

New South Wales

Home Invasion (Occupants Protection) Bill 1995

Explanatory note

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

Overview of Bill

The object of this Bill is to protect occupants of dwelling-houses from home invasion and its consequences. The Bill:

- (a) declares that it is the public policy of the State that its citizens have a right to enjoy absolute safety from attack within their homes from intruders, and
 - (b) sanctions the use of physical force, including, subject to certain constraints, deadly physical force, by an occupant against an intruder, and
 - (c) provides immunity to occupants from criminal and civil liability arising from anything done by them that is sanctioned under the proposed Act and from civil liability that might otherwise arise between an occupier and an intruder under, for example, the law relating to occupiers' liability, and
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- (d) provides that an occupant who is acquitted of criminal charges because of the immunity conferred by the proposed Act is entitled to recover the costs and expenses of medical and similar treatment, lost income and the costs and expenses of legal advice and representation incurred as a consequence of the home invasion.

Outline of provisions

Part 1 Preliminary

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

Clause 2 provides that the proposed Act will commence 3 months after the date of assent unless commenced sooner by proclamation.

Clause 3 contains definitions for the purposes of the proposed Act.

Clause 4 defines who is an *intruder* for the purposes of the proposed Act.

Clause 5 defines what is *deadly physical force* for the purposes of the proposed Act.

Part 2 Use of force to prevent attack

Clause 6 declares that it is the public policy of the State that its citizens have a right to enjoy absolute safety from attack within their homes from intruders.

Clause 7 justifies, subject to clauses 8, 9 and 10, the use of physical force, including deadly physical force, by an occupant against an intruder if the occupant reasonably believes in the circumstances as the occupant perceives them that the intruder is using or might use physical force against any person in the dwelling-house.

Clause 8 requires an occupant to give an intruder a warning before using physical force unless the occupant reasonably believes in the circumstances as the occupant perceives them that the warning would be useless, that the warning would be dangerous to the occupant or another person, that serious bodily harm will be inflicted on a person before the warning could be given or that substantial damage would be done to the dwelling-house or any of its contents before the warning could be given.

Clause 9 removes the necessity for a warning by the occupant if the intruder uses physical force.

Clause 10 denies an occupant the use of deadly physical force in two situations. The first is if the occupant reasonably believes in the circumstances as the occupant perceives them that the intruder has ceased to threaten the use of physical force, or to cause damage to the dwelling-house or any of its contents, or is fleeing or retreating from the dwelling-house. The second is if the use of deadly physical force is not a reasonable response in the circumstances as the occupant perceives them.

Clause 11 extends the area in which an occupant may use physical force to include the grounds surrounding the dwelling-house and to land a reasonable distance from the dwelling-house if the intruder is armed, uses corporal violence or maliciously inflicts actual bodily harm on any person.

Part 3 Criminal and civil proceedings

Clause 12 confers an immunity from criminal liability on an occupant for the use of physical force that is justified under the proposed Act. The occupant has the burden of proving justification on the balance of probabilities. The trial of an occupant is barred if the hearing does not commence within 9 months after the commission of the alleged crime.

Clause 13 confers an immunity from civil liability on an occupant for the use of physical force that is justified under the proposed Act.

Clause 14 confers an immunity from civil liability on an occupant that an intruder may otherwise claim as a result of the intrusion.

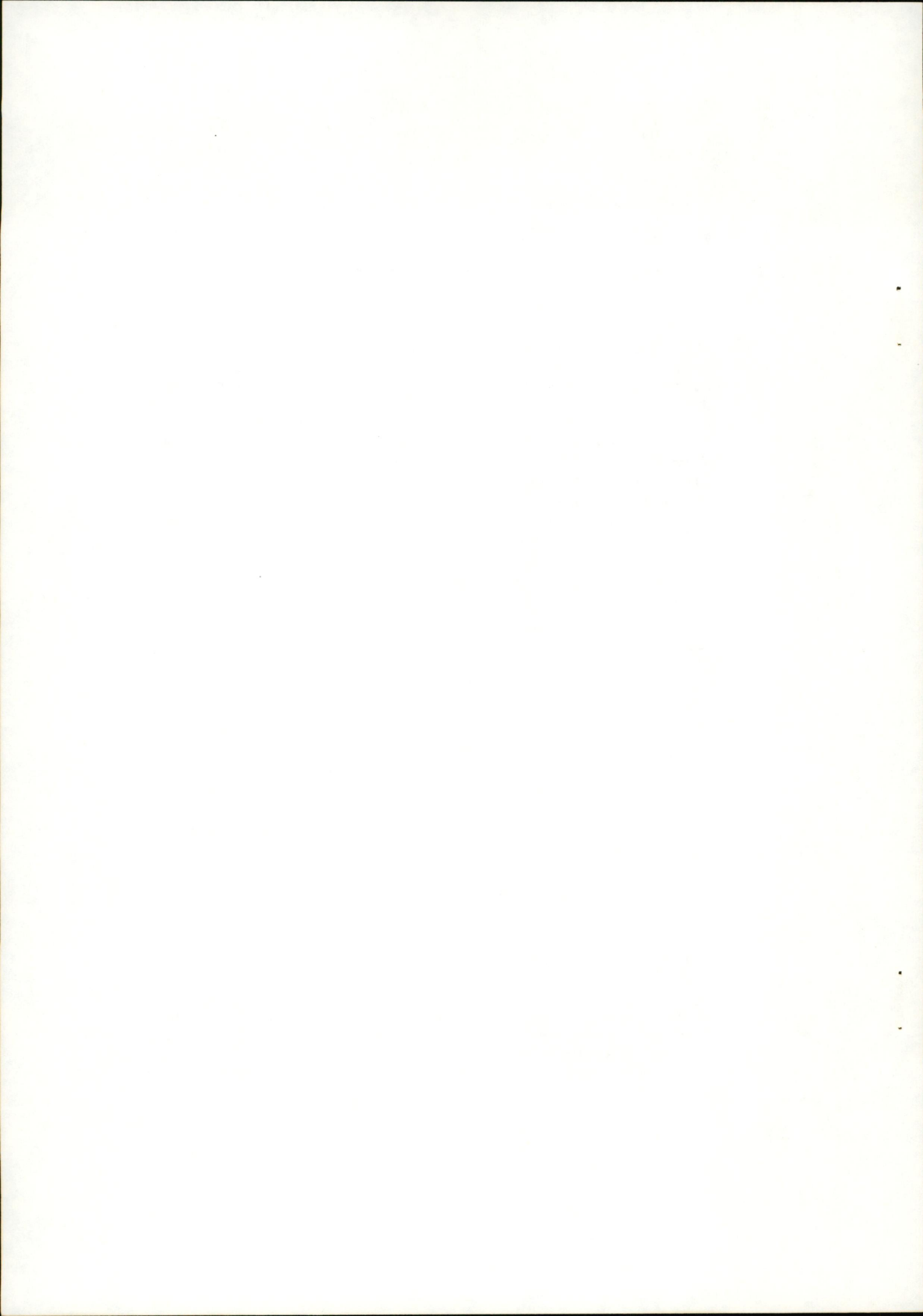
Clause 15 gives effect to the amendment to the *Costs in Criminal Cases Act 1967* set out in Schedule 1.

Clause 16 provides that the proposed Act applies in addition to the common law of self defence.

Clause 17 extends the application of the proposed Act to things done before its commencement and in respect of which legal proceedings have not then been commenced.

Schedule 1 Amendment of Costs in Criminal Cases Act 1967

Schedule 1 amends the *Costs in Criminal Cases Act 1967* to provide that, on the acquittal of an occupant on the ground that the occupant used physical force that is justified by the proposed Act, the Treasurer must pay the occupant's costs and expenses of medical and similar treatment, any loss of income or remuneration suffered by the occupant and the occupant's costs and expenses of legal advice and representation, as certified by the court.





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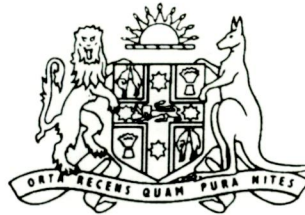
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New South Wales

Home Invasion (Occupants Protection) Bill 1995

No. , 1995

A Bill for

An Act to provide protection and immunity to occupants who defend themselves and others against invaders of their dwelling-houses; to amend the *Costs in Criminal Cases Act 1967*; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Home Invasion (Occupants Protection) Act 1995*.

2 Commencement

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This Act commences on the day occurring 3 months after the date of assent unless commenced sooner by proclamation.

3 Definitions

In this Act:

actual bodily harm has the same meaning as at common law. 10

confrontation with an intruder means a confrontation with an intruder in which physical force is used.

deadly physical force has the meaning given in section 5.

dwelling-house includes:

(a) any building or other structure intended for occupation as a dwelling and capable of being so occupied, although it has never been so occupied, and 15

(b) a boat or vehicle in or on which any person resides, and

(c) 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. 20

intruder has the meaning given in section 4.

serious bodily harm means actual bodily harm:

(a) that creates a substantial risk of death, or 25

(b) that causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ, or

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- (c) that results from an offence under section 61I of the *Crimes Act 1900* (Sexual assault) or section 61J of the *Crimes Act 1900* (Aggravated sexual assault).

4 Who is an intruder?

A person is an intruder for the purposes of this Act if: 5

- (a) the person makes an unlawful entry into a dwelling-house, and
- (b) an occupant of the dwelling-house has a reasonable belief in the circumstances as the occupant perceives them that the person, in addition to the unlawful entry, has committed, or is committing, or intends to commit, a crime in the dwelling-house against an occupant of the dwelling-house or the property of, or within, the dwelling-house. 10

5 Deadly physical force

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Deadly physical force means force that the actor uses with the purpose of causing, or that the actor knows will create a substantial risk of causing, death or serious bodily harm. For example, purposely firing a firearm in the direction of another person or at a vehicle, building or structure in which another person is believed to be constitutes deadly physical force. A threat to cause death or serious bodily harm, by the production of a weapon (within the meaning of the *Crimes Act 1900*) or otherwise, so long as the actor's purpose is limited to creating an apprehension that the actor will use deadly physical force if necessary, does not constitute deadly physical force. 20 25

Part 2 Use of force to prevent attack

6 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 their dwelling-houses from intruders. 5

7 Use of force

Any occupant of a dwelling-house is justified in using any degree of physical force, including deadly physical force, against an intruder if the occupant reasonably believes in the circumstances as the occupant perceives them that the intruder is using or might use physical force against any person in the dwelling-house, subject to sections 8, 9 and 10. 10

8 Warning of intention to use force

The use of physical force, including deadly physical force, is justified under section 7 only if the occupant before using such force warns the intruder of the occupant's intention to use force, unless the occupant reasonably believes in the circumstances as the occupant perceives them that: 15

- (a) the warning would be useless, or 20
- (b) it would be dangerous to the occupant or another person to give the warning, or
- (c) serious bodily harm will be inflicted on the occupant or another person before the warning can be given, or
- (d) substantial damage will be done to the dwelling-house or anything within the dwelling-house before the warning can be given. 25

9 Warning not necessary

If at any time during the intruder's presence in the dwelling-house or on the grounds surrounding it or the land a reasonable distance from it, the intruder threatens or employs physical force or deadly physical force against anyone on or in the premises, the occupant need not give any warning to the intruder before using physical force or deadly physical force against the intruder. 30
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10 Limitation on use of deadly physical force

The use of deadly physical force by an occupant of a dwelling-house against an intruder is not justified:

- (a) if the occupant reasonably believes in the circumstances as the occupant perceives them that the intruder has ceased to threaten the use of physical force, or to cause damage, or is fleeing or retreating from the dwelling-house, or 5
- (b) if the use of deadly physical force is not a reasonable response in the circumstances as the occupant perceives them. 10

11 Extension to curtilage of dwelling-house

The right of an occupant to use physical force, including deadly physical force, as provided in section 7, extends to the grounds surrounding the dwelling-house and to land a reasonable distance from the dwelling-house if the intruder: 15

- (a) is armed with an offensive weapon, or instrument within the meaning of the *Crimes Act 1900*, or
- (b) uses corporal violence on any person, or
- (c) maliciously inflicts actual bodily harm on any person.

Part 3 Criminal and civil proceedings

12 Immunity from criminal liability

- (1) Any occupant of a dwelling-house who uses physical force, or deadly physical force, that is justified under this Act, is immune from all criminal liability of any kind resulting from the use of that force. 5
- (2) In any criminal proceedings, an occupant accused of any crime as a result of a confrontation with an intruder has the burden of establishing on the balance of probabilities that the occupant's conduct is justified under this Act. If this burden is satisfied, the occupant must be acquitted of all criminal charges resulting from the confrontation. If the occupant does not satisfy this burden, the prosecution in the same proceedings must prove beyond reasonable doubt that the occupant's conduct constituted the crime alleged. This subsection is subject to section 16. 10
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- (3) The trial of an occupant accused of any crime as a result of a confrontation with an intruder must be commenced to be heard within a period of 9 months after the commission of the alleged crime, otherwise the trial of the occupant for the alleged crime is barred. 20

13 Immunity from civil liability—use of physical force, or deadly physical force, by occupant

- (1) Any occupant of a dwelling-house who uses physical force, or deadly physical force, that is justified under this Act is immune from all civil liability of any kind resulting from the use of that force. 25
- (2) In any civil proceedings brought against an occupant as a result of a confrontation with an intruder, the occupant has the burden of establishing on the balance of probabilities that the occupant's conduct is justified under this Act or is otherwise exempt from civil liability under any other law. If this burden is satisfied, the occupant is not liable to pay the claimant any damages or compensation. 30

14 Immunity from civil liability—other consequences of intrusion

The owner of a dwelling-house and anyone lawfully within the dwelling-house is immune from all civil liability of any kind (other than civil liability resulting from the use of force, or deadly physical force, by an occupant of a dwelling-house) claimed by an intruder, or by a person claiming through the intruder, resulting from the intrusion into the dwelling-house and, if the intruder:

- (a) is armed with an offensive weapon, or instrument within the meaning of the *Crimes Act 1900*, or
- (b) uses corporal violence on any person, or
- (c) maliciously inflicts actual bodily harm on any person,

the intruder's entry onto the grounds and land referred to in section 11.

15 Amendment of Costs in Criminal Cases Act 1967 No 13

The *Costs in Criminal Cases Act 1967* is amended as set out in Schedule 1.

16 Self defence

The provisions of this Act are in addition to and do not derogate from or otherwise affect:

- (a) the right at common law of a person to defend himself or herself against an attack and to act in the defence of others, or
- (b) the determination at common law of the issue of self defence.

17 Application of this Act

This Act, section 12 (3) excepted, extends to anything done before the date on which this Act commences by an occupant of a dwelling-house and in respect of which legal proceedings have not been commenced before that date.

Schedule 1 Amendment of Costs in Criminal Cases Act 1967

(Section 15)

Section 2A

Insert after section 2: 5

2A Costs arising from home invasion

- (1) If an application is made for a certificate pursuant to the provisions of section 2 by a defendant who is acquitted of criminal charges under section 12 of the *Home Invasion (Occupants Protection) Act 1995*: 10
- (a) the Court or Judge or Justice or Justices must grant a certificate under this Act, and
- (b) the Court or Judge or Justice or Justices must specify in the certificate as the amount of costs to be paid by the informant, prosecutor or complainant, as the case may be: 15
- (i) all hospital, medical, dental, nursing, pharmaceutical and associated costs and expenses, and
- (ii) all loss of income or remuneration, and 20
- (iii) all legal costs and expenses, incurred by the defendant as a consequence of the defendant's confrontation with an intruder (within the meaning of the *Home Invasion (Occupants Protection) Act 1995*), and 25

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- (c) the Treasurer is to pay the applicant (out of money provided by Parliament or otherwise legally available) the amount specified in the certificate to the extent to which it is not provided by way of legal aid under the *Legal Aid Commission Act 1979* or compensation under the *Victims Compensation Act 1987*.
- (2) This section has effect despite the other provisions of this Act.

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