

Crimes Act (Self-Defence and Castle Doctrine) Amendment Bill 2016

Member's Bill

Explanatory note

The purpose of the Crimes Act (Self-Defence and Castle Doctrine) Amendment Bill 2016 is to clarify and reinforce the premise that **people have an innate right to defend themselves and to protect their property**, and to defend and protect others and others' property; and to clarify and strengthen existing law relating to the right of a person to use reasonable force against another person **for the purposes of self-defence or in the defence of others**.

The basis of this bill is the presumption that **the rights and interests of a person subjected to a criminal act take precedence over those of the person committing the act**; and further, that **a person committing a criminal act should not have recourse to any criminal or civil recompense for any loss, damage, or injury**, sustained as a result of the person who is subject to the criminal act or who is acting on behalf of the person who is subject to the criminal act, taking action to defend or protect themselves or any other person against that act.

The bill proposes that a person's house is their castle, and that **they have a right to employ reasonable force in defence of it** and of themselves and of others; and of their various property.

The bill proposes that the **definition of reasonable force shall include** the use of **any and all force** considered or proven **necessary** in order to cause a person to **entirely and immediately desist from the commission of a criminal act**.

The bill clarifies and reinforces that a person employing such **reasonable** force in the circumstances defined **does not commit an offence**, even in the event that that use of **reasonable** force results in the death of the person committing the criminal act.

The bill clarifies and reinforces that **it is immaterial whether a person's belief that their use of force is reasonable or not if that belief is honestly held**, but in considering whether the person using the force honestly held the belief, the court or the jury is directed to have regard to the presence or absence of reasonable grounds for the person so believing, and all other relevant circumstances.

The bill provides that in determining whether a person using force honestly believed it to be reasonable and therefore justified, **the onus of proof shall rest with any prosecuting authority** to prove beyond a reasonable doubt that the person did not hold that belief honestly.

The bill provides that in determining whether a person using force under the Act should face a charge in the Courts in relation to that use of force, the prosecuting authority **must be**

certain on proper and adequate grounds that a Court or Jury could find the person to be culpable beyond a reasonable doubt.

The bill proposes that the castle doctrine extends to any dwelling, vehicle, vessel, or place of business, which belongs to the person acting to defend it or to defend those within it, or to any dwelling, vehicle, vessel, or place of business where they may lawfully be, and to **any public place where they may lawfully be**.

The bill clarifies and reinforces that a person being lawfully in a public place and being witness to a criminal act or to an impending criminal act being done to a person lawfully in that public place **may intervene on behalf of that person** and may employ reasonable force to protect that person against the criminal act or to prevent the criminal act or to cause the cessation of the criminal act.

The bill proposes that a person lawfully in such a place has **no duty to retreat in the face of a criminal act** or perceived imminent criminal act, even if they have means and opportunity to do so.

The bill proposes that any such person faced with any such criminal act similarly has **no duty to retreat from any public place** where they are and where they may lawfully be.

The bill clarifies that a person faced with a criminal act and employing force in defence against it **is permitted to detain** the person committing the offence for the purposes of effecting or assisting a lawful arrest.

The bill clarifies and reinforces that a person who uses such force as is permitted in the circumstances referred to **shall not bear any civil liability** in respect of any injury, loss or damage arising from the use of such force.

The bill makes it clear that a person **may not provoke or pursue** a person for the purposes of employing force against them under the justification of self-defence or the defence of others.

The bill makes it clear that a person **may not** engage in hunting down, seeking out, revenge, pre-emption, or other forms of **vigilantism**.

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Crimes Act (Self-Defence and Castle Doctrine) Amendment Act 2016

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Crimes Act 1961 (the **Principal Act**).

Part 1

Substantive amendments

Sections 48, 52, 53, 55, and 56, to be replaced by:

4 Interpretation.

(1) In this Act—

“**act**” includes omission and a reference to committing or doing an act includes a reference to making an omission;

“**curtilage**”, in relation to a dwelling, vehicle, vessel, or place of business, means an area immediately surrounding or adjacent to the dwelling, vehicle, vessel, or place of business, which is used in conjunction with the dwelling, vehicle, vessel, place of business, including but not limited to the totality of the site or property on which the dwelling, vehicle, vessel, or place of business is situated, and including the totality of any farm or other titled property on which the dwelling, vehicle, vessel, or place of business is situated.

“**dwelling**” includes—

- (a) a building or structure (whether temporary or not) which is constructed or adapted for use as a dwelling and is being so used,
- (b) a vehicle or vessel (whether mobile or not) which is constructed or adapted for use as a dwelling and is being so used, or
- (c) a part of a dwelling;

- (d) an outbuilding situated on the property on which the dwelling is situated.

“place of business” includes-

- (a) an outbuilding situated on the site or property on which the place of business is situated, or which is used in conjunction with the place of business.

“public place” means any place to which the public have access whether as of right or by permission and whether subject to or free of charge.

- (2) In this Act, a reference to a dwelling, vehicle, vessel, or place of business, includes a reference to the curtilage of the dwelling, vehicle, vessel, or place of business.
- (3) In this Act, an act is criminal notwithstanding that the person doing the act—
 - (a) if charged with an offence in respect of it, would be acquitted on the ground that—
 - (i) he or she acted under duress, or
 - (ii) his or her act was involuntary, or
 - (iii) he or she was in a state of intoxication, or
 - (iv) he or she was insane so as not to be responsible according to law for the act, or
 - (v) he or she was a person to whom section 21 or section 22 of the Crimes Act 1961 applies.

5 Justifiable use of force

- (1) Notwithstanding the generality of any other enactment or rule of law; - it shall not be an offence for a person who is in his or her dwelling, vehicle, vessel, place of business, or public place, or for a person who is a lawful occupant in a dwelling, vehicle, vessel, place of business, or public place to use force against another person or the property of another person where—
 - (a) he or she believes the other person has entered or is entering the dwelling, vehicle, vessel, or place of business, or public place, for the purpose of committing a criminal act or as a trespasser for the purpose of committing a criminal act, and

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- (b) the force used is reasonable and necessary in the circumstances as he or she believes them to be—
 - (i) but where “reasonable” shall include the use of any and all force believed or proven necessary in order to cause a person to entirely and immediately desist from the commission of a criminal act;
 - (ii) where “necessary” as above shall not be limited to the minimum force necessary as may be subsequently determined, but may include force exceeding that which may be subsequently determined to be greater than the minimum necessary, if the person honestly believed it to be necessary, or did not know, or could not know, or could not be reasonably expected to know, that the force used was greater than that which may be subsequently proven or determined to be the minimum necessary;
 - (iii) where “reasonable force” may include the use of any tool, object, substance, animal, or weapon available to the person using the force, including the use of any firearm which is lawfully available to the person using the force;
 - (iv) but where the use of any firearm by the person using the force may be lawful if the use of that firearm constitutes reasonable force as defined for the purposes of this act, notwithstanding that the use of the firearm by the person may not be lawful in any circumstances other than for the purpose of using reasonable force as defined in this act.

- (2) **In order to –**
 - (a) protect himself or herself or another person present in the dwelling, vehicle, vessel, place of business, or public place from injury, assault, detention, or death caused by a criminal act,
 - (b) protect his or her property, or the property of another person, in both cases including but not limited to the dwelling, vehicle, vessel, place of business, or public place, and anything contained therein, from appropriation, destruction, or damage caused by a criminal act, or
 - (c) prevent the commission of a crime, or to detain for the purposes of effecting, or assist in effecting, a lawful arrest.

- (3) The use of force shall not exclude the use of force causing death provided that such force is reasonable or necessary as defined for the purposes of this act.

6 Exclusions

(1) Clause 5 Subsection (1) shall not apply where

- (a) a person engages in conduct or causes a state of affairs for the purpose of enticing, eliciting, or provoking a person to commit an act to which Clause 5 Subsection (1) would apply had that person not been enticed, elicited, or provoked.
- (b) a person acts to pursue a person who is committing a criminal act or who has committed a criminal act from the dwelling, vehicle, vessel, place of business, or public place, to another place which is not the place where the criminal act was committed, except where such pursuit is for the purpose of detaining that person in accordance with 5 (2) (c).
- (c) a person or persons act to pre-empt, entrap, seek out, ensnare, course, or track a person or persons, or engage in any other activity of vigilantism, on suspicion of a criminal act either believed committed or believed imminent, or at a place other than the place where the criminal act was done, or at a time other than the time when the criminal act was done.
- (d) a person uses force against—
 - (i) a member of the Police acting in the course of his or her duty,
 - (ii) a person assisting a member of the Police acting in the course of his or her duty, or
 - (iii) a person lawfully performing a function authorised by or under any enactment

Provided that:

- (e) The person or persons described in 6 (1) (d) (i), (ii), and (iii) have properly identified themselves as being so lawfully authorised and have been given opportunity to identify themselves as being so lawfully authorised.

7 Justification and Liability

(1) It is immaterial whether a belief is justified or not if it is honestly held but:

- (a) In determining whether a person using force honestly believed it to be necessary and therefore justified, the onus shall be on any prosecuting

authority to prove beyond a reasonable doubt that the person did not hold such an honest belief.

- (b) In determining whether a person using force in the circumstances as defined and described under this Act should face a charge in the Courts in relation to that use of force, a prosecuting authority shall not proceed with such charge unless that authority is certain on reasonable and legal grounds as defined in this Act, that a Court or Jury could find the person to be culpable beyond a reasonable doubt.
- (c) In considering whether a person charged with using force in the circumstances as defined and described under this Act honestly believed it to be reasonable and therefore justified, the court or the jury, as the case may be, shall have regard to the presence or absence of reasonable grounds for the person so believing, and all other relevant circumstances, including but not limited to the person's honest or reasonable perception or presumption of relative threat.
 - (i) In the event that a person so charged is acquitted, discharged without conviction, found not guilty, or otherwise exonerated or freed or exempted from such charge, that person shall be entitled to the full reimbursement by the prosecuting authority of all legal costs, and the recompense of all other actual and reasonable costs and losses, incurred as a result of such charge and the subsequent defence thereof.

8 No Duty to Retreat

- (1) It is immaterial whether the person using the force had a safe and practicable opportunity to retreat from the dwelling, vehicle, vessel, place of business, or public place before using the force concerned.
 - (a) Nothing in this Act shall operate to require—
 - (i) a person to retreat from his or her dwelling, vehicle, vessel, place of business, or
 - (ii) a lawful occupant in a dwelling, vehicle, vessel, place of business, to retreat from the dwelling, vehicle, vessel, or place of business, or
 - (iii) a person lawfully in any public place to retreat from their position of occupancy in that public place

9 General defences

- (1) Nothing in this Act shall operate to prejudice any defence recognised by law as a defence to a criminal charge.

10 Civil liability

- (1) Notwithstanding the generality of any other enactment or rule of law concerning the civil liability of persons in relation to trespassers, a person who uses such force as is permitted by Clause 5 in the circumstances referred to in that Clause shall not be liable in tort in respect of any injury, loss or damage arising from the use of such force.

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