

[Act 2001 No 116]



New South Wales

Crimes Amendment (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 codify the law with respect to self-defence.

The codification generally accords with the codification of that defence contained in the Model Criminal Code recommended by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General (Chapter 2—General Principles of Criminal Responsibility, clause 313, report issued December 1992). A codification that accords with the Model Criminal Code has been enacted by the Commonwealth in the *Criminal Code Act 1995* (section 10.4 of the Code).

The codification effected by the Bill seeks to simplify the law by enabling defendants to rely on self-defence if they believed their conduct was necessary (even if they were wrong), so long as the response was objectively proportionate to the situation (as they perceived it).

Self-defence will only be available in the following circumstances:

- (a) for the purpose of defending oneself or another person,
- (b) for the purpose of preventing or terminating the unlawful deprivation of one's liberty or the liberty of another person,
- (c) for the purpose of protecting property from unlawful taking, destruction, damage or interference,
- (d) for the purpose of preventing criminal trespass to any land or premises or of removing a person committing criminal trespass.

The Bill does not follow the Model Criminal Code in the following respects:

- (a) The Bill (and the Code) exclude self-defence if the defendant uses force that inflicts death only for the purpose of protecting property or preventing criminal trespass. The Code (but not the Bill) also excludes self-defence in those circumstances if the defendant uses force that inflicts really serious injury.
- (b) The Bill (but not the Code) reduces murder to manslaughter in the case of excessive self-defence, that is, where the defendant uses force that inflicts death and that is not a reasonable response in the circumstances, but where the defendant believed it was necessary for personal defence or for preventing or terminating unlawful deprivation of liberty.
- (c) The Bill departs from the Code in the drafting of a number of provisions that give effect to the policy of the Code, including:
 - (i) the Bill refers to self-defence for the purpose of preventing or terminating unlawful deprivation of liberty rather than unlawful imprisonment in order to cover all forms of unlawful detention and to maintain consistency of expression with other provisions of the *Crimes Act 1900*, and
 - (ii) the Bill makes it clear that self-defence is not excluded merely because the defendant is responding to lawful conduct or to conduct of a child or other person who is not criminally responsible for the conduct, and accordingly enables the matter to be determined on the basis of the defendant's belief about the necessity of the conduct and the reasonableness of the response (rather than attempting to define the circumstances in which self-defence is not available when the defendant is responding to lawful conduct).

The Bill confirms (in accordance with the existing law and other provisions of the Code) that if the issue of self-defence is raised, the prosecution must prove, beyond reasonable doubt, that the defendant did not act in self-defence.

The codified provisions relating to self-defence will apply to all trials commenced after the commencement of the Bill, whether the offence was committed before or after that commencement.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

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 following Acts as a consequence of the codification of the law with respect to self-defence:

Home Invasion (Occupants Protection) Act 1998

Workplace (Occupants Protection) Act 2001

The repeal of those Acts will 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 contains the amendments to the *Crimes Act 1900* outlined above.