

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.