



New South Wales

Home Invasion (Occupants Protection) Bill 1998

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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly*



New South Wales

Home Invasion (Occupants Protection) Bill 1998

Act No , 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.

EXAMINED

Chairman of Committees

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.

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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.

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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.

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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.

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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. 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