ELECTRONIC VERSION

HOME INVASIONS AND THE CRIMINAL LAW AMENDMENT BILL 1996

LEGISLATION BULLETIN NO 2/97

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This Legislation Bulletin was prepared to assist Members in their consideration of the Bill in the Queensland Legislative Assembly. It should not be considered as a complete guide to the legislation and does not constitute legal advice.

The Bulletin reflects the legislation as introduced. The *Queensland Legislation Annotations*, prepared by the Office of the Queensland Parliamentary Counsel, or the *Bills Update*, produced by the Table Office of the Queensland Parliament, should be consulted to determine whether the Bill has been enacted and if so, whether the legislation as enacted reflects amendments in Committee. Readers are also directed to the relevant *Alert Digest* of the Scrutiny of Legislation Committee of the Queensland Parliament.

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PORTFOLIO:	Attorney-General and Minister for Justice
HANSARD REFERENCE SECOND READING:	Weekly Hansard, 4 December 1996, pp 4870-4876

1. PURPOSE

The Criminal Law Amendment Bill 1996 repeals the *Criminal Code 1995* (Qld), which has not yet been proclaimed.[1] In its place, the Bill substitutes wide-ranging amendments to Queensland's current *Criminal Code*, originally enacted in 1899 and often referred to as the Griffith Code after its creator, Sir Samuel Griffith. In his Second Reading Speech to introduce the Criminal Law Amendment Bill, Hon D E Beanland MLA, Attorney-General and Minister for Justice, stated:

> *This Bill implements the coalition's undertaking that, on coming to office, it would repeal the much-criticised Labor Government's 1995 Criminal Code and,*

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[1] The former Labor Government's Criminal Code 1995 was assented to on 16 June 1995. However, most of its provisions have not been proclaimed into force, their commencement having been postponed to a date to be fixed by proclamation. By virtue of the *Acts Interpretation Act 1954* (Qld), and the Criminal Code Regulation 1996, the period before the postponed provisions of the 1995 Code commence was extended until 14 June 1997. **Clause 121** of the Criminal Law Amendment Bill 1996 will repeal the Criminal Code 1995.

> *instead, implement a package of legislation containing a set of comprehensive amendments to the Griffith Code to update it in a way commensurate with the needs and expectations of contemporary society*.[2]

Among the changes proposed under the 1996 Bill are:

- the replacement of the existing s 267 of the Queensland Criminal Code (which deals with defence of a dwelling house) with a new provision: **proposed new s 267**, and
- the amalgamation of existing sections 419 (housebreaking - burglary) and 420 (entering a dwelling house with intent to commit an indictable offence) into the single offence of burglary: **proposed new s 419**.

This *Legislation Bulletin* focuses on the proposed new provisions outlined above.

Various other amendments proposed by the Criminal Law Amendment Bill 1996 are discussed in *Bulletins* Nos 1/97 and 3/97.

Section 2 of this *Legislation Bulletin* briefly sets out the common law position where a person seeks to defend his or her dwelling house.

Section 3 outlines what the Queensland Criminal Code, as it currently stands, says about the right of homeowners to defend their property.

Prior to the introduction of the Criminal Law Amendment Bill 1996 by the Coalition Government, changes to the law governing home invasions had been proposed by Queensland's Criminal Code Review Committee in June 1992. Section 4 outlines the new provision proposed by that Committee, and the provision subsequently inserted into the Criminal Code 1995 (s 73).

Section 5 examines the recommendations made in the *Report of the Criminal Code Advisory Working Group to the Attorney-General*, released in July 1996.

Section 6 then outlines the key points of proposed new s 267 and compares them with the recommendations of the 1996 Criminal Code Advisory Working Group.

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[2] Criminal Law Amendment Bill 1996 (Qld), Second Reading Speech, Hon D E Beanland MLA, *Queensland Parliamentary Debates*, 4 December 1996, p 4870.

In Section 7, the proposed Queensland changes are compared with the legal position in another of the Code jurisdictions[3] (Western Australia), where that state's Criminal Code provision governing the circumstances in which individuals may defend the buildings in which they dwell was amended last year by the *Criminal Law Amendment Act 1996* (WA). Reference is also made in Section 7 of this *Bulletin* to legislative developments in NSW.

The final section of this *Bulletin* looks at the proposed new offence of burglary, and the penalties to be imposed, under Queensland's Criminal Law Amendment Bill.

Appendix A to this Bulletin contains a cross-section of print media reports of cases from 1995 onwards in which homeowners have defended their property or themselves against intruders.

2. THE COMMON LAW POSITION

In *R v Hussey* 18 Cr App R 160, it was held that a householder may use all necessary force against a trespasser who invades his or her home. In *Hussey's* case, Mr Hussey, who rented a room from Mrs West, was given a notice to quit his lodgings, which he claimed was not a valid notice. When he refused to vacate his room, his landlady Mrs West, together with another woman named Mrs Gould and a man named Crook, tried to force their way into Mr Hussey's room, which he had barricaded. Armed with a hammer, spanner, poker and chisel, they broke a panel of the door, whereupon Mr Hussey fired through the opening, wounding Mrs Gould and Mr Crook. Hussey, who was convicted of unlawful wounding and sentenced to 12 months' imprisonment with hard labour, appealed. Hewart LCJ, in allowing Hussey's appeal, stated that:

> *No sufficient notice had been given to appellant to quit his room, and therefore he was in the position of a man who was defending his house.*[4]

Allowing Mr Hussey's appeal, the Lord Chief Justice cited with approval *Archbold's Criminal Pleading, Evidence and Practice* 26th edn at p 887 :

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[3] In Queensland, Tasmania, Western Australia and the Northern Territory, Codes have been enacted to provide a comprehensive statement as to what are regarded as criminal offences, and thus to replace the common law. See Eric J Edwards, Richard W Harding and Ian G Campbell, *The Criminal Codes: Commentary and Materials*, 4the edn, Law Book Company, 1992, pp 3-4. As Edwards et al explain at p 3: "*The crucial effect of the Codes is that no conduct or omission in these places is an offence* [except under federal law] *unless the legislature enacts its prohibition*".

[4] *R v Hussey* 18 CR App R 160, at p 161 (English Court of Criminal Appeal).

> *In defence of a man's house, the owner or his family may kill a trespasser who would forcibly dispossess him of it, in the same manner as he might, by law, kill in self-defence a man who attacks him personally; with this distinction, however, that in defending his home he need not retreat, as in other cases of self-defence, for that would be giving up his house to his adversary.*[5]

3. THE CURRENT QUEENSLAND CODE POSITION

Section 267 of the current Queensland Criminal Code provides that a person who is in peaceable possession of a dwelling-house (and any person lawfully assisting the first person or acting with his or her authority) may use the amount of force he or she believes, on reasonable grounds, is necessary to prevent the dwelling house being forcibly broken into and entered by someone whom he or she believes, on reasonable grounds, to be attempting to break and enter the dwelling house with the intent to commit an indictable offence.

3.1 MEANING OF DWELLING HOUSE

"Dwelling house" is defined in s 1 of the current Criminal Code to include any building or structure, or part of a building or structure, which is being kept by the owner or occupier for the residence of the owner/occupier, his or her family or servants. It does not matter if the building or structure is left uninhabitated from time to time.

According to Queensland case law, the reference to structures as well as buildings in s 1 has an enlarging effect. In *R v Rose*, the court held that the word "structure" includes material constructions which do not fit within the description of buildings. In that case, a caravan which had been used as a residence by its occupier was held to be a dwelling house within the definition in s 1. According to Gibbs J:

> *The word "structure" in its most natural and ordinary meaning is a building, but the word is capable of having the wider meaning of anything constructed out of material parts, and in that sense undoubtedly would include a machine and a caravan.*[6]

In *R v Halloran and Reynolds* [1967] QWN 34, a motel unit occupied by a person for a week was held to be a dwelling house for the purposes of the Queensland Criminal Code.

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5 *R v Hussey*, p 161.

6 *R v Rose* [1965] QWN 35.

3.2 THE DEGREE OF HARM THAT A HOUSEHOLDER MAY INFLICT

Apart from s 267, there are several other provisions in the current Criminal Code which extend protection to people defending property or property rights (namely ss 274 to 279). They provide that it is lawful to defend peaceable possession of moveable property, to defend premises against trespassers by removing disorderly persons, to defend peaceable possession of real property and to resist entry upon a disputed right of way. Sections 274 to 279 all prohibit persons defending property from inflicting "bodily harm".

By contrast, s 267 of the Criminal Code says that the degree of force that a person may use in defence of his or her dwelling house is "*such force as the person believes, on reasonable grounds, to be necessary*" to prevent the dwelling house being forcibly broken into and entered. Unlike the above provisions, s 267 does not stipulate that force, or such force as is reasonably necessary may be used, provided a person does not do bodily harm to the person against whom he or she uses force.

4. THE 1992 CRIMINAL CODE REVIEW COMMITTEE'S RECOMMENDATIONS

In April 1990, Queensland's then Attorney-General, Hon D Wells MLA, established the Criminal Code Review Committee to review the Griffith Code. The Final Report of that Committee was published in June 1992.[7] Schedule 3 of the report sets out the draft sections that the Criminal Code Review Committee recommended for adoption. Schedule 4 explains how a draft section differed from the existing section, and why the adoption of the draft section was recommended.

Draft Section 41 (Defence against intruders) is the provision which the Criminal Code Review Committee recommended to replace s 267 of the Griffith Code. Draft s 41 differed from the present s 267 in several ways:

- It extended protection to persons who are lawfully in places other than dwelling-houses. An example is persons who are lawfully on office premises. The Criminal Code Review Committee recommended that the term "place" should be defined as provided by draft Section 1 in Schedule 3 of its Final Report. Under draft s 1, "place" is defined to mean:
  - a building or any part of a building;
  - a structure or any part of a structure used for human habitation or for storing property;

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[7] *Final Report of the Criminal Code Review Committee to the Attorney-General*, Government Printer, Queensland, June 1992.

  - a tent or any part of a tent, or
  - a conveyance.
- The operation of draft s 41 was extended to prevent the entering of a dwelling house or place, rather than being confined to forcible breaking and entering, as is currently the case under s 267 of the Criminal Code.
- The operation of the section was also widened to prevent the entering of a dwelling house or place by persons who are intending to commit any offence rather than only indictable offences.

4.1 THE CRIMINAL CODE 1995

Following a further public consultation period during which a draft Criminal Code Bill 1994 was released, the Criminal Code 1995 was introduced and enacted. The equivalent to draft s 41 in the unproclaimed Criminal Code 1995 is s 73 (Defence of premises against crime).

Section 73 uses the term "premises" rather than "place". The term "premises" is defined in Schedule 5 to the Code. Based on this definition, the scope of the defence provided by s 73 is considerably wider than that provided by s 267 of the Griffith Code. It also appears to be somewhat wider than that provided by draft s 41, as originally recommended by the Criminal Code Review Committee. For example, the term "premises" also includes

- the land or water on which a building or structure is located;
- a cave as well as a tent, and
- premises held under two or more titles or owners.

Like draft s 41, the operation of s 73 is extended to prevent entry, rather than being confined to forcible **breaking and entering**. It is thus wider than s 267 of the Griffith Code, under which a defence is only available where forcible breaking and entering is involved. Section 73 of the Criminal Code 1995 also seems to have been drafted in somewhat wider terms than draft s 41 as proposed by the 1992 Criminal Code Review Committee, insofar as s 73 applies if a person reasonably believes that someone else is trying to enter the premises, **or to remain on the premises**. Draft s 41 would only have applied where a person reasonably believed that someone else was trying to enter premises.

However, unlike draft s 41, the operation of s 73 is **not wide enough to prevent the entry of premises by intruders who intend to commit any type of offence**. Rather, the protection afforded by s 73 only applies if a person reasonably believes that someone is trying to enter the premises, or continues to remain on the premises, **with intent to commit a crime**.

5. REPORT OF THE 1996 CRIMINAL CODE ADVISORY WORKING GROUP TO THE ATTORNEY-GENERAL

In April 1996, the National/Liberal Coalition Government established the Criminal Code Advisory Working Group, chaired by retired Supreme Court judge Peter Connolly QC, to examine options for the reform of the Griffith Code and related legislation on the criminal law.

As part of that review, the Working Group examined s 267 of the Criminal Code and recommended that s 267 be amended by:

- extending the operation of the defence to cover a "**dwelling**" rather than a "dwelling house". This amendment is described as being intended to extend the operation of s 267 to moveable as well as immovable dwellings. The Advisory Working Group stated that tents, motor vehicles and boats in which a person lives from time to time would therefore be included.[8]
- widening the defence so that it is required only that there be an unlawful **entry** of a person's dwelling. At present, the requirement is that there must be a forcible **breaking and entering** of the dwelling.
- extending the protection given to a owner/occupier of a dwelling so as to authorise him to prevent an intruder unlawfully **remaining** in the dwelling.

As explained by the Criminal Code Advisory Working Group:

> *The current section protects a homeowner in preventing a person from breaking and entering the dwelling; and once an intruder gains access to the inside of the dwelling, the defence on a strict reading has no application*.[9]

5.1 LAWFULNESS OF HOMEOWNER'S ACTIONS

The Criminal Code was enacted in Queensland as a schedule to the Criminal Code Act 1899. Section 6 of the Criminal Code Act 1899 says that when, by the Criminal Code, an act is declared to be lawful, no action can be brought in respect of that act.

In addition to its recommendations outlined above, in its report, the Criminal Code Advisory Working Group also recommended that the Criminal Code should clearly provide that a homeowner who is acquitted under the defence provided by s 267 should be conclusively deemed to have acted lawfully, thus avoiding any civil liability which might attach under s 6 of the Criminal Code Act 1899 for any injuries

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[8] *Report of the Criminal Code Advisory Working Group to the Attorney-General*, July 1996, p 40.

[9] *Report of the Criminal Code Advisory Working Group to the Attorney-General*, p 40.

that were inflicted on an intruder.[10] The proposed amendment reflected "*... Government policy to prohibit civil actions by criminals who have suffered personal injuries during their illegal activities*".[11]

As explained by the Criminal Code Advisory Working Group:

> *It has always been assumed that section 6* [of the Criminal Code Act 1899] *prevented the bringing of Civil proceedings with respect to conduct which, by the provisions of the Code, is stated to be lawful.*
>
> *Section 6 does, however, present several difficulties. Firstly, on its face, it appears to say that the institution of an action is incompetent. If this were to be its strict meaning, then the remedy on the civil side would be to move to set aside the writ or plaint. This is obviously not a practical proposition until it is established, in the intruder's action, that the householder's conduct was justified by the Code, and it is cold comfort to the householder to be told that he would have a good defence to an action brought by the wrongdoer once he has produced conclusive evidence to the requisite standard that his actions were within section 267. This means that he is faced with the costs of a civil action which he may or may not recover and of course, the attendant anxiety and waste of his time.*
>
> *Secondly, in most cases all a householder can point to is an acquittal and frequently he can do no more than point to the fact that he was not prosecuted or that a prosecution, although commenced, has been withdrawn. If he has the benefit of an acquittal, it will frequently not be clear exactly why a jury acquitted him. At the highest, the only conclusion that may be drawn from an acquittal is that the jury were not satisfied beyond reasonable doubt of the householder's guilt as charged. The householder simply cannot argue that he was acquitted because the jury concluded that his actions were "lawful".*[12]

The Advisory Working Group also considered ss 274 to 279 of the current Criminal Code, which were previously discussed in Section 3.2 of this Bulletin. They concluded that as these sections also provide defences under s 6 of the Criminal Code Act of 1899, they also needed "*to be strengthened if the lawfulness of the occupier's conduct is to be a practical reality*".[13]

The Working Group therefore recommended that a new s 267A be inserted into the Queensland Criminal Code, as follows:

> *267A. Defence of Lawfulness*

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[10] *Report of the Criminal Code Advisory Working Group to the Attorney-General*, p 40.

[11] *Report of the Criminal Code Advisory Working Group to the Attorney-General*, p 41.

[12] *Report of the Criminal Code Advisory Working Group to the Attorney-General*, p 41.

[13] *Report of the Criminal Code Advisory Working Group to the Attorney-General*, p 42.

1) *A person who found to be not guilty of an offence after having conducted his defence on reliance on section 267, or on sections 274, 275, 276, 277, 278, or 279 of the Code, that defence having been left to the jury (if any) shall be conclusively deemed to have acted lawfully.*
2) *A person in relation to whom a nolle prosequi is entered or other withdrawal of a charge is made, or who shall not be charged with an offence by reason of the provisions of this section or of one of the abovementioned sections, shall be deemed to have been acquitted and shall be entitled to a certificate to that effect and shall be conclusively deemed to have acted lawfully.*[14]

6. THE CRIMINAL LAW AMENDMENT BILL 1996

Clause 36 of the Criminal Law Amendment Bill 1996 omits 267 of the current Criminal Code and substitutes a **proposed new s 267**. The proposed new provision reflects the recommendations made by the Criminal Code Advisory Working Group and its draft amendments to s 267, as set out at p 42 of the 1996 Report.

6.1 DEFINITION OF DWELLING

The *Explanatory Notes* to the Criminal Law Amendment Bill 1996 explain that **Clause 6** amends s 1 by omitting defunct definitions and inserting new definitions relevant to the reforms proposed by the Bill.[15]

Proposed new s 267 uses the term "dwelling" rather than "dwelling house". **Clause 6(3)** of the Criminal Law Amendment Bill amends the definition of "dwelling house" in s 1 of the Code by replacing the term "dwelling house" with the term "dwelling". Apart from this, the definition remains unchanged.

6.2 LAWFULNESS OF HOMEOWNER'S ACTIONS

A provision along the lines of the draft 267A recommended by the Advisory Working Group has not been included in the Criminal Law Amendment Bill 1996.

However, an amendment has been made to s 6 of the Criminal Code Act 1899. **Clause 4** of the 1996 Bill amends s 6 by inserting a **proposed new s 6(1A) and (1B)**. Under the changes, it is provided that a person who suffers loss or injury during the course of or in connection with the commission of an indictable offence

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[14] *Report of the Criminal Code Advisory Working Group to the Attorney-General*, p 42.

[15] Criminal Law Amendment Bill 1996 (Qld), *Explanatory Notes*, p 4.

of which the person is found guilty (whether or not a conviction is recorded) does not have a right of action against another person for the loss or injury.

According to Hon D E Beanland MLA in his Second Reading Speech to introduce the Criminal Law Amendment Bill, the proposed amendment:

> *... will directly reflect the Coalition policy which calls for an amendment "to prohibit civil actions by criminals who have suffered civil injuries where they have suffered those injuries during illegal activities".*[16]

7. A COMPARATIVE SURVEY

7.1 THE POSITION IN WESTERN AUSTRALIA

In Western Australia, s 244 of the Criminal Code provides that it is lawful for any person who is in peaceable possession of a dwelling, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as he believes, on reasonable grounds, to be necessary to prevent the forcible entering of the dwelling, during the day or night, by any person whom he or she believes on reasonable grounds to be attempting to enter the dwelling house with intent to commit an offence.

The section was amended last year by s 14 of the *Criminal Law Amendment Act 1996* (WA). Under those amendments:

- the term "dwelling house" was replaced by the term "dwelling", and
- the requirement that people defending their dwellings must reasonably believe that an intruder intended to commit an indictable offence was changed so that the protection conferred by s 244 operated whenever it was believed on reasonable grounds that an intruder intended to commit an offence of any kind.

Key points of difference and similarity between the WA Act and the proposed Queensland changes are outlined below.

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[16] Criminal Law Amendment Bill 1996 (Qld), Second Reading Speech, Hon D E Beanland MLA, *Queensland Parliamentary Debates*, 4 December 1996, p 4872. The full text of the Coalition "Home Invasion" Policy is contained in Appendix B to this Bulletin.

7.1.1 Definition of Dwelling

Prior to the amendments made in 1996, the WA Criminal Code defined "dwelling-house" in the same way as it is currently defined in Queensland's Code. By virtue of the amendments made by the Criminal Law Amendment Act 1996, the definition of dwelling house was omitted and replaced by a definition of the term "dwelling", as follows:

> *... any building, structure, tent, vehicle or vessel, or part of any building, structure, tent, vehicle or vessel, that is ordinarily used for human habitation, and it is immaterial that it is from time to time uninhabitated*.[17]

As explained during the Second Reading debates on the WA Bill, the term "dwelling" extends the older definition of "dwelling house" to encompass any place used for human habitation,[18] including dwellings of a non-conventional kind.[19]

As previously explained in Section 6.1 of this Bulletin, the term "dwelling" has been substituted for the term "dwelling house" in the definition of "dwelling house" contained in the Queensland Criminal Code. However, no other changes have been made.

7.1.2 The Type of Offence Intended to be Committed

Section 244 of the WA Criminal Code, as amended, is wider than the proposed Queensland amendments insofar as it applies to any offence (indictable or otherwise) that an intruder may be intending to commit. By contrast, in Queensland, defence of a dwelling will continue to be allowed only if one believes an intruder intends to commit an indictable offence.

Despite the widening of the provision in Western Australia, as outlined above, the change was criticised as superficial during debate on the Criminal Law Amendment Bill. Mr McGinty, the then Leader of the WA Opposition stated:

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[17] *Criminal Code* (WA), s 1, as amended by s 4 of the *Criminal Law Amendment Act 1996* (WA).

[18] Criminal Law Amendment Bill 1996 (WA), Second Reading Speech, Mr Prince, Member for Albany and Minister for Health, *Western Australian Parliamentary Debates*, 20 June 1996, p 3016.

[19] Criminal Law Amendment Bill 1996 (WA), Second Reading Speech, Mr McGinty, Member for Fremantle and Leader of the Opposition, *Western Australian Parliamentary Debates*, 20 August 1996, p 4047.

> *... this Bill will allow a person to use reasonable force to resist the forcible entry of another person into a house where it is reasonably anticipated that that person intends to commit any offence, rather than an indictable offence. That will effect no significant change in the law. It is quite clear that the sorts of offences that people commit when they break into someone else's home are, by and large, indictable offences and to change the requirement from one where an indictable offence must be anticipated to any offence that might be anticipated will have no practical consequences. Indictable offences includes a wide range of crimes. ...*
>
> *Burglary is an indictable offence, and that is the essence of breaking into someone's house. If the person did intend to do something else while he was in the house, it would still be caught as an indictable offence; so to simply change that characterisation from an indictable offence to any offence will, in my view, have no practical consequences. Generally speaking, people will break into other people's homes with a view to stealing. Stealing is also an indictable offence, as is any form of assault occasioning bodily harm, or worse. Each of those is an indictable offence and will, therefore, trigger the defence of reasonable force.*[20]

7.1.3 Whether an Intruder's Entry Must be Forcible

Under the proposed Queensland changes, an intruder's entry does not have to be forcible (though it must be unlawful). By contrast, in Western Australia, the requirement that there be a forcible entry before a person may defend their dwelling remains. The need for this requirement was questioned during by the Opposition during debate on the WA Criminal Law Amendment Bill. For example, Mr McGinty, then Leader of the Opposition, stated:

> *... we would remove the requirement that force can be used only to prevent a forcible entry, so that reasonable force can be used to prevent any entry without lawful excuse. In many circumstances the entry into a house, as threatening as it might be, may not be by forcible entry, such as through a smashed window or by knocking down a door or something of that nature. The reality of what occurs in the suburbs requires that the law be amended not only to give the householder certain rights when someone has entered their house without lawful excuse but also to delete the requirement that the unlawful entry onto the property be by forcible entry. It does not accord with what will happen in many circumstances. Certainly, in most circumstances when someone forcibly enters a house it will constitute unlawful entry without lawful excuse. However, the provision is too*

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[20] Criminal Law Amendment Bill 1996 (WA), Second Reading Speech, Legislative Assembly, Mr McGinty, Member for Fremantle and Leader of the Opposition, *Western Australian Parliamentary Debates*, 20 August 1996, pp 4046-47.

limiting and will deprive people who feel extremely threatened of the right to defend themselves with reasonable force in their own home.[21]

7.1.4 Entering and Remaining in the Dwelling

Under the Queensland proposals, an occupant of a dwelling will be entitled to use such force as he believes on reasonable grounds to be necessary to stop someone entering the dwelling, or remaining in the dwelling. By contrast, in Western Australia, while a person may use force to prevent someone entering his or her dwelling, the legislation does not say that force may be used to stop them remaining there.

7.2 NEW SOUTH WALES

In 1994 in NSW in response to growing community concern about "Home Invasion" type crimes throughout Australia, not just in NSW, the *Crimes Act 1900* was amended by the *Crimes (Home Invasion) Amendment Act 1994* to provide for longer gaol sentences for persons committing home invasions while armed. The Act redrafted the sections of the Crimes Act relating to housebreaking and burglary to include a basic offence of break and enter, with two levels of aggravating circumstances - "circumstances of aggravation" and "circumstances of special aggravation".[22] These were outlined as follows in the Second Reading Speech:

The first level of aggravating circumstances - circumstances of aggravation - will apply where one or more of the following occurs: the alleged offender is armed with an offensive weapon or instrument; the alleged offender is in the company of another person or persons; the alleged offender uses corporal violence on any person; the alleged offender maliciously inflicts actual bodily harm on any person; or the alleged offender deprives any person of his or her liberty.

The second level of aggravating circumstances - circumstances of special aggravation - will apply where either or both of the following occur: the alleged offender wounds or inflicts grievous bodily harm on any person, or the alleged offender is armed with a firearm, within the meaning of the Firearms Act 1989; or

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[21] Criminal Law Amendment Bill 1996 (WA), Second Reading Speech, Legislative Assembly, Mr McGinty, Member for Fremantle and Leader of the Opposition, *Western Australian Parliamentary Debates*, 20 August 1996, p 4048.

[22] These are defined in new Section 105A inserted by the *Crimes (Home Invasion) Amendment Act 1994.*

> *a prohibited weapon or prohibited article, within the meaning of the Prohibited Weapons Act 1989; or a spear gun, whether loaded or not.*[23]

The maximum penalty for an offence where in addition to circumstances of aggravation, one or more circumstances of special aggravation are proved has been raised from 14 years to 25 years.[24]

In addition two Private Members Bills have been introduced recently into the NSW Parliament.

The first was the Home Invasion (Occupants Protection) Bill introduced by Hon J S Tingle of the Legislative Council on 16 November 1995. The Bill's objectives are to sanction the use of physical force, including, subject to certain constraints, deadly physical force, by an occupant against an intruder and to provide immunity to occupants from criminal and civil liability arising from anything done by them that is sanctioned under the Bill. The Bill's provisions are stated to be in addition to, and do not derogate from, a person's common law right to defend himself or to defend others. Debate on the Bill was adjourned after the second reading speech and it was restored to the Notice Paper on 26 September 1996.[25]

The second piece of legislation, the Home-owners Defence Bill 1996 was introduced by Mr C P Hartcher MP on 26 September 1996. The object of the Bill was to restate the law relating to self-defence which is currently dealt with by common law. It attempted to establish what a home-owner could lawfully do in self-defence to protect occupants and property within the home. It did not reach Third Reading stage.

8. BURGLARY

In Queensland, between 1994/95 and 1995/96, the number of reported offences involving breaking and entering of dwellings rose by 8 per cent, from 34,497 to 37,236.[26]

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[23] Hon. J P Hannaford, Attorney-General and Minister for Justice, Second Reading Speech, Crimes (Home Invasion) Bill, *NSW Parliamentary Debates*, 16 November 1994, p 5091.

[24] Proposed Qld changes to the law relating to housebreaking and burglary are discussed in Section 8 of this *Bulletin*.

[25] A motion by Mrs Isaken, to resume the adjourned debate of the question on the motion of Mr Tingle that the Bill be read a second time, is now listed on the Notices of Motions and Orders of the day of the NSW Legislative Council for Tuesday 8 April 1997.

[26] Queensland Police Service, *Statistical Review 1995-96*, p 4.

8.1 THE CURRENT LEGISLATION

Breaking and entering of dwellings is dealt with under the current Criminal Code in ss 419 and 420.

Section 419 provides that:

> ***[s 419] Housebreaking ¾ burglary***
>
> ***419*** *(1) Any person who ¾*
>
> *(a) breaks and enters the dwelling house of another with intent to commit an indictable offence therein; or*
>
> *(b) having entered the dwelling house of another with intent to commit an indictable offence therein, or having committed an indictable offence in the dwelling house of another, breaks out of the dwelling house;*
>
> *is guilty of a crime, and is liable to imprisonment for 14 years.*
>
> *(2) If the offence is committed in the night, the offender is liable to imprisonment for life.*

Section 420 provides that:

> ***[s 420] Entering dwelling house with intent to commit an indictable offence***
>
> ***420*** *(1) Any person who enters or is in the dwelling house of another with intent to commit an indictable offence therein, is guilty of a crime, and is liable to imprisonment for 7 years.*
>
> *(2) If the offence is committed in the night, the offender is liable to imprisonment for 14 years.*

8.2 THE 1996 REPORT OF THE CRIMINAL CODE ADVISORY WORKING GROUP TO THE ATTORNEY-GENERAL

In its 1996 report, the Criminal Code Advisory Working Group recommended:

- that ss 419 and 420 of the Criminal Code be amalgamated into one offence, to be known as burglary, and to be defined as entering, or being in, a dwelling with intent,
- that new categories of aggravated burglary be added to cover cases where before, during or after entering a dwelling, an offender uses or threatens to use violence or damages property, or is armed or pretends to be armed with a dangerous weapon or thing, and
- that s 420 be repealed.[27]

Proposed new s 419, as drafted by the Advisory Working Group, is set out below:

> ***419. (~~Housebreaking~~.) Burglary:***
>
> *(1) Any person who ¾*
>
> *~~(a) (breaks and~~) enters* **or is in** *the dwelling (~~house~~) of another with intent to commit an indictable offence therein~~; or~~*
>
> *~~(b) having entered the dwelling house of another with intent to commit an indictable offence therein, or having committed an indictable offence in the dwelling house of another breaks out of the dwelling house~~;*
>
> *is guilty of a crime and is liable to imprisonment for 14 years.*
>
> *(2) If the offender breaks the dwelling, he is liable to imprisonment for ~~(fourteen)~~* **seventeen years**.
>
> *(3) If the offence is committed in the night,* **or if the offender uses or threatens to use actual violence, or is or pretends to be armed with a dangerous or offensive weapon or instrument, or is in company with one or more person or persons, or damages or threatens or attempts to damage any property**,
>
> *~~the offender~~ he is liable to imprisonment for life.*

8.3 The Proposed Legislation

Following a further consultation period after the release of these draft amendments in July 1996, the proposed legislation is as follows.

Schedule 1 of the Criminal Law Amendment Bill 1996 repeals s 420 of the current Criminal Code.

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[27] *Report of the Criminal Code Advisory Working Group to the Attorney-General*, pp 76-77.

Clause 72 of the Criminal Law Amendment Bill 1996 replaces the existing s 419 with the following provision:

> ***Burglary***
>
> ***419.(1)*** *Any person who enters or is in the dwelling if another with intent to commit an indictable offence in the dwelling commits a crime.*
>
> *Maximum penalty¾14 years imprisonment.*
>
> ***(2)*** *If the offender enters the dwelling by means of any break, he or she is liable to imprisonment for life.*
>
> ***(3)*** *If¾*
>
> *(a) the offence is committed in the night; or*
>
> *(b) the offender¾*
>
> *(i) uses or threatens to use actual violence; or*
>
> *(ii) is or pretends to be armed with a dangerous or offensive weapon, instrument or noxious substance; or*
>
> *(iii) is in company with 1 or more persons; or*
>
> *(iv) damages, or threatens or attempts to damage, any property;*
>
> *the offender is liable to imprisonment for life.*
>
> ***(4)*** *Any person who enters or is in the dwelling of another and commits an indictable offence in the dwelling commits a crime.*
>
> *Maximum penalty¾imprisonment for life.*

By contrast with the draft provisions proposed by the Advisory Working Group:

- where an offender enters a dwelling by breaking in, he or she will be liable under the Criminal Law Amendment Bill 1996 to life imprisonment: **proposed new 419(2)**. The Advisory Working Group had proposed a maximum sentence of 17 years imprisonment for this offence.
- the Criminal Law Amendment Bill adds another category to the list of aggravated circumstances in which an offender under proposed new s 419 will be liable to imprisonment for life, namely, if the offender is or pretends to be armed with a noxious substance: **proposed new s 419(3)(b)(ii)**.

Proposed new s 419(4) covers the situation where someone enters or is in someone else's dwelling and commits an indictable offence while there. In this case, an offender will face a maximum penalty of life imprisonment.

BIBLIOGRAPHY

BOOKS

- Edwards, Eric J, Harding, Richard W and Campbell, Ian G, *The Criminal Codes: Commentary and Materials*, 4th edn, Law Book Company, 1992.
- *Final Report of the Criminal Code Review Committee to the Attorney-General*, Government Printer, Queensland, 1992.
- Herlihy, J M and Kenny, R G, *An Introduction to Criminal Law in Queensland and Western Australia*, Butterworths, Sydney, 1990.
- Queensland. Government Statistician's Office, *Crime and Safety Trends in Queensland: Survey Findings from 1975 to 1995*, Government Statistician's Office, 1996.
- Queensland. Police Service, *Statistical Review 1995-96*.
- *Report of the Criminal Code Advisory Working Group to the Attorney-General*, chaired by P D Connolly QC, July 1996.

NEWS ARTICLES

— 'At home with a loaded gun', *Australian*, 28 April 1995, p 12.

— 'House-breaker shot dead', *Canberra Times*, 26 April 1995, p 3.

— 'Man who wounded intruder acquitted', *Courier Mail*, 17 August 1995, p 12.

— 'Self defence has to be reasonable', *Canberra Times*, 27 April 1995, p 10.

— 'Three shattered lives', *Sunday Mail*, 24 September 1995, p 6.

— 'Victim angry he was one facing charges', *Sunday Mail*, 24 August 1995, p 7.

- Butler, G, 'Life ruined by one shot', *Courier Mail*, 29 April 1995, p 1.
- Cooper, R, 'Clarify intruder laws', *Courier Mail*, 15 May 1995, p 13.
- Eccleston, R, 'Shoot-from-the-hip case triggers debate on lethal force', *Australian*, 26 April 1995, p 2.
- Eccleston, R, 'Householder used reasonable force in burglary death', *Australian*, 26 April 1995, p 1.
- Fife-Yeomans, J, 'Crime hits at home as the streets evoke fear', *Australian*, 3 March 1997, p 3.
- Giles, D, 'Burglary victim ends up in court: resident fires gun at thieves', *Sunday Mail*, 24 September 1995, p 6.
- Hansen, P, 'Two lives, just one shot: went to bed an ordinary bloke', *Sunday Mail*, 30 April 1995, p 5.
- Hansen, P, 'Gun-shy invaders in retreat', *Sunday Mail*, 7 May 1995, p 7.

- Harris, T, 'Furore grows over teen burglar death', A*ustralian*, 27 April 1995, p 3.
- Harris, Trudy, 'Shot intruder's grieving family pestered by crank callers', *Australian*, 16 May 1995, p 8.
- Hele, M and Smith, B, 'Teenagers "not robbers"', *Courier Mail*, 26 April 1995, p 2.
- Horan, M, 'Home-owner charged with killing intruder', *Courier Mail*, 29 February 1996, p 1.
- Johnstone, C, 'Fingers on the trigger', C*ourier Mail*, 26 April 1995, p 9.
- Kerin, J, 'Widow seeks charges against 84-year old', *Australian*, 6 May 1995, p 3.
- Kerin, J, 'Ruling no licence to kill, warns A-G', *Australian*, 18 May 1996, p 2.
- Oberhardt, M, 'Why can't I jail girl's rapist for life, asks judge in invasion case', *Courier Mail*, 12 March 1997, p 3.
- Porter, J, 'Bill to help invader victims', *Australian*, 16 May 1995, p 3.
- Ray, C, 'The right to defend', *Courier Mail*, 10 May 1995, p 15.
- Scott, L, 'DPP drops manslaughter charge in intruder killing', *Australian*, 11 May 1996, p 7.
- Solomon, D, 'Law and order off rails', *Courier Mail*, 26 April 1995, p 2.
- Thurlow, C, 'Anger over shot boy ruling', *Courier Mail*, 26 April 1995, p 1.
- Woods, J, 'Law hampers courts: judge', *Courier Mail*, 27 April 1995, p 4.

LEGISLATION

Western Australia

- *Criminal Code* (WA)
- *Criminal Law Amendment Act 1996* (WA)

New South Wales

- Home Invasion (Occupants Protection) Bill 1995 (Legislative Council)

CASES

- *R v Rose* [1965] QWN 35
- *R v Halloran and Reynolds* [1967] QWN 34
- *R v Hussey* (1925) 18 Cr App R 160

APPENDIX A

This appendix contains the following news items:

— 'House-breaker shot dead', *Canberra Times*, 26 April 1995, p 3.

- Eccleston, R, 'Householder used reasonable force in burglary death', *Australian*, 26 April 1995, p 1.
- Eccleston, R, 'Shoot-from-the-hip case triggers debate on lethal force', *Australian*, 26 April 1995, p 2.
- Johnstone, C, 'Fingers on the trigger', C*ourier Mail*, 26 April 1995, p 9.
- Thurlow, C, 'Anger over shot boy ruling', *Courier Mail*, 26 April 1995, p 1.

— 'Self defence has to be reasonable', *Canberra Times*, 27 April 1995, p 10.

- Harris, T, 'Furore grows over teen burglar death', A*ustralian*, 27 April 1995, p 3.
- Woods, J, 'Law hampers courts: judge', *Courier Mail*, 27 April 1995, p 4.

— 'At home with a loaded gun', *Australian*, 28 April 1995, p 12.

- Hansen, P, 'Gun-shy invaders in retreat', *Sunday Mail*, 7 May 1995, p 7.
- Ray, C, 'The right to defend', *Courier Mail*, 10 May 1995, p 15.
- Porter, J, 'Bill to help invader victims', *Australian*, 16 May 1995, p 3.

— 'Man who wounded intruder acquitted', *Courier Mail*, 17 August 1995, p 12.

— 'Three shattered lives', *Sunday Mail*, 24 September 1995, p 6.

— 'Victim angry he was one facing charges', *Sunday Mail*, 24 August 1995, p 7.

- Horan, M, 'Home-owner charged with killing intruder', *Courier Mail*, 29 February 1996, p 1.
- Scott, L, 'DPP drops manslaughter charge in intruder killing', *Australian*, 11 May 1996, p 7.
- Kerin, J, 'Ruling no licence to kill, warns A-G', *Australian*, 18 May 1996, p 2.
- Oberhardt M, 'Why can't I jail girl's rapist for life, asks judge in invasion case', Courier Mail, 12 March 1997.

Title **Victim angry he was one facing charges.**

Source **SUNDAY MAIL (151)**

Date Issue 24/09/95

Pages **7**

BURGLARS took on the wrong man when they broke into the home of Harry Schwaller.

They did not realise how much they put their lives at risk.

He served in the Swiss Army for five years, attaining the rank of captain, and became highly proficient with firearms.

He was trained to kill if necessary.

Mr Schwaller, 35, could have killed the intruders when they broke into his Redland Bay home in the early hours of June 7..

The fact that he didn't was intentional on his part - the first two shots fired were cartridges filled with table salt.

And he aimed low.

He got three shots off at one of the escaping burglars.

The salt shots fizzed, but lead pellets from the third shot embedded in the fence across the road which the runaway man had just jumped.

"I only wanted to scare them off, to frighten them," he told The Sunday Mail after being cleared of a criminal charge in relation to the shooting.

"Had I wanted to hit him I could have - he would not have been standing today had I shot him.

I don't think I should say any more on that subject."..Mr Schwaller said he did not think he winged the man in flight but

would not have been unhappy had he left some impression.

The Zurich-born self-employed plumber-handyman moved into his Dart Street home in the peaceful Brisbane bayside suburb nine years ago.

He had no problems until 2.30am on that fateful night.

"The past three months have been the worst of my life," he said.

"I am very relieved that it is all over.

"I keep asking why should I have been punished for what happened.

"It was at night.

You lie in your own bed in your own house and someone enters in not the normal way.

You don't invite them in.

They walk around your lounge, your bedroom, they steal your goods.

"They had no right to be there.

I had every right to defend my life and my property."..

Mr Schwaller said his biggest mistake was firing at the burglar in a public place.

He said if there was a next time, he would shoot at them while in the house - and ask questions later.

"I would not shoot outside the house - too much trouble," he said.

"If it was inside the house and someone was having a go at me, then I would not hesitate."..

He did warn the offenders in his house on June 7 that he had a gun and was prepared to use it.

"If you listen to what has been on the news lately, then my solicitor made a good point in court," he said.

In his submissions, Terry Fisher said Mr Schwaller would have been better off had he killed the intruder because he probably would not have been charged by police.

Mr Fisher was referring to the Greg Bateman case, in which the Rochedale South man shot and killed a teenage boy who had broken into his home in the early hours of the morning in April this year.

Police decided within 48 hours not to charge Mr Bateman with any offence.

"I do not think killing someone would be right," Mr Schwaller said.

"I do not agree with how things are in America where everyone has a gun and goes banging around.

"I don't agree that anyone should be able to go out in the middle of the road and fire shots.

In one way, I would have understood if I had been found guilty.

"But, in another, I was very surprised to be charged at all.

Inside me I was very angry.

"Everyone has the right to be allowed to use reasonable force if people come into your home uninvited and threaten your life and property.

"I believe, in the circumstances, what I did was reasonable."..

Mr Schwaller said he was particularly angry with police because he had telephoned them in the first place, had given them the gun when they arrived and had given full details of what had happened.

"I was the victim yet I was up on charges," he said.

"These people stole my things - they were worth over $7500.

The police never recovered any of it.

They never found the burglars.

"But they went after me.

I was surprised and I said that to police.

They told me they had to play it by the book."..

Sources told The Sunday Mail last week the order to charge Mr Schwaller came from higher echelons of the Queensland Police Service and was made in light of the bad publicity from not allowing a court to hear the Bateman case.

Police took his gun from him and it was not returned until after the not guilty finding.

That could have proved disastrous because Mr Schwaller had another burglary just four weeks after the first.

He had installed motion sensor lights around his house, but thieves were not put off and stole two 125-litre hot water cylinders from his carport in the middle of the night.

Mr Schwaller said it was probably coincidence, but it did cross his mind at the time that the original intruders had come back seeking revenge for him firing at them.

As for the future, he intends to use the shotgun for the reason he bought it four years ago: clay pigeon shooting.

"Much safer," he said.

Title **Three shattered lives.**

Source **SUNDAY MAIL (151)**

Date Issue 24/09/95

Pages **6**

SELF-employed electrician Greg Bateman, 36, was not charged by police after he shot and killed an intruder in his Rochedale South home.

The incident occurred just after midnight on April 25 this year.

Matthew Easdale, 16, was shot dead by Mr Bateman after Easdale threw a rock through a window and then entered the Nerida Street home.

Mr Bateman had woken when he heard the noise and with his rifle he confronted Easdale in the lounge.

Easdale had been carrying a tree branch as he approached the home owner and was shot once in the left side of the chest.

Police said the incident had occurred so quickly and with such pressure on Mr Bateman, they decided no charges should be laid.

Police Commissioner Jim O'Sullivan said the law allowed for a person in self-defence to use deadly force if necessary.

Police Minister Paul Braddy said the decision not to charge Mr Bateman proved the State's criminal code was working.

It was thought Easdale and his two friends had gone to the address by mistake while looking for other people.

REDCLIFFE invalid pensioner Gaetano Castorina, 62, was cleared by a Supreme Court jury for the attempted murder of an intruder.

He shot Patrick Michael Stoddart, 25, on February 18 last year but was found not guilty on all criminal charges on April 6 this year.

Mr Castorina said he was woken when alone at home about midnight and saw a man trying to open rear and front sliding doors.

He grabbed his shotgun.

He said he gave repeated warnings he was armed and told the intruder he should leave, but the man remained on the property.

He said the man - whom he confronted in the carport area - kept coming and he shot him in the stomach.

Mr Castorina was acquitted of attempted murder, doing grievous bodily harm with intent, or causing grievous bodily harm to Stoddart.

Justice William Lee said he totally agreed with the verdict and that jury members had applied common sense.

Attorney-General Matt Foley this month awarded Mr Castorina $30,000 to cover legal fees, but warned others that this payment was a "one-off".

Title **Man who wounded intruder acquitted.**

Source **Courier Mail (59)**

Date Issue 17/08/95

Pages **12**

A GUN enthusiast who shot and seriously wounded an intruder in his house last night hailed his acquittal as a verdict for all Australians.

Lawrence Morris said the jury verdict ensured people could feel safe in their homes.

A Victorian County Court jury took less than two hours to acquit Morris, 53, of Armadale, of charges relating to the 1992 shooting of a criminal who was trying to steal a brass bed from his apparently abandoned Malvern house.

Beside his legal counsel on the court house steps last night, Morris said he had had financial support from across the nation, particularly from the Sporting Shooters Association, of which he is a member.

During the 11-day trial, the jury heard that the victim of the shooting, Peter Blake, 42, of Seaford, had gone to Morris's home to help a friend steal a brass bed on November 4, 1992.

No one had lived in the house since Morris and his wife had separated, but Morris occasionally stayed there to give the impression it was occupied.

The court heard that friends of Blake had earlier searched the house after one of them - who stole five shot guns from a metal cabinet - saw it as a prospective "squat".

The Crown claimed that the house, which was filthy and scattered with books, clothes and ammunition, was left by the men in a way which indicated they would return.

Prosecutor Nigel Parkinson claimed Morris had been lying in wait for the thieves to return and engaged in "a calculated ambush" when he shot Blake in the pelvis with a military-style gun.

But the defence case centred around claims that Blake was affected by amphetamines at the time, entered the house with his adrenalin running and threatened to kill Morris.

Defence barrister Sean Cash said the jury had to ask whether people should be prepared to accept drug-affected criminals like Blake entering their homes.

There was "a fine line" between guarding oneself and one's property and "lying in wait", he said.

Title **Bill to help invader victims.**

Author **PORTER, JONATHAN**

Source **Australian (80)**

Date Issue **16/05/95**

Pages **3**

HOUSEHOLDERS who shoot home invaders would be compensated for legal costs, public humiliation and anguish if a private member's Bill planned by the head of the NSW Shooters Party, Mr John Tingle, is accepted by the NSW Parliament.

Mr Tingle, who is a member of the NSW Legislative Council, said yesterday changes to the law were necessary because householders were at a disadvantage to home invaders.

"An intruder could sue a householder for injuries received during a home invasion, but a householder who tries to defend himself could find himself charged with assault or manslaughter," Mr Tingle said.

"I am not just talking about guns, it could be a knife or the householder could hit someone." According to Mr Tingle, the Opposition had indicated it would support his Bill and the Minister for Police, Mr Whelan, "said he could not see any thing wrong with it".

It was "only a matter of time" before NSW had a shooting similar to the recent home-invader shootings in Queensland and South Australia.

In Brisbane on Anzac Day Matthew Easdale, 16, was shot dead by Mr Greg Bateman while he was breaking into Mr Bateman's home.

About 12 hours later police said Mr Bateman would not be charged over the shooting.

At midnight on May 3, 84-year-old Mr Alby Geisler who lived alone in Adelaide, shot 32-year-old Ian Aspinall, who had broken into his home.

Mr Tingle said the decision by the South Australian Director of Public Prosecutions not to charge Mr Geisler made it "imperative that the NSW Government define its attitude to such incidents as soon as possible".

Title **The right to defend.**

Author **Ray, Chris**

Source **Courier Mail (59)**

Date Issue 10/05/95

Pages **15**

The ordinary people of Queensland are deeply concerned about their safety and their right of self-defence.

They do not want to see the debate politicised, sensationalised or reduced to petty point-scoring in the media by prominent public commentators.

They are simply asking to have the laws of self-defence clarified and to be assured that they will not be pursued through the courts if they genuinely act in self-defence.

There have been 300,000 gun licences issued in Queensland.

It is difficult to obtain a hand-gun licence for self-defence, but shotguns and rifles are readily available.

Certainly no one should keep a firearm for self-defence without some appropriate training and understanding of the inherent responsibilities.

Queensland Council for Civil Liberties president Ian Dearden has raised fears that, if citizens are given greater powers to act in self-defence, a parent by accident might shoot a 14-year-old son climbing through the window after sneaking out at night.

But how could a change in any law cause such an event?.

Already one-in-four households has a gun and it has not happened yet.

Mr Dearden also has suggested people treat an intruder as a brown snake - get out of the way and call a professional.

This is unrealistic given the short time frame in which one might have to react to an intruder There.is also the difficulty of making a phone call in the middle of the night with someone in the house and the possibility of a long delay in police response.

Criminologist Professor Paul Wilson has quoted research by the New England Journal of Medicine, stating that: "The risks of keeping a gun in the home almost triples the likelihood that someone in the house will be killed, and the risks of keeping a gun in the house far outweighs the benefits, in terms of safety.".

Professor Wilson fails to acknowledge the narrow perspective of this research: it was a comparative study of hand-gun homicides and the respective gun laws in Vancouver and Seattle.

This research has been heavily criticised and has some quite serious flaws.

It was conducted in North America and may be entirely irrelevant to the Australian situation.

The journal failed to acknowledge that the two cities, despite having the same average income, have very different below-average income groups.

The Seattle groups have a high proportion of racial minorities who have experienced a long history of discrimination and destruction of basic family values.

If one limits the Seattle-Vancouver comparison to the same socio-economic groups of non-Hispanic whites, the homicide and gun victimisation rates are exactly the same, despite Canada's stricter laws.

The article professed to draw on support from other research , when in fact this other research "Under the Gun; Weapons, Crime and Violence in America" by Wright, Rossi and Daly concludes there is no persuasive evidence that any form of gun control has reduced or would reduce homicide.

Title **Gun-shy invaders in retreat.**

Author **HANSEN, PETER (5555)**

Source **SUNDAY MAIL (151)**

Date Issue 07/05/95

Pages **7**

POLICE see hopeful signs that the recent fatal shooting by a householder of a 16-year-old intruder may have slowed the rate of home invasions in Queensland.

Home invasions had been happening with such regularity - an average of two a week in Queensland - that a special unit of detectives was set up to concentrate on them.

Since that Anzac Day tragedy, when the Brisbane youth was shot dead after he and mates smashed their way into a Rochedale South home, the number of home invasions has slowed to just one.

And that one barely fitted the definition - it was really a caravan invasion.

Two men armed with a .22 rifle smashed their way into a unit at an Aspley caravan park early last week and robbed a man of a large amount of cash.

Police quickly made an arrest.

Detectives point to precedents where a shocking death such as that Anzac Day tragedy served as a deterrent.

A veteran detective said: "I remember a couple of years ago when Brisbane was being plagued by bank hold-ups.

Then one guy was killed when he was crushed by one of those pop-up security screens while jumping a bank counter and soon after another offender was shot dead in a bank.

"We had a break for several months.

Bank hold-ups suddenly lost their popularity.".

Operation Biretta, the special unit set up to tackle home invasions, began work in November last year.

It is headed by Det Sgt Mick Austin within the Armed Robbery task force.

Sgt Austin said: "The term home invasion has been adopted by many people to refer to all sorts of offences, even ordinary burglaries.

"The unit really investigates offences that fit a definition - where armed persons force their way into people's houses when they are occupied, intent on stealing property.

"The unit has looked at 21 so far this year.

Others have occurred elsewhere in Queensland, but 80 percent happen in the south-east quarter.

"Our clear-up rate is better than 50 percent.

"Last year there were more than 100 such offences in Queensland, and we don't believe they are escalating.".

Sgt Austin said police wanted to ease the public perception that everyone was likely to be a victim of home invasion.

"We've found that isn't so, although now and then they pick on the wrong house by mistake.

"Criminals do their homework and target victims who will yield a high return cash,.drugs, jewellery.

"More than 50 percent of home invasions have a personal grudge motive - the victim knows the offenders.

"Home invasions range in severity from the professional jobs where professional criminals go in with their balaclavas and firearms with a specific target.

Many of these are drugs-connected.

"They range down to opportunist petty affairs which have a background of money owed or someone has been ripped off.

"But the community at large shouldn't be paranoid about home invasions.".

Cases collected by The Sunday Mail show alleged offenders have included women and a 15-year-old boy.

Weapons used include firearms, baseball bats, knives, bayonets and a syringe containing bleach.

In many cases, homes are invaded around 10pm when residents are about to go to bed.

Police said most victims had pleaded not to be identified, fearing their homes could attract more thieves.

Title **Self-defence has to be reasonable.**

Source **CANBERRA TIMES (1205)**

Date Issue 27/04/95

Pages **10**

JUST what happened when a Brisbane householder shot a teenage intruder and whether charges ought, as a matter of law or policy, be preferred against him are matters best left to both the investigating authorities and the Queensland coroner.

The outcome, however, is likely to be watched with close interest.

Already, a decision by police not to immediately act against the householder has been seen as a signal by both those who belong in the battlements of the my-home-is-my-castle brigade - some of whom would sometimes seem to argue that it is always perfectly allright to shoot burglars - and those who fear just such vigilantes.

Yesterday's appeal by the Queensland Premier for a suspension of judgment until the facts are established is entirely appropriate so far as the particular tragedy is concerned; the wider debate, however, is unlikely to be so patient.

Strictly speaking, the law on the subject has nothing much to do with privacy or protection of one's castle and everything to do with self-defence.

The law says that a person is entitled to use reasonable force to defend oneself, others or one's property, and that what is reasonable must be in proportion to the violence or the threat which is offered.

The fallacy of those who automatically leap to the defence of anyone who does something such as shoot a burglar is that they attach the question of reasonability not to the proportionality of the defence offered to the actual or feared attack but to the decision to defend oneself.

No one, they might say, has the right to burgle my house, or to steal my property; I have a perfect right to try to prevent them from doing so.

This may be perfectly correct; where they err is that once they conclude that it is reasonable to defend oneself, they assume that any force, including fatal force, is, or ought to be, permitted.

The law has never said that, nor should it.

It says one can use as much force as is reasonable to effect a lawful purpose.

Although some leeway is permitted for quick judgments in tense situations, the law implicitly permits no more than is reasonable in all the circumstances.

In recent years, judges have shifted towards a subjective rather than an objective test.

They do not concern themselves with what some "reasonable man" might have done in particular circumstances but with what the person actually thought or believed at the time.

This swings the scales somewhat towards the defender, but does not change the basic question.

The law, in judging what is proportional, has always taken account of such things as comparative sizes of the parties, degrees of provocation and instinctiveness of a response.

It is quite true that public opinion, at least as reflected by juries, has tended to give a wider ambit to the person seen as defending himself or herself than the law strictly allows.

But too much reading of signals into that can be dangerous given that jurors are enjoined also to give the benefit of any doubt to a defendant.A decision by a Queensland jury to acquit a man recently was cited by police as a factor they took into account in deciding on no immediate action in Tuesday's case.

But that case did not change the law, or even, necessarily send an unambiguous signal about a shift in community standards.

Some sympathy for the person defending his or her rights is natural and understandable.

Some tolerance for over-reaction to pressure in difficult circumstances is, too.

But not many people in the community would agree that the penalty for intrusion, or even for offering violence, ought to be death, as some of the extremists sometimes seem to suggest, let alone that such penalties ought to be exacted by the victim rather than the state.

Title **At home with a loaded gun.**

Source **Australian (80)**

Date Issue 28/04/95

Pages **12**

QUEENSLAND'S "intruder" controversy has strayed far from the facts and principles that matter.

Three days ago a youth was shot dead by a man who police promptly decided was lawfully defending himself.

Just as quickly, all sorts of wild commentary broke out across the nation.

In Queensland, which is approaching a State election, the controversy inevitably became politicised.

It is difficult to say whether the police were right to decide so quickly not to lay charges.

The Police Minister, Mr Braddy, says the case was unusually straightforward: there were witnesses and what had happened could be speedily reconstructed.

Civil libertarians, however, have argued that the police acted too hastily, in a politicised environment, and pre-empted the coroner.

What can be said with confidence is that the law is right to require people defending themselves or their property to use only reasonable means.

The shadow police spokesman, Mr Cooper, is wrong in principle to suggest this requirement should be removed.

His argument makes no sense in practice either, since it wrongly implies that people defending themselves are being sanctioned.

The man who shot the youth dead on Tuesday was not charged.

In Queensland's other recent shooting of an "intruder", the shooter was acquitted by a jury.

It is worth remembering that such events are rare in Australia.

When they do happen, it would be more desirable for the courts, rather than the police, to decide what constitutes a reasonable degree of self-defence.

Certainly the police are called upon - and trained - to make many discretionary judgments.

But the notion of what is reasonable is inevitably subjective.

It requires judgments not just about the circumstances, but also about prevailing community attitudes.

It may not be in the best interests of the police to have to make such rapid judgments when lethal force has been used and a de facto election campaign is perverting a so-called "law and order" debate.

In the circumstances, therefore, it may be preferable for independent prosecutors to intervene, or for a coronial inquiry to run its course or - if it comes to that - for a jury to decide whether reasonable force has been used.

The obvious question is what shapes community attitudes and notions of reasonable force?.

One powerful influence is the nexus between media reporting and the highly competitive politics of "law and order" during an election campaign.This was clear in the recent NSW campaign.

It has also become so in Queensland's "intruder" controversy.

First, there has been an exaggeration by politicians of the scale of the threat faced by people in their homes.

Second, there have been claims that the opposing political party does not have draconian enough measures to deal with the threat.

Third, it is being claimed that election of the "right" party will bring security and reassurance.

A vicious cycle in which opposing parties attempted to outbid each other's "law and order" credentials marred the NSW elections.

A similar cycle should not be encouraged in the general community.

For as people become convinced of an increased threat to their safety, some will be more likely to want to arm themselves; some more likely to be willing to shoot; and some criminals more likely to go armed.

Nobody wins in such a scenario.

Governments, police and the community must work effectively together to prevent and fight crime.

There should be an emphasis on having fewer weapons in the community, not more - and firearms should be made more difficult to come by.

Just as we expect the courts to view very seriously any crimes committed with firearms, so too must great care be taken to ensure their use in self-defence be a last resort, and never a first resort.

Title **Law hampers courts: judge.**

Author **WOODS, JAMES**

Source **Courier Mail (59)**

Date Issue 27/04/95

Pages **4**

POLITICIANS were pushing citizens to violence and encouraging a "shoot first, ask questions later" culture, youth law centres said yesterday.

And retired Supreme Court judge Peter Connolly said the Penalties and Sentences Act was hampering the state's judges from severely punishing "home invaders".

Youth Advocacy Centre co-ordinator Gwenn Murray said yesterday she was appalled by the political support for police in deciding not to charge Rochedale South homeowner Gregory Bateman over Tuesday's fatal shooting of 16-year-old Matthew Easdale.

Easdale was killed after breaking into Mr Bateman's home.

Ms Murray said Police Minister Paul Braddy and Opposition police spokesman Russell Cooper were pushing homeowners into "responding in a violent way".

She said the home invasion issue was "getting out of hand".

"The public should be made aware that a life has been lost here, that's the central issue," Ms Murray said.

"The law is about physical safety and protecting your life, it's not about property.".

Ms Murray described the police decision as "really frightening".

Youth Affairs Network of Queensland policy officer Ben Thomson said statistics showed most young people did not reoffend after being warned.

"If (Bateman) is let off without any investigation it's saying to the public this sort of thing is condoned," Mr Thomson said.

"We'll see a lot more violence against young people who might be engaged in this kind of thing in the future.".

Former judge Peter Connolly said people were sick of having their houses invaded.

"A lot of the problem is sentencing because the legislation does discourage solid sentencing for things like house-breaking, particularly by the young," Mr Connolly said.

"Judges are having their hands tied.

The legislation hasn't worked very well.

"A real custodial sentence is what's called for, not hiding behind their ages.".

Queensland Young Lawyers president Michael Liddy applauded the police's quick decision because it meant innocent people were not subjected "to the stresses and expense of a criminal prosecution".

"The benefit of the doubt should be given to the invaded, not the invader," Mr Liddy said.

University of Queensland senior law lecturer Graham Kenny said that under section 267 of the Criminal Code a homeowner could use lethal force as long as it was "reasonably based".

Title **House-breaker shot dead.**

Source **CANBERRA TIMES (1205)**

Date Issue 26/04/95

Pages **3**

The police decision not to charge a man who shot dead a teenaged intruder in his home early yesterday proved people could reasonably act in self-defence under present laws, Police Minister Paul Braddy said later.

Police said they would not charge the 34-year-old man from Rochedale, in southern Brisbane, who shot the 16-year-old just after midnight.

Mr Braddy said police believed the man should not be charged because he acted while menaced after his house was forcibly entered.

The dead youth had broken into the house armed with a 75cm tree branch and was threatening the owner.

Mr Braddy said, "It's very sad for both the home owner who was forced to defend himself in this way and very sad for the family of the deceased youth.

But the law has been applied and I think the law is applied sensibly and is a sensible law.".

Two weeks ago a Brisbane Supreme Court jury acquitted a 61-year-old invalid pensioner of attempted murder after he shot an intruder in his carport.

Opposition police spokesman Russell Cooper said yesterday's shooting should serve as a warning for people considering similar foolhardy crimes.

Police said a 16-year-old and an 18-year-old, who had been with the intruder but had not entered the house, had been charged with burglary and would appear in court today.

The dead boy's uncle said last night that the family held no malice towards the householder.

"He must be feeling almost as bad as the rest of us," he said on Channel 10 news.

"How would you feel after shooting a child?".

Title **Furore grows over teen burglar death.**

Author **HARRIS, TRUDY**

Source **Australian (80)**

Date Issue 27/04/95

Pages **3**

THE furore over the fatal shooting of a teenager who broke into a Brisbane home intensified yesterday with the State Government and police rejecting claims of political interference and the boy's family appealing for calm.

As the Federal Government and other States bought into the debate, the Australian Firearm Owners Association called for publicly funded education courses so people could familiarise themselves with guns to avoid further tragedies.

The association's vice-chairman, Mr Ian McNiven, said the shooting of Matthew Easdale by the home owner who discovered him in his lounge room was the "blood price" the nation had to pay to defend itself and its homes.

"It's the fundamental democratic right of every Australian citizen much the same as freedom of speech, freedom of assembly and trial by jury," Mr McNiven said.

"We accept a high blood price for motor cars with hundreds of people killed each year.

We must now accept guns and tragic shootings if we want a better society.".

But the president of the Victorian Civil Liberties Council, Mr Robert Richter QC, said home owners armed with guns would not deter criminals.

Burglars and robbers would themselves just buy bigger weapons.

The federal Minister for Justice, Mr Kerr, said: "The sort of right-wing rhetoric coming out of Queensland now about the desirability of gun ownership is ridiculous.".

However, the Premier of NSW, Mr Carr, said any invasion of another person's home "is not on ...The home owner is entitled and will be protected in the courts if he or she uses reasonable force".

The Queensland Police Minister, Mr Braddy, rejected allegations police failed to investigate the shooting properly before they decided not to charge 34-year-old gun enthusiast Mr Gregory Bateman, who shot 16-year-old Easdale after the youth entered his home at 12.03am on Tuesday.

The president of the Queensland Council for Civil Liberties, Mr Terry O'Gorman, attacked Mr Braddy for politicising the shooting in the lead-up to the State election by holding a press conference soon after police announced their decision.

The Queensland Premier, Mr Goss, yesterday called for an end to political comments claiming the coroner should be left to investigate the shooting.

The Easdale family made an emotional plea for the bickering to stop so the family could grieve in peace.

Title **Shoot-from-the-hip case triggers debate on lethal force.**

Author **ECCLESTON, ROY**

Source **Australian (80)**

Date Issue 26/04/95

Pages **2**

IT's after midnight when you are startled by a loud bang in the loungeroom.

You grab a firearm, see someone moving towards you, perhaps carrying something like a stick.

In a split second you shoot; the intruder dies.

Have you used reasonable force or should you face a murder charge?.

Queensland police, judging by their decision yesterday against laying any charges in just such a case, clearly believe that in those particular circumstances the use of lethal force by a home-owner is reasonable.

A 34-year-old Rochedale man will now not face any charges -pending a coronial inquest -despite his shooting of a 16-year-old burglar who detectives believe tragically went to the wrong house.

A few months ago the police might not have come to the same conclusion.

But that was before a Brisbane jury acquitted 62 year-old Mr Gaetano Castorina of attempted murder and grievous bodily harm charges after he shot a man he believed to be a burglar.

This begs some serious questions.

Is the community becoming more tolerant of individuals who shoot, even kill, intruders: and to what extent will this encourage more shootings?.

And if the community is taking a harder line on burglars, is that view due to an understanding of the facts or a climate of fear fuelled by State politicians seeking votes in an election year, and the prominence of certain types of crime stories in the media?.

In the Castorina case, the jury took 30 minutes to acquit and was strongly backed by Supreme Court judge Justice William Lee who said he "entirely agreed" with the "commonsense" verdict.

Mr Castorina, whose charges were originally dismissed by a magistrate, was taken to trial by the Director of Prosecutions to allow a jury to make the decision.

That is as good a sample of public opinions as you are likely to get.

The court case also sent a clear message back to the community through headlines such as "Judge backs home defence" and "QC: Burglars can be shot dead now".

Yesterday, that turned out to be tragically prophetic.

However, the law covering the home owner's responsibilities has not changed - those encountering an intruder are still entitled to use no more than reasonable force.

But consensus on what constitutes reasonableness is evolving.

Says Brisbane silk Mr Anthony Morris QC: "The law has always been the same but at the same time the law has always depended on community standards as voiced through a jury.

So when the law speaks about using reasonable force to protect your own property, what might have been considered reasonable force 100 years ago or even 10 years ago has through the eyes of juries changed.".

So are juries taking a tougher line?.

"It's not, so much a matter of taking a hard line on burglars...but taking a softer line on home owners protecting their own property," he says.

Both Mr Morris and former Supreme Court judge Mr Bill Garter QC are concerned about the effect of the political debate on producing these cases.

Mr Morris says he believes it would now be easier to defend home owners who shoot intruders.

"I don't mean to be critical in saying this but politicians and the media have created such an impression that home owners are living under a state of siege that when juries have to consider those questions they are considering them from a point of view that people should have a right to do whatever they can to protect their property," he says.

Even though the extent of violence in burglaries is often overstated?."A lot of the law and order debate from politicians from both sides creates a lot of public unrest which the statistics and the reality just doesn't generate," Mr Morris says.

"The truth is there's been a substantial increase in property offences, breaking and entering and burglary, but there hasn't been an obvious increase in physical violence associated with that." Mr Garter worries that the political debate - in which the State Opposition has touted removing the requirement for force to be reasonable - is clouding the community's objectivity.

"The political debate at the current time is fairly misinformed as to what the law has been for so long," Mr Garter says.

He suspects there has been a change in community attitudes but "I think the attitudes are being formed by an ill-informed political debate".

The view that politicians are creating a climate of fear "is precisely right".

That, he says, "tends to distract police, perhaps juries, perhaps so many other people away from what is quite clear law.".

Title **Householder used reasonable force in burglary death.**

Author **ECCLESTON, ROY**

Source **Australian (80)**

Date Issue 26/04/95

Pages **1**

QUEENSLAND police yesterday announced they would not lay charges against a man who shot and killed a youth breaking into his home yesterday, fuelling the debate over home owners' rights to defend their properties.

Police concluded the man used reasonable force to defend his home despite fatally shooting at close range the 16-year old who was breaking into the lounge room of his Rochedale South home.

The family of the dead youth, Matthew Easdale, said they held the home owner accountable for the killing but were still too shocked to decide whether they would pressure police to lay charges.

Matthew's stepfather, Mr David Easdale, said last night the family was "entangled in a web of confusion" about whether police should have charged the man.

Yesterday's shooting follows the acquittal of a Brisbane pensioner two weeks ago on charges of shooting a man who claimed he was sheltering from rain in the pensioner's carport.

A Brisbane Supreme Court jury dismissed the attempted murder charge against Mr Gaetano Castorina, 62, with the judge commenting that the man acted "properly" in the defence of his home and the jury's decision was "commonsense".

Police said the 34-year-old home owner was woken at 12.03am yesterday by the sound of the youth smashing a rock through his front sliding door.

The youth allegedly entered the house.

Detective-Sergeant Mike Condon said yesterday the home owner walked towards the youth, who was holding a tree branch, and without warning shot him in the chest with his .270 rifle.

Despite resuscitation efforts by police, the youth died 15 minutes later.

Acting Detective-Inspector Dan Murdoch said the youth allegedly broke into the Nerida Street house, in Brisbane's south, thinking the home was unoccupied.

"It seems the boy made a tragic mistake.

It's a tragedy all round," he said.

Inspector Condon said the home owner "was concerned for his safety and when you're in fear of your life you can take steps to ensure you and your property are not harmed.

"There is no requirement by law to issue a warning and anyway by the time you get the warning out, you might be dead," he said.

The shooting fuels debate over law and order in the leadup to the State election and follows the Opposition's policy guaranteeing home owners the right to defend themselves and their homes without fear of criminal charges.

The Opposition spokesman on police matters, Mr Russell Cooper, said the shooting was a tragedy but home owners must be allowed to use "whatever it takes" to protect their property against home invaders.

The Police Minister, Mr Braddy, defended the police decision and called on the Opposition to stop politicising such incidents and raising community concern about the need to protect their homes.

Mr Braddy denied yesterday's incident, and the dismissal of charges against the Brisbane pensioner, sent a message to home owners encouraging them to use lethal force when threatened.

"The only message this sends to the community is that there is a sensible law that enables you to defend yourself.

It hasn't altered anything, the law has always been there," Mr Braddy said.

"It's very sad for both the home owner ...and for the family of the deceased youth but this proves the law is working." Inspector Murdoch said

his decision not to lay charges was not influenced by the acquittal of the Brisbane pensioner several weeks ago and claimed "every incident was different".

"The law gives the owner the right to protect his home.

We have had lengthy discussions this morning about the legislation and the evidence and decided he did not break the law," he said.

Title **Fingers on the trigger.**

Author **JOHNSTONE, CRAIG**

Source **Courier Mail (59)**

Date Issue 26/04/95

Pages **9**

"Home invasion" has been part of the Australian vocabulary for little more than a year.

The tragic irony is that the term only came to full public attention with the murder of the man who coined it - Sydney MP John Newman, a vocal campaigner against crime in the western Sydney suburb of Cabramatta.

Today, it is not only Newman's former constituency - the Asian community of Sydney's west - that fears home invasions Such incidents have spread interstate and become so worrying that Queensland police have set up a unit devoted solely to fight them.

The cause of the home invasion phenomenon is, ironically, due partly to increased vigilance against crime.

As traditional robbery targets such as banks, convenience stores and service stations upgrade security, criminals are turning to "softer" targets.

And there are few targets softer than a family home in the middle of the night.

Crime figures compiled by Queensland police suggest that there has been a marked increase in home burglaries and invasions in the past 18 months.

`P Figures show that break-and-enter offences accounted for 30 percent of property crimes in the 1993/94 financial year.

Reported offences against property increased by five percent and reported break and enters were up by 14 percent.

But the most significant rise was in the category of breaking and entering a dwelling, which increased by 24 percent in 1993/94 and was the major factor affecting the overall rise in property offences.

With police fighting a rearguard action against such crimes, it is no surprise that home owners have been tempted to take matters into their own hands.

There is no hard evidence to suggest that a significant number of Queenslanders are arming themselves to ward off potential home invaders But.

yesterday's killing of an intruder at Rochedale and a Redcliffe pensioner's wounding of a man he thought was trying to rob him last year show that some people at least are willing to use force to defend themselves against intruders.

Tony Cleaver, owner of a firearms store in Redcliffe, said between three and five people a week called in to buy a weapon to protect themselves and their property.

Usually the customers are middle-class professionals or the elderly, concerned that deadlocks and other passive security measures are not enough.

Most tell Mr Cleaver that if confronted by an intruder in their home, they would shoot.

"It's a terrible way for society to have to go for people to protect themselves, but the way things are today the police can't protect you as much as you can protect yourself," he said.

"If someone is lurking around your home at 2am, they're not there for a cup of tea.".

But while custom from those concerned about security has been fairly constant in the three years he has had his store, Mr Cleaver has also noticed a recent increase in young women customers, aged between 20 and 30, seeking a small-calibre weapon to defend themselves.

"They're flatting by themselves mostly and want protection," he said.

"Usually they want a light-calibre shotgun or a .22 rifle - something that's easy to handle.

"And quite a few women are also going to pistol clubs.".

This apparent increased readiness to use violence to ward off real or perceived threats of violence comes as the Queensland Government argues with the Opposition over which has the more appropriate policy to deal with home invasions.

Section 267 of the Government's Criminal Code states that it is lawful for people to use such force as is believed reasonably necessary to prevent the forced breaking and entering of their home.

The Opposition says it will toughen up the law in favour of householders, a move which has the Government shouting "rednecks".

The Opposition has countered that the Government's response to the concern over home invasions is akin to Woody Allen trying to act like Clint Eastwood.

But whatever the merits of either side's proposed reforms, the debate has resulted in Queenslanders considering their own personal responses in the event of home invasion.

One response has already been tested in court.

Earlier this month a jury acquitted Clontarf pensioner Gaetano Castorina of attempted murder and grievous bodily harm charges arising out of an incident at his home in February last year.

Mr Castorina, 62, had shot a man whom, he alleged, was trying to break into his home.

The court heard that Mr Castorina was woken by a noise and saw the man trying to open the rear sliding door of his home.

The invalid pensioner shot the man only after repeatedly warning him that he had a gun.

Mr Castorina's barrister, Shane Herbert QC, argued that the Criminal Code allowed for people to use whatever force they believed was necessary to prevent their home from being broken into.

Police Commissioner Jim O'Sullivan has declared he is happy with the way the law stands.

He said: "When a person is in peaceful possession of his home or has family members under his care he.

is entitled to use the degree of force that is reasonably necessary to defend himself and his own.

"That force may include lethal force if the householder is in fear of grievous bodily harm or death being inflicted on him or those in his care.".

The Commissioner has also attempted to calm the highly-emotional home-invasion debate, saying that there have only been "a couple of dozen at most" of such incidents.

"Some people are including all common break-and-entries in the home-invasion hysteria.".

Another who says the debate is in danger of running off the rails is secretary of the newly-formed Shooters' Party, Jon Lunn.

He says he cannot see evidence that people are arming themselves as a direct result of the publicity surrounding home invasions.

"I don't think that many people who have not owned guns before are arming themselves in response to this issue," he said.

"My view is that it is a nonsense to advocate the ownership of weapons to defend the home.".

Mr Lunn, whose party is yet to be registered but is planning to campaign at the next state election, said the law covering people having guns at home was quite explicit.

"Weapons have to be locked away and the ammunition kept in a separate place," he said.

Queensland Council for Civil Liberties vice-president Terry O'Gorman

said yesterday that it was important that both the Government and Opposition tackle home invasions seriously rather than adopt a "kneejerk" response.

It was wrong to assume that a "criminal has rights and victims have no rights", he said.

He agreed that the publicity surrounding the problem could lead to people seeing no alternative but to start arming themselves.

But he said the justice system must treat sympathetically those victims of home invasion who defended themselves using reasonable force.

And whatever the circumstances of a killing resulting from a home invasion, Mr O'Gorman said the question of laying charges should be left to the coroner.

He cites Section 7 of the Coroner's Act which obliges a coroner to inquire into the cause and circumstances of a death where in the coroner's opinion the death was violent or where the cause and circumstances of the death needed to be more clearly ascertained.

Title **Anger over shot boy ruling.**

Author **THURLOW, CHERYL**

Source **Courier Mail (59)**

Date Issue 26/04/95

Pages **1**

A police decision not to charge a homeowner who shot dead a teenage intruder has sparked claims of political interference in the investigation.

Queensland Civil Liberties Council vice-president Terry O'Gorman last night said the shooting of 16-year-old Matthew Easdale had been investigated with "unusually quick speed".

Easdale was killed early yesterday morning after entering a house at Nerida St, Rochedale South in Logan City.

Acting Detective Inspector Dan Murdoch, of Logan Police, said Easdale had gone to the house of Gregory Bateman, 34, with two friends and had thrown a rock through a sliding glass door.

Mr Bateman had woken when he heard the noise and confronted Easdale in the lounge room with a rifle, Insp Murdoch said.

Easdale had been carrying a tree branch as he approached Mr Bateman and was shot in the left side of the chest.

Insp Murdoch said Mr Bateman had said "nothing substantial" before firing the shot which killed Easdale but the incident had occurred so quickly, with such pressure on Mr Bateman that police decided no charges should be laid.

Insp Murdoch said Mr Bateman had a licence for the rifle.

At a media conference 14 hours after the shooting, Police Minister Paul Braddy said the decision not to charge Mr Bateman proved the state's criminal code was working.

Mr O'Gorman said: "The hastiness of the police decision smacks very much of the police trying to curry favour with the Police Minister.".

He blasted Mr Braddy's claims that the outcome was an endorsement of the law.

"It's just showing what a plaything the law has become in this state in the lead-up to an election," Mr O'Gorman said.

"This will become the Fred Many of the state election.".

The early release of rapist Fred Many featured prominently in the recent New South Wales election campaign.

Mr Braddy last night rejected any implication of political interference in the shooting investigation.

"It's an attack on the integrity of the police service to suggest otherwise," Mr Braddy said.

He was not aware of all of the case details but said "it would appear to be fairly open and shut".

"That decision will be reviewed further by the coroner," Mr Braddy said.

Police Commissioner Jim O'Sullivan said the quick decision not to charge Mr Bateman had nothing to do with politics.

"The law is quite adequate in this area and it states that in self-defence a person is allowed to use deadly force if necessary, if you believe your life is in danger," Mr O'Sullivan said.

Police believe Easdale and his two friends had gone to Mr Bateman's house by mistake.

The parents of one of the youths said they had been looking for two other youths who had bashed their friends and damaged a car.

Two youths, aged 16 and 18, will appear in the Southern Districts Magistrates Court in Beenleigh this morning on burglary charges.

Mr O'Sullivan said: "I strongly support the decision of the investigating officers.

I would hope this case doesn't become a political football.".

Opposition police spokesman Russell Cooper said that while the shooting was a terrible tragedy, the youth had paid "the ultimate price of the occupational hazards of home invaders".

"The bottom line is that this youth would be alive today if he had not broken the law," he said.

Mr Cooper said the recent case involving a Redcliffe pensioner had been treated differently.

A Supreme Court jury recently acquitted Gaetano Castorina, 62, of attempted murder after he shot and wounded an alleged intruder in his garage in February last year.

Firearm Owners Association of Australia junior vice-chairman Ian McNiven, of the Sunshine Coast, said property defence involving shooting was known to deter potential home invaders.

"It is a fundamental right for people to defend their property,," he said.

The 1990 Weapons Act requires anyone who owns a pistol, rifle, air gun or shotgun to hold a licence.

Applicants for a licence must be at least 17 years of age, of sound mental state, have no criminal convictions and must not be the subject of a domestic violence order.

Title **Ruling no licence to kill, warns A-G.**

Author **KERIN, JOHN**

Source **Australian (80)**

Date Issue 18/05/96

Pages **2**

SOUTH Australia's Attorney General, Mr Griffin, warned the community yesterday not to seize on a controversial decision to free a gun collector who shot a fleeing bandit as a licence to kill in self- defence.

Mr Griffin was responding to a decision by a South Australian Supreme Court Jury on Thursday to clear 37-year-old Adelaide tow truck driver Mr Kingsley Foreman of murder and manslaughter charges in the shooting of a robber after he had threatened a female attendant with a replica gun and a knife.

Seventeen-year-old Dallas Milsore was shot in the neck, suffering a severed artery, and died five days after the incident occurred on October 17 last year.

Lawyer for Mr Foreman, Mr Gary Coppola, said yesterday his client was "deeply relieved" with the decision but said Mr Foreman had declined to be interviewed, preferring to tie up a media deal for his ordeal in an attempt to recoup legal costs.

Members of the Milsom family have also indicated they are not prepared to speak about either the trial or the death of Milsom.Mr Griffin, although declining to comment on the case, announced he would introduce amendments to South Australia's Criminal Law Consolidation Act to tighten self defence provisions relating to the use of excessive force.

"My very strong message...is that this does not present a licence to shoot, or to kill or to use force which goes over the top," Mr Griffin said yesterday.

"Reasonable men and women faced with a situation and threat believing it to be imminent and of risk to them are entitled to react but not (in an excessive way)," Mr Griffin said.

Mr Griffin's warning came as the Sporting Shooters Association said the decision underlined the need for citizens to have the right to firearms for self protection.

It said felons were on notice that they risked their victims fighting back with sometimes tragic consequences.

University of South Australia Associate Professor in Law Rick Sarre said yesterday South Australia's self-defence provisions were unnecessarily complex and too broad, appearing to make little distinction between threat to property and threat to person.

Combined Shooters and Firearms Council of South Australia Inc.President Mr Michael Hudson said yesterday the jury had made its decision and "that's where the issue should end".

Mr Foreman in interview with Channel Nine last night said he did not feel guilty about the incident.

"I regret that a young fellow is dead but at that time I had no other choice but to do what I did," he said.

He also claimed the charge was politically motivated.

"There was no other choice, it was either fire the gun like I did or basically be dead.

Sure it turns out now that it was a replica gun but of course then you don't know," he said.

He said he also had feared the Port Arthur massacre would swing the jury in the prosecution's favour.

Title **DPP drops manslaughter charge in intruder killing.**

Author **SCOTT, LEISA**

Source **Australian (80)**

Date Issue 11/05/96

Pages **7**

QUEENSLAND'S Director of Public Prosecutions, Mr Royce Miller QC, overrode the State coroner yesterday by dropping a charge of manslaughter against a man who shot dead a teenager who invaded his home armed with a stick.

The killing of Matthew Easdale, 16, last year prompted a national law and order debate and sparked allegations of political interference after police decided - on the day of the shooting - that the home owner, Mr Gregory Bateman, would not be charged.

Mr Miller said yesterday his decision "in no way" meant that home owners who injured or killed an intruder were safe from prosecution.

"Each case will be decided on its own facts and merits," he said.

Detective Senior Constable Scott Knowles told an inquest in February that he disagreed with the decision to announce there would be no police charges just 14 hours after the Anzac Day killing in Brisbane.

He said he believed he was investigating a murder.

The coroner, Mr Gary Casey, decided that conflicting evidence about the events of the night forced him to commit Mr Bateman for trial.

That committal was dismissed yesterday.

Mr Bateman told police he was awoken early in the morning by a rock crashing through his window and heard the voices of Easdale and two of his friends.

The trio had mistaken his home for that of some rival youths they intended to attack.

Mr Bateman said he loaded his .243 bolt action rifle and shot at Easdale after the teenager raised "something dark in his hand", which he feared might be a gun.

It turned out to be a stick.

Mr Miller's decision was made after an assessment of the evidence was presented to his office by Mr Bateman's solicitors, Henley Keith.

A solicitor at the firm, Mr Mark Freier, said Mr Bateman was pleased the DPP had accepted the submission, but refused to comment further.

The mother of Matthew Easdale, Mrs Cathy Easdale, said that while .she bore Mr Bateman no animosity, she would have liked the case to have gone to trial, "simply because if it went to court, everything is done properly".

"This way, there is some questions left unanswered and you'll never know," she said.

"But what I think is not going to change anything." In a statement, Mr Miller said he had to consider whether there was a "reasonable prospect" that a jury would be persuaded that the person charged was guilty.

"I have determined that the continued prosecution of Mr Bateman cannot be justified and no indictment will be presented against him," he said.

"The criminal process against him is now at an end.".

Title **Home-owner charged with killing intruder.**

Author **Horan, Matthew**

Source **Courier Mail (59)**

Date Issue 29/02/96

Pages **1**

THE man who shot dead a teenage home-invader was yesterday charged with manslaughter - despite being cleared by police just hours after the shooting.

Coroner Gary Casey said conflicting evidence about the night gun enthusiast Greg Bateman killed 16-year-old Matthew Easdale with a high-powered .243 hunting rifle forced him to commit Bateman for trial.

Bateman shot Easdale after the teenager threw a large rock through a glass door and entered his Rochedale South house armed with a stick in the early hours of Anzac Day last year.

The 35-year-old electrician told police that in the dark he mistook the stick for a gun and fired after Easdale spun around and moved towards him.

Police announced after the shooting they would not charge Bateman.

Civil liberties groups accused the police of bowing to political pressure in the run up to last year's state election.

The shooting came three weeks after a Supreme Court jury had found 62-year-old pensioner Gaetano Castorina not guilty of attempted murder of an intruder he shot in his Redcliffe carport.

The then-police minister Paul Braddy said the decision not to charge Bateman proved the state's criminal code was working.

The Opposition spokesman at the time and now Police Minister Russell Cooper said it was coalition policy not to charge the home-owner if an intruder was committing an offence at the time of his or her death.

He said there would still be a coronial inquest.

"(Home-invaders) leave their rights at the door," he said.

After yesterday's ruling, Mr Cooper said: "I won't be buying into this.".

Mr Cooper said coalition policy was not in place yet but it would abide by the decision of a coroner.

Mr Casey said he was satisfied Bateman shot Easdale but said there was conflicting evidence as to what caused him to fire.

Easdale and two friends had been drinking at a party when they decided to go to Bateman's street to assault a youth with whom they had been fighting.

However, they entered the wrong house.

One of Easdale's friends, Scott Freier, told police Bateman had yelled "Hoy" and fired immediately at Easdale, who was standing still, facing Bateman.

But under cross-examination during the inquest, Freier admitted Easdale had spun around.

After the hearing, Easdale's tearful mother Cathy said her privacy had been "ripped apart" by publicity surrounding her son's death.

"I've got such a good network of support though," she said.

"I have a firm religious background and I firmly believe I will see Matthew again.".

Her solicitor, Peter Pavusa, said there were no winners in the case.

He said the question of a home-owner's rights when faced with an intruder was "a very difficult one" and there were strong views on the matter.

He said the family had only wanted the matter to be properly dealt with by a court.

"It is obviously a decision where justice is seen to be done and it rests in the hands of the court," he said.

Bateman's solicitor, Jamie Griffiths, said his client accepted the coroner's decision.

"No, he is not disillusioned.

Obviously he is a little disheartened," he said.

Title **Why can't I jail girl's rapist for life, asks judge in invasion case.**

Author **OBERHARDT, MARK**

Source **Courier Mail (59)**

Date Issue 12/03/97

Pages **3**

THE horrific rape of a 12-year-old girl during a home invasion left a District Court judge asking why he could not sentence the attacker to life in prison.

Chief Judge Pat Shanahan said yesterday the girl was "defiled and degraded" when raped by Anthony John Frost, at her Greenbank home, on Brisbane's southern outskirts, on April 14 last year.

"I know what the community thinks.

I know what my friends and neighbours think - they were horrified by this despicable act," Judge Shanahan said.

Frost, 24, and his accomplice Donald Jeffery Sayers, 24, were apprehended three weeks after the home invasion, bringing to an end their sequence of crimes, the court was told.

When told the Crown was seeking up to 18 years' jail in cumulative sentences for Frost, Judge Shanahan replied: "Why can't I give him life?".

He remanded Frost and Sayers in custody so he could consider all submissions and reports before passing final sentence.

Frost and Sayers pleaded guilty to a total of 20 joint charges of armed robbery in company, deprivation of liberty and entering a dwelling with intent.

Frost pleaded guilty to a further two charges of rape, two of indecent assault, one of attempted rape and one of disabling with intent to commit rape.

Prosecutor Michael Byrne, QC, said the home invasion was the final crime in a three-week period in March-April last year.

He said the pair, wearing masks and armed with replica pistols, robbed the Go Video store on Old Cleveland Road, Carina, on March 23.

The pair, armed with a pistol and knife, then robbed the Ray White Real Estate office at New Farm, on April 4..

Mr Byrne said Frost and Sayers, made bolder by their "success", cruised Brisbane's remote southern suburbs on April 14, looking for easy prey.

About 10pm they burst into a house where a man, 31, and his four children - aged 12, nine, seven, and three - were either watching television or asleep.

The family was herded into a bedroom and bound with tape.

Frost then took the girl, 12, into her bedroom where he raped her twice, the court heard.

Barrister Dennis Lynch, for Frost, said his client had been under the influence of LSD and cannabis at the time.

APPENDIX B

Coalition Policy on Home Invasion

The Coalition, recognising widespread community concern at the alarming upsurge in the crime dubbed "home invasion", believes that the Criminal Justice legislation be amended to deal with "home invasion" and that persons may be charged with this offence if they illegally enter any occupied place and commit one or more of the following acts:

1. Use or threatened use of actual violence;
2. Use or threatened use of a "dangerous thing";
3. Being armed, or pretending to be armed, with a "dangerous thing";
4. Theft, threatened theft or attempted theft of any property;
5. Damage, threatened damage or attempted damage of any property.

The Criminal Justice System does not presently adequately address the problems associated with home invasions and the right of occupiers to defend their property e.g. Castorina.

The Coalition will address these defects by:

directing the Director of Prosecutions to produce and publish comprehensive guidelines setting out the basis of his discretion to prosecute or not prosecute;

conducting a full investigation to determine whether the test to be applied by Magistrates in determining whether an accused person be committed for trial is whether it will be "likely" for a jury to convict;

introducing stiff penalties for "home invasion" type offences which will be defined as break and enter offences involving violence and threats of violence;

amending the law to prohibit civil actions by criminals who have suffered personal injuries where they suffered those injuries during illegal activities.

Further, it would be deemed reasonable to use force to defend one's self, family & friends when one's home is violated by illegal entry.

Moreover, persons charged with this offence may also be charged with other offences depending on the circumstances and any sentence or sentences imposed for convictions on these other offences shall be served in addition to, and not concurrent with, the penalty imposed for a "home invasion" conviction.

In addition, persons convicted of this offence will be required immediately after conviction - if requested by the victim, or victims - to make a formal face-to-face apology.

Any failure to make this act of contrition shall be regarded as a contempt of the Court, and dealt with accordingly.

Further, persons convicted of this offence will also be required to serve a period of community service for the victim or victims if so requested and will be required to make financial restitution for any loss or damage of property and recompense for pain and suffering.

This community service and restitution will be separate from any imposed sentence and shall apply immediately the convicted person has been released from secure custody.