



New South Wales

# Right to Self-defence Bill 2001

## Explanatory note

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

### Overview of Bill

The object of this Bill is to amend the *Crimes Act 1900* to restate the law relating to self-defence. The law relating to self-defence is presently dealt with principally by the common law and partly (in relation to what a home-owner may lawfully do in self-defence to protect occupants and property within the home) by the *Home Invasion (Occupants Protection) Act 1998*.

## Outline of provisions

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

**Clause 2** provides for proposed Act to commence on a day to be proclaimed by the Governor-in-Council.

**Clause 3** is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

**Clause 4** repeals the *Home Invasion (Occupants Protection) Act 1998*.

## Schedule 1 Amendments

**Schedule 1** inserts a new Part 8B into the *Crimes Act 1900* to deal with self-defence. The Part contains the following provisions:

- **Proposed section 344B** contains definitions. The expression *conduct* is defined to cover acts or omissions. The expression *offence* is limited to offences that are punishable under the *Crimes Act 1900* and committed after the commencement of the proposed Act.
- **Proposed section 344C** is based on section 10.4 of the Criminal Code, as set out in the *Criminal Code Act 1995* of the Commonwealth. The proposed section will replace the common law in its application to the offences covered by the definition mentioned above. The leading case is *Zecevic v Director of Public Prosecutions (Victoria)* (1987) 162 CLR 645.
- **Proposed section 344C (1)** provides that a person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self-defence.
- **Proposed section 344C (2)** sets out the requirements regarding self-defence. It is self-defence only if the defendant believes the conduct is necessary in the circumstances listed in the subsection and the conduct is a reasonable response in the circumstances as he or she perceives them.
  - The circumstances in which the plea of self-defence is available to a person are: defence of the person or another person, prevention or termination of unlawful imprisonment of the person or another person, protection of property, prevention of criminal trespass, removal of criminal trespassers.

- The test as to necessity is subjective, but the test as to proportion is objective. The response of the defendant has to be objectively proportionate to the situation which the defendant subjectively believed to exist.
- **Proposed section 344C (3)** provides that a person who carries out conduct in self-defence:
  - to defend himself or herself or another person, or
  - to prevent or terminate the unlawful imprisonment of himself or herself or another person,is not prevented from using a higher level of force than that used by the person against whom the conduct in self-defence is carried out.
- **Proposed section 344C (4)** provides that force that involves the intentional infliction of death or the intentional infliction of grievous bodily harm is not self-defence in the context of force used to protect property.
- **Proposed section 344C (5)** provides that the right to use force in self-defence is not available where the accused is responding to conduct that is lawful and that the accused knew was lawful. The proposed section also provides (for this purpose) that conduct is not lawful merely because the person carrying it out is not criminally liable for it: this would cover attacks by a child or an insane person.
- **Proposed section 344D** provides that the prosecution bears the burden of proving that conduct was not carried out in self-defence when it has been established that the evidence discloses the possibility that it was carried out in self-defence (whether or not the plea of self-defence is raised by the defendant).
- **Proposed section 344E** provides that a person who carries out conduct in self-defence is immune from civil liability resulting from his or her conduct.



New South Wales

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New South Wales

# Right to Self-defence Bill 2001

No. , 2001

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## **A Bill for**

An Act to amend the *Crimes Act 1900* in relation to self-defence; and to repeal the *Home Invasion (Occupants Protection) Act 1998*.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Right to Self-defence Act 2001</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day to be appointed by proclamation.	5
<b>3 Amendment of Crimes Act 1900 No 40</b>	6
The <i>Crimes Act 1900</i> is amended as set out in Schedule 1.	7
<b>4 Repeal of Home Invasion (Occupants Protection) Act 1998 No 109</b>	8
The <i>Home Invasion (Occupants Protection) Act 1998</i> is repealed.	9

<b>Schedule 1</b>	<b>Amendments</b>	1
	(Section 3)	2
<b>Part 8B</b>		3
Insert after Part 8A:		4
<b>Part 8B</b>	<b>Self-defence</b>	5
<b>344B</b>	<b>Definitions</b>	6
	In this Part:	7
	<i>conduct</i> means an act or an omission to perform an act.	8
	<i>criminal trespass</i> means criminal trespass to land or premises, and includes an offence under section 18 of the <i>Imperial Acts Application Act 1969</i> or the <i>Inclosed Lands Protection Act 1901</i> .	9 10 11 12
	<i>offence</i> means an offence punishable under this Act and committed after the commencement of this Part.	13 14
<b>344C</b>	<b>Self-defence</b>	15
	(1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self-defence.	16 17 18
	(2) A person carries out conduct in self-defence if and only if he or she believes the conduct is necessary:	19
	(a) to defend himself or herself or another person, or	20 21
	(b) to prevent or terminate the unlawful imprisonment of himself or herself or another person, or	22 23
	(c) to protect property from unlawful appropriation, destruction, damage or interference, or	24 25
	(d) to prevent criminal trespass, or	26

(e)	to remove from any land or premises a person who is committing criminal trespass,	1 2
	and the conduct is a reasonable response in the circumstances as he or she perceives them.	3 4
(3)	This section does not prevent a person who carries out conduct in self-defence:	5 6
(a)	to defend himself or herself or another person, or	7
(b)	to prevent or terminate the unlawful imprisonment of himself or herself or another person,	8 9
	from using a higher level of force than that used by the person against whom the conduct in self-defence is carried out.	10 11
(4)	It is not self-defence if the person uses force that involves the intentional infliction of death or the intentional infliction of grievous bodily harm and if he or she believes that the infliction of the death or grievous bodily harm is necessary for the purpose only of:	12 13 14 15 16
(a)	protecting property, or	17
(b)	preventing criminal trespass, or	18
(c)	removing a person who is committing criminal trespass.	19
(5)	It is not self-defence if:	20
(a)	the person is responding to lawful conduct, and	21
(b)	he or she knew that the conduct was lawful.	22
	However, conduct is not lawful merely because the person whose act or omission comprised the conduct is not criminally responsible for it.	23 24 25
(6)	This section has effect subject to any other provision of this Act.	26 27
<b>344D</b>	<b>Burden of proof</b>	28
(1)	The prosecution bears the burden of proving beyond reasonable doubt that conduct was not carried out in self-defence when it has been established that the evidence discloses the possibility that it was carried out in self-defence.	29 30 31 32



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(2) Without limiting subsection (1), the prosecution bears the burden of proving beyond reasonable doubt that the defendant believed that the infliction of death or grievous bodily harm as referred to in section 344C (4) was necessary only for a purpose so referred to.	1 2 3 4 5
(3) This section applies whether or not the plea of self-defence is raised by the defendant.	6 7
<b>344E Immunity from civil liability</b>	8
A person who carries out conduct in self-defence is immune from civil liability resulting from his or her conduct.	9 10
<b>Note.</b> Under section 352 of this Act, a person acting in self-defence may, without having to obtain a warrant, arrest the assailant, if the assailant:	11 12
(a) is in the act of committing an offence, or	13
(b) has just committed an offence, or	14
(c) has committed a serious indictable offence for which the assailant has not been tried.	15 16