



New South Wales

Home Invasion (Occupants Protection) Act 1998 No 109

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Home Invasion (Occupants Protection) Act 1998 No 109

Act No 109, 1998

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. [Assented to 9 November 1998]

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

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.

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.

intruder has the meaning given in section 4.

occupant of a dwelling-house includes an owner, lessee and landlord of the dwelling-house and any person invited into the dwelling-house.

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
- (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.

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 dwelling-houses from intruders.

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.

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

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

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

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.

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.
- (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.

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.

[Minister's second reading speech made in—
Legislative Assembly on 24 September 1998
Legislative Council on 21 October 1998]

BY AUTHORITY