



Speech by

**Mrs D. PRATT**

**MEMBER FOR NANANGO**

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Hansard 26 November 2002

**OCCUPANTS (HOME INVASION) PROTECTION BILL**

Second Reading

**Mrs PRATT** (Nanango—Ind) (10.17 a.m.): I move—

That the bill be now read a second time.

The purpose of this bill is to recognise in legislation that people do have the right to defend themselves, their family and their property without fear of prosecution and civil liability; that it is necessary that people who do break and enters realise that they forfeit their right to sue the occupant because they have engaged in a dangerous illegal activity; and that parity/disparity must be recognised as occurring in any break and enter or home invasion and given due consideration.

The bill allows the occupant the right to use any force necessary to prevent an intruder breaking or entering, or to eject someone who refuses to leave once asked to do so. It also states that there is a time limit for prosecution of the occupant and that, in the event of prosecution, the prosecutor must prove beyond doubt that the occupant did not believe they needed to use the force they did.

The bill also prevents the criminal and his/her associated family or other possible litigants from suing for any personal injury or trauma associated with the perpetration of the illegal act. Recently in Sydney, the person committing the criminal act of breaking and entering successfully sued and received compensation of \$49,049, as did the mother of the young offender who successfully sued and who was awarded \$18,578 for nervous shock after seeing her son's injuries.

Any parent who sees the injuries their child receives from falling off a fence, a swing, out of a tree or sees the injuries from any number of activities/experiences, including a schoolyard fight, feels these same feelings. Who will these parents now be able to sue? It is only natural to feel such things, but it does not negate the child's own contributory factor to the result of those actions. I have felt the same 'sweating, insomnia, episodes of crying and nightmares' after my children have been in accidents and the thought of the worst possibility that could have occurred can be frightening. Usually these injuries are a result of their own actions and lack of judgment, but children can be forgiven for bad judgment. In the case of the Joshua Fox, he knew and was old enough to weigh the risks. Again, we see all manner of responsibility and logic thrown away and negated by the court.

It is now necessary to convey to the criminal that it is not okay to break and enter a private dwelling or anywhere else considered as a person's home. Criminals must be made aware that there are consequences to their actions and, as was often stated by our parents, 'If you play with fire you're going to get burnt.' This may sound harsh to some, but an option has been considered that outlines that a person engaging in a possibly dangerous activity like abseiling, horse riding or many other forms of leisure activity considered as dangerous should have the right to sign a waiver that they would not sue the organising body of the event in the case of injury. This is being considered because of the current insurance debacle which has threatened almost every aspect of our lives.

If a person engaging in a lawful activity is permitted to waive their right to sue except under proven negligence by the operators, it is only fair that someone who engages in a criminal act which by its very nature is extremely dangerous should automatically be seen as waiving their right to sue the innocent occupant of a dwelling. Many people forget that the person has committed an illegal act by

simply entering the house uninvited even if they are apprehended before they commit the second crime of theft, assault, abduction or murder, to name but a few. In many instances, the occupant of a dwelling is confronted by a person intent on a criminal act in the dark, they are confused, groggy from being awoken, and the first reaction is often based on the fight, flight or freeze instinct. If the occupants are already awake and confronted, the instinct is again to fight, flight or freeze.

Would anyone in this chamber know instinctively what they would do if they were confronted? Would they know if the criminal in their house, if cornered, had the worst possible intention? Would we know whether they were drunk or high on drugs? Statistics report that Queensland has the highest number of hallucinogenic drug users. How would we know in the dark if that criminal person's instincts were heightened beyond any reason through drug abuse? We cannot. Research has shown that any person confronted will be subject to stresses on performance, which precludes the legalistic term 'reasonable force'. An article states—

The effects of sudden stress on physiology and psychology is not generally known. The factors of parity/disparity, shown in research, generally indicate that the invaded person will be at a physical and psychological disadvantage and to establish parity may need a weapon of defence

This article goes on to state—

In order to truly understand the effects of stress on performance it is important to have an understanding of survival stress. It can be defined as:

- A condition that may occur when a person is startled by an imminent threat of personal injury
- A condition that may exist when a person's time to respond to a threat is minimal
- A condition when a person may not have confidence in their level of ability to control a threat

Survival stress can activate the body's sympathetic nervous system and create a condition commonly known as 'Fight, Flight or Freeze' response. The activation of this sympathetic nervous system is a powerful survival mechanism shared by all mammals enabling them to completely focus all of the body's resources on either charging toward or running away from their opponent. The process is automatic, virtually uncontrollable and it dominates all voluntary and involuntary systems until the threat has been eliminated or avoided.

It is therefore unreasonable for any court to say the occupant used too much force when they believed they were in fear for their own life or those of family members. No-one can put themselves into another's state of mind under these circumstances.

Young Josua Fox was drunken, underage, uninvited, unrepentant, irresponsible, inconsiderate, selfish, and disrespectful of others rights and property. This reprobate has made a small fortune from his illegal activities. The law courts and the judgments they hand down continue to disillusion the general public. The constant undermining of people's rights through the handing down of inappropriate sentences by the justice system only continues to further entrench people's belief that 'the law is an ass'. Such judgments as the one in Sydney send the wrong message to the public. The law must now stand behind the occupant of a dwelling, not behind the person breaking and entering, the home invader or the person of criminal intent.

Debate, on motion of Mr Welford, adjourned.