act 2009**

### **8 Schedule 2 to the Criminal Procedure Act 2009 amended**

After item 4.8 of Schedule 2 to the **Criminal  
Procedure Act 2009** insert—

"4.8A Offences under section 79 of the **Crimes  
Act 1958** (carjacking).".

## **Part 6—Repeal**

### **9 Repeal of amending Act**

This Act is **repealed** on 1 July 2018.

#### **Note**

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

<sup>†</sup> *Minister's second reading speech—*

*Legislative Assembly: 1 September 2016*

*Legislative Council: 11 October 2016*

The long title for the Bill for this Act was "A Bill for an Act to amend the **Crimes Act 1958** to create new offences of carjacking and home invasion, to amend the **Sentencing Act 1991** to provide that minimum terms of imprisonment apply to the offences of aggravated carjacking and aggravated home invasion, to amend the **Bail Act 1977** to include aggravated carjacking, home invasion and aggravated home invasion as show cause offences under that Act and for other purposes."