



New South Wales

Crimes Amendment (Self-defence) Act 2001 No 116

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Crimes Amendment (Self-defence) Act 2001 No 116

Act No 116, 2001

An Act to amend the *Crimes Act 1900* to codify the law with respect to self-defence; and to repeal the *Home Invasion (Occupants Protection) Act 1998* and the *Workplace (Occupants Protection) Act 2001*. [Assented to 18 December 2001]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Self-defence) Act 2001*.

2 Commencement

This Act commences on a day to be appointed by proclamation.

3 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 1.

4 Consequential repeals

(1) The following Acts are repealed:

Home Invasion (Occupants Protection) Act 1998 No 109

Workplace (Occupants Protection) Act 2001 No 6

(2) The repeal of those Acts does not reverse the declared public policy of the State that its citizens have a right to enjoy safety from attack within dwelling-houses from intruders, or from suspected offenders while present at a workplace.

Schedule 1 Amendments

(Section 3)

[1] Section 18 Murder and manslaughter defined

Omit “, or in his or her own defence” from section 18 (2) (b).

[2] Part 11, heading

Omit the heading to Part 11. Insert instead:

Part 11 Criminal responsibility—defences

Division 1 Preliminary

[3] Part 11, Division 2, heading

Insert before section 417:

Division 2 Lawful authority or excuse

[4] Part 11, Division 3

Insert after section 417:

Division 3 Self-defence

418 Self-defence—when available

- (1) A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in self-defence.
- (2) 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 deprivation of his or her liberty or the liberty of another person, or

- (c) to protect property from unlawful taking, destruction, damage or interference, or
- (d) to prevent criminal trespass to any land or premises or to remove a person committing any such criminal trespass,

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

419 Self-defence—onus of proof

In any criminal proceedings in which the application of this Division is raised, the prosecution has the onus of proving, beyond reasonable doubt, that the person did not carry out the conduct in self-defence.

420 Self-defence—not available if death inflicted to protect property or trespass to property

This Division does not apply if the person uses force that involves the intentional or reckless infliction of death only:

- (a) to protect property, or
- (b) to prevent criminal trespass or to remove a person committing criminal trespass.

421 Self-defence—excessive force that inflicts death

- (1) This section applies if:
 - (a) the person uses force that involves the intentional or reckless infliction of death, and
 - (b) the conduct is not a reasonable response in the circumstances as he or she perceives them,but the person believes the conduct is necessary:
 - (c) to defend himself or herself or another person, or
 - (d) to prevent or terminate the unlawful deprivation of his or her liberty or the liberty of another person.
- (2) The person is not criminally responsible for murder but, on a trial for murder, the person is to be found guilty of manslaughter if the person is otherwise criminally responsible for manslaughter.

422 Self-defence—response to lawful conduct

This Division is not excluded merely because:

- (a) the conduct to which the person responds is lawful, or
- (b) the other person carrying out the conduct to which the person responds is not criminally responsible for it.

423 Offences to which Division applies

- (1) This Division applies to offences committed before or after the commencement of this Division, except as provided by this section.
- (2) This Division does not apply to an offence if proceedings for the offence (other than committal proceedings) were instituted before the commencement of this Division.

[Minister's second reading speech made in—
Legislative Assembly on 28 November 2001
Legislative Council on 12 December 2001]