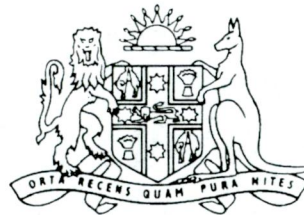


First print



New South Wales

Home Invasion (Occupants Protection) Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to protect occupants of dwelling-houses from home invasion and its consequences.

The Bill:

- (a) declares that it is the public policy of the State that its citizens have a right to enjoy absolute safety from attack within their homes from intruders, and
 - (b) sanctions the use of physical force by an occupant in defence against an intruder if the occupant believes on reasonable grounds that it is necessary to do so, and
 - (c) provides immunity to occupants from criminal and civil liability arising from anything done by them that is sanctioned under the proposed Act.
-

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 defines who is an *intruder* for the purposes of the proposed Act.

Part 2 Use of force to prevent attack

Clause 5 declares that it is the public policy of the State that its citizens have a right to enjoy absolute safety from attack within their homes from intruders.

Clause 6 enables an occupant to act in self-defence against an intruder if the occupant believes on reasonable grounds that it is necessary to do so.

Clause 7 enables an occupant to act in defence of another person in the dwelling-house against an intruder if the occupant believes on reasonable grounds that it is necessary to do so.

Clause 8 enables an occupant to act in defence of property of, or within, the dwelling-house if the occupant believes on reasonable grounds that it is necessary to do so.

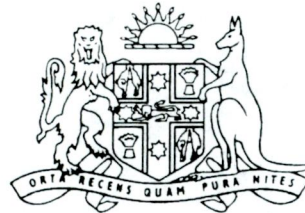
Clause 9 provides that the test as to whether reasonable grounds exist is to be determined having regard to the belief of the occupant, based on the circumstances as the occupant perceived them to be.

Clause 10 places the onus on the prosecution of proving, beyond a reasonable doubt, that the occupant did not have the belief alleged, or that the grounds for the occupant's belief were not reasonable grounds.

Part 3 Criminal and civil liability

Clause 11 grants immunity from criminal liability to an occupant who acts in accordance with the proposed Act.

Clause 12 grants immunity from civil liability to an occupant who acts in accordance with the proposed Act.



New South Wales

Home Invasion (Occupants Protection) Bill 1998

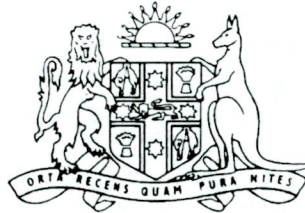
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Home Invasion (Occupants Protection) Bill 1998

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New South Wales

Home Invasion (Occupants Protection) Bill 1998

No . . . , 1998

A Bill for

An Act to provide protection and immunity to occupants who defend themselves, other occupants and their property against invaders of their dwelling-houses; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Home Invasion (Occupants Protection) Act 1998*.

2 Commencement

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

3 Definitions

In this Act:

confrontation with an intruder means a confrontation with an intruder in which physical force is used. 10

dwelling-house includes:

- (a) any building or other structure occupied as a dwelling, and
- (b) any building or other structure within the same curtilage as a dwelling-house, and occupied in connection with the dwelling-house or whose use is ancillary to the occupation of the dwelling-house. 15

intruder has the meaning given in section 4.

4 Who is an intruder?

A person is an intruder for the purposes of this Act if:

- (a) the person makes an unlawful entry into a dwelling-house, and 20
- (b) an occupant of the dwelling-house believes that the person, in addition to the unlawful entry, has committed, or is committing, a crime in the dwelling-house against an occupant of the dwelling-house or the property of, or within, the dwelling-house. 25

Part 2 Use of force to prevent attack

5 Safety within homes

Parliament expressly declares that it is the public policy of the State of New South Wales that its citizens have a right to enjoy absolute safety from attack within their dwelling-houses from intruders.

5

6 Self-defence

An occupant of a dwelling-house may act in self-defence against an intruder if the occupant believes on reasonable grounds that it is necessary to do so.

10

7 Defence of other persons

An occupant of a dwelling-house may act in defence of any other person in the dwelling-house against an intruder if the occupant believes on reasonable grounds that it is necessary to do so.

8 Defence of property

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An occupant of a dwelling-house may act in defence of any property of, or within, the dwelling-house against an intruder if the occupant believes on reasonable grounds that it is necessary to do so.

9 Reasonable grounds

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Whether grounds are reasonable grounds for the purposes of section 6, 7 or 8 is to be determined having regard to the belief of the occupant, based on the circumstances as the occupant perceived them to be.

10 Onus of proof in criminal proceedings

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If in proceedings against an occupant of a dwelling-house the occupant seeks to rely on the provisions of section 6, 7 or 8, the prosecution has the onus of proving, beyond reasonable doubt:

- (a) that the occupant did not have the belief alleged, or
- (b) that the grounds for the occupant's belief were not reasonable grounds.

30

Part 3 Criminal and civil liability

11 Immunity from criminal liability

- (1) An occupant of a dwelling-house who acts in accordance with section 6, 7 or 8 is immune from criminal liability resulting from his or her acts. 5
- (2) If proceedings are commenced against an occupant accused of a crime as a result of a confrontation with an intruder, the occupant must be brought before the court, whether by way of preliminary hearing or otherwise, within 9 months after the proceedings are commenced. However, the 9-month period is to be extended by the length of any delay that is attributable to the occupant. 10

12 Immunity from civil liability

An occupant of a dwelling-house who acts in accordance with section 6, 7 or 8 is immune from civil liability resulting from his or her acts. 15