

# Crimes Amendment (Self-defence) Act 2001 No 116

[2001-116]



New South Wales

## Status Information

### Currency of version

Repealed version for 18 December 2001 to 21 July 2003 (accessed 11 July 2024 at 18:36)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Act was repealed by the [Statute Law \(Miscellaneous Provisions\) Act 2003 No 40](#), Sch 3 with effect from 22.7.2003.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 22 July 2003

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# Crimes Amendment (Self-defence) Act 2001 No 116



New South Wales

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*.

## 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(1) The following Acts are repealed: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.