



Legislative Assembly

Right To Self-Defence (Immunity From Civil Liability) Bill Hansard

Extract

26/09/2002

Second Reading

Mr HARTCHER (Gosford) [10.05 a.m.]: I move:

That this bill be now read a second time.

The Right to Self-defence (Immunity from Civil Liability) Bill will ensure that people who exercise their right to self-defence cannot thereafter be subject to legal action in the civil courts for damages. The bill is a simple bill. Clause 1 sets out the short title. Clause 2 provides for the commencement of the proposed Act on the date of assent. It further provides that the bill is not to be retrospective. It will not, therefore, apply to conduct carried out before the commencement of the Act. Clause 4 sets out the requirements for self-defence before immunity from civil liability is made good. Clause 4 spells out what constitutes self-defence for the purposes of the Act. Clause 4 states:

- (1) For the purposes of this Act, a person carries out conduct in self-defence if and only if the person believes the conduct is necessary:
 - (a) to defend himself or herself or another person, or
 - (b) to prevent or terminate the unlawful imprisonment of himself or herself or another person, or
 - (c) to prevent property from unlawful appropriation, destruction, damage or interference, or
 - (d) to prevent criminal trespass, or
 - (e) to remove from any land or premises a person who is committing a criminal trespass

and the conduct is a reasonable response in the circumstances as he or she perceives them.

The clause further states:

- (2) Conduct is not excluded from being self-defence merely because the person:
 - (a) in defending himself or herself or another person, or
 - (b) in preventing or terminating the unlawful imprisonment of himself or herself or another person used a higher level of force than that used by the person against whom the conduct in self-defence is carried out

The bill originates from an earlier bill that I presented to Parliament in 2001: the Right to Self-defence Bill. That bill contained a clause similar to clause 3 in this bill. The Government did not support my original bill. The Attorney General disparaged the bill. The Government opposed the bill and then it simply proceeded to introduce its own legislation, which was the same as my bill. I regard that as a genuine form of flattery. I was thrilled to see my idea taken up by the Government, which is bereft of any ideas or initiatives in these important areas of law reform. Nonetheless it reflected the cynicism of the Carr Government in relation to this whole issue of self-defence.

Significantly, at the time the Attorney General said that there was no need for this clause. The Attorney General disparaged this clause and said a number of things about it. In September, almost exactly one year ago, before the whole public liability crisis, the Government was quite cavalier in its attitude. When the public liability crisis arose, the Government got excited and its attitude was to change very quickly. In debate in September 2001 the Attorney General said:

The amendment cannot be supported by the Government. It should not be an amendment to the Crimes Act but more properly should be separate legislation dealing only with the subject of civil liability.

The Government now has a bill dealing only with the subject of civil liability. The Government now has before the Parliament its own civil liability legislation which is designed to exclude criminals and drunks from claiming, but it does not guarantee to any person the right to immunity from action arising from the exercise of self-defence. While the Government purports to address this whole issue of how criminals are using civil liability claims to advance their case, it still has not addressed this issue in its legislation. It will probably realise, once again, that the Opposition has come up with appropriate ideas and it will probably steal them. This is an opportunity for the Government to take this legislation on board and support it now.

At the time the Attorney General admitted that it was not a bad concept, but he then went on to say that it could lead to absurd and unjust results. The difficulty for the Attorney General was that he could not find an

appropriate example of how my bill, which states that people defending themselves in accordance with the law cannot be sued, could lead to an unjust or unfair result. He had to resort to the most far-fetched and extreme cases to illustrate a point that was badly made. Last year the Government had the opportunity to close the loophole, but it missed that opportunity and is now being forced by the insurance crisis, which has arisen since, to address the whole issue of who can sue and in what circumstances. The Government has still not closed this loophole in the law.

The Liberal Party and National Party are prepared to close the loophole for the Government and put before the House appropriate legislation. When I introduced the bill last year the salient story was the break-in of a home in Western Sydney, which was reported in the *Daily Telegraph* at the time. That offender launched a civil action for compensation against his victims. The police statement tendered in the court states that the owners arrived home to find that their front door was ajar and the criminal was in their lounge room. They confronted the criminal, who threw a bag of coins at them. The criminal then ran out the back door, was pursued and then attacked by the victims' dog. It is ridiculous that an offender can sue his victims for \$40,000 because he was attacked after breaking into their home.

The Government has done nothing to stop that ridiculous situation. Last year it had an opportunity to close that gap in the law, but it still has not done so. Following on from that case is the well-known case of the young teenager who broke into a flat above a hotel. The manager had a fight with the intruder in an endeavour to protect his wife and children and as a result the young intruder received an award of damages for \$50,000 and his mother an award of \$19,000 because she saw blood on her son. The Premier agrees it is ridiculous that intruders can break into the homes of people and then sue them. However, the Premier has taken no action to close that loophole, but the Opposition is prepared to do it for him. The Opposition is prepared to come into this Parliament and end that ridiculous situation. In that case the hotel manager lost his job and his flat. He was the victim yet the criminal walked away with \$50,000 and his mother with \$19,000.

One of the reasons for the insurance crisis is that the Government fails to address legal issues until it is forced to. It simply sits back, waits for a public clamour, and then responds. The Government never takes the initiative and plans for the people of New South Wales, be it in law reform, health, education or roads. The Government is totally reactive and waits for the appropriate media crisis so that it can be seen to act on that crisis. The Government now has its media crisis with this huge insurance crisis and the widespread concern by the community that people are not safe in their homes. To add insult to injury, when a criminal invades the homes of innocent people, the criminal can sue the victim. The Opposition does not agree with that and is determined to close that option for criminals. If the Coalition does not close it now, and the Government does not support this bill, the Coalition will close it upon obtaining office in 2003. The Carr Government has a perfect opportunity to act and I call upon it to so act. When I introduced the bill I put out a media release, which stated:

A court judgment awarding \$50 000 to a person breaking in to another person's premises sends the completely wrong message.

Shadow Attorney General Chris Hartcher said the judgment of \$50 000 for "excessive force" and \$19 000 to the mother was extraordinary and should be reviewed.

"No legal systems can tolerate situations where criminals are allowed to use the law for their own profit," Mr Hartcher said.

That is the crucial point here. The legal system cannot be so manipulated that criminals are allowed to use it to make a profit. Unfortunately, the Carr Government is doing nothing about that situation. The media release further stated:

Last year the Coalition introduced legislation into the Parliament that barred people engaged in criminal conduct from suing for civil damages.

It followed the outrageous situation where a man who broke into a house and attacked the homeowner launched a civil action against his victim after he was bitten by their dog.

The Carr Labor Government voted against it.

In doing so they sent the wrong message—to the criminal, the community and the courts.

Mr Hartcher said the Coalition would re-introduce the legislation, preventing criminals from launching civil suits against their victims.

That is exactly what we are doing. The Opposition is prepared to send a message supporting the community of New South Wales when people act in self-defence, be it in their home, in the street or anywhere else. It will ensure that criminals face the court and victims receive justice. It will ensure that people cannot be sued in those circumstances and that the legal system in this State looks after honest, law-abiding citizens and does not favour, by neglect and inaction, criminals who exploit the law.

This bill is clear and simple and I hope it receives the support of all honourable members. In particular, I hope it receives the support of members of the crossbench and those who take an interest in legislative reform. I urge the Government to put aside its bloody-minded attitude that the only legislation that can pass through Parliament is legislation introduced by the Government. It should take this opportunity to correct the mistake it made in 2001, before the insurance crisis was forced upon it, by supporting this bill and adopting legislation that encourages good citizenship and acknowledges the right to self-defence in our community.