



New South Wales

# Home Invasion (Occupants Protection) Bill 1997

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

*Legislative Council*

*Clerk of the Parliaments*



New South Wales

## **Home Invasion (Occupants Protection) Bill 1997**

Act No      , 1997

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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.

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The Legislature of New South Wales enacts:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Home Invasion (Occupants Protection) Act 1997*.

### 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:

*confrontation with an intruder* means a confrontation with an intruder in which physical force is used. 10

*dwelling-house* includes:

- (a) any building or other structure occupied as a dwelling, and
- (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. 15

*intruder* has the meaning given in section 4.

### 4 Who is an intruder?

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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. 25



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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 their dwelling-houses from intruders.

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### 6 Use of force

Any occupant of a dwelling-house is justified in using any degree of physical force against an intruder if:

- (a) the occupant believes that the intruder is using physical force against any person in the dwelling-house, or
- (b) the occupant believes on reasonable grounds that the intruder might use physical force against any person in the dwelling-house,

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subject to sections 7, 8 and 9.

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### 7 Warning of intention to use force

The use of physical force is justified under section 6 only if the occupant before using such force warns the intruder of the occupant's intention to use force, unless the occupant reasonably believes that:

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- (a) the warning would be useless, or
- (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.

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### 8 Warning not necessary

If at any time during the intruder's presence in the dwelling-house the intruder threatens or employs physical force against anyone on or in the premises, the occupant need not give any warning to the intruder before using physical force against the intruder.

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Clause 9 Home Invasion (Occupants Protection) Bill 1997

Part 2 Use of force to prevent attack

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**9 Limitation on use of physical force**

The use of physical force by an occupant of a dwelling-house against an intruder is not justified if the intruder has ceased to threaten the use of physical force, or to cause damage, or is fleeing or retreating from the dwelling-house.

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## **Part 3 Criminal and civil proceedings**

### **10 Immunity from criminal liability**

- (1) Any occupant of a dwelling-house who uses 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) If an occupant accused of any crime as a result of a confrontation with an intruder raises a defence under this Act, the prosecution bears the burden of disproving the defence so raised beyond a reasonable doubt.
- (3) The trial of an occupant accused of a crime as a result of a confrontation with an intruder must be commenced to be heard within a period of 9 months after the occupant is charged with any offence arising from the confrontation. However, the 9-month period is to be extended by the length of any delay that is attributable to the occupant. 10  
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### **11 Immunity from civil liability—use of physical force by occupant**

- (1) Any occupant of a dwelling-house who uses physical force that is justified under this Act is immune from all civil liability of any kind resulting from the use of that force.
- (2) In any civil proceedings brought against an occupant as a result of a confrontation with an intruder, the plaintiff must prove on the balance of probabilities that the occupant's conduct is not justified under this Act. 20

### **12 Time for commencement of civil proceedings**

Civil proceedings against an owner or occupant of a dwelling-house, or anyone lawfully within a dwelling-house, as a result of a confrontation with an intruder must be commenced not later than 9 months after the date of the confrontation. 25

Clause 13 Home Invasion (Occupants Protection) Bill 1997

Part 3 Criminal and civil proceedings

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### **13 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.

### **14 Self defence**

The provisions of this Act are in addition to and do not derogate from or otherwise affect: 5

- (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. 10

### **15 Application of this Act**

This Act, section 10 (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. 15



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**Schedule 1    Amendment of Costs in Criminal  
Cases Act 1967**

(Section 13)

**Section 2A**

Insert after section 2:

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**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 10 of the *Home Invasion (Occupants Protection) Act 1997*:

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(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:

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(i) all hospital, medical, dental, nursing, pharmaceutical and associated costs and expenses, and

(ii) all loss of income or remuneration, and

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(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 1997*), and

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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

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Schedule 1      Amendment of Costs in Criminal Cases Act 1967

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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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