

Queensland



# **OCCUPANTS (HOME INVASION) PROTECTION BILL 2002**



# Queensland



## OCCUPANTS (HOME INVASION) PROTECTION BILL 2002

### TABLE OF PROVISIONS

Section		Page
	<b>PART 1—PRELIMINARY</b>	
1	Short title . . . . .	4
	<b>PART 2—INTERPRETATION</b>	
2	Definitions . . . . .	4
3	What is a “dwelling house” . . . . .	4
4	Who is an “intruder” . . . . .	5
5	Who is an “occupant” . . . . .	5
	<b>PART 3—DEFENDING AGAINST INTRUDERS</b>	
6	Effect of pt 3 . . . . .	5
7	Defence against intruders . . . . .	5
8	Time limit for prosecution . . . . .	6
9	Onus of proof in criminal proceeding . . . . .	6
10	Immunity from civil liability . . . . .	7
	<b>PART 4—AMENDMENT OF CRIMINAL CODE</b>	
11	Act amended in pt 4. . . . .	7
12	Omission of s 267 (Defence of dwelling) . . . . .	7



**2002**

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**A BILL**

**FOR**

**An Act to authorise occupants of dwelling houses to defend themselves  
and their property against intruders, and for other purposes**

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The Parliament of Queensland enacts—

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## PART 1—PRELIMINARY

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### 1 Short title

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This Act may be cited as the *Occupants (Home Invasion) Protection Act 2002*.

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## PART 2—INTERPRETATION

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### 2 Definitions

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In this Act—

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“**break**” or “**enter**”, a dwelling house, means unlawfully break or enter the dwelling house or attempt to unlawfully break or enter the dwelling house.

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“**dwelling house**” see section 3.

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“**intruder**” see section 4.

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“**invitee**” see section 7(1)(d).

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“**occupant**” see section 5.

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“**offence**” means an offence as defined under the Criminal Code.

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### 3 What is a “dwelling house”

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A “**dwelling house**” includes—

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(a) a building or other structure where someone lives; and

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(b) a building or other structure that is—

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(i) within the curtilage of a dwelling house; and

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(ii) occupied in connection with the dwelling house or whose use is ancillary to the occupation of the dwelling house; and	1 2
(c) another place, whether natural or artificial, where someone lives.	3
<b>4 Who is an “intruder”</b>	4
An “intruder”, in relation to a dwelling house, is a person who—	5
(a) breaks or enters, the dwelling house; or	6
(b) is not an occupant of the dwelling house but is lawfully in the dwelling house and—	7 8
(i) fails to leave the dwelling house immediately on being asked to do so by an occupant of the dwelling house; or	9 10
(ii) commits, in the dwelling house, an offence that an occupant of the dwelling house finds out about while the person is still there.	11 12 13
<b>5 Who is an “occupant”</b>	14
An “occupant”, of a dwelling house, is a person who, whether alone or with others, is in peaceable possession of the dwelling house.	15 16
<b>PART 3—DEFENDING AGAINST INTRUDERS</b>	17
<b>6 Effect of pt 3</b>	18
This part has effect even if the conduct it authorises would not otherwise be authorised under the Criminal Code.	19 20
<b>7 Defence against intruders</b>	21
(1) It is lawful for an occupant of a dwelling house to use any force or do anything else the occupant believes is necessary—	22 23
(a) to prevent an intruder from breaking or entering the dwelling house; or	24 25

*Occupants (Home Invasion) Protection Bill 2002*

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(b) to cause an intruder in the dwelling house to leave the dwelling house; or	1 2
(c) to restrain an intruder who is breaking or entering the dwelling house or is in the dwelling house until a police officer arrives; or	3 4
(d) to defend himself or herself, another occupant or anyone else lawfully in the dwelling house (“ <b>invitee</b> ”) against violence used or threatened against any of them by an intruder who is—	5 6 7
(i) attempting to break or enter the dwelling house; or	8
(ii) in the dwelling house; or	9
(e) to prevent an intruder from committing, or make an intruder stop committing, an offence in the dwelling house.	10 11
(2) Subsection (1) applies, with necessary changes, to an invitee in a dwelling house who—	12 13
(a) helps the occupant of the dwelling house to act against an intruder in a way that is authorised under subsection (1); or	14 15
(b) with the occupant’s authority, express or implied, does something the occupant is authorised to do under subsection (1).	16 17
<b>8 Time limit for prosecution</b>	18
A prosecution for an offence against an occupant of a dwelling house or an invitee in the dwelling house arising out of anything the occupant or invitee does, under section 7, to an intruder must be started within 9 months after the offence is committed.	19 20 21 22
<b>9 Onus of proof in criminal proceeding</b>	23
(1) This section applies if an occupant of a dwelling house or an invitee in the dwelling house—	24 25
(a) acts, in a way authorised under section 7, against an intruder; and	26
(b) is charged with an offence in relation to the action; and	27
(c) claims, as a defence to the charge, that the action is authorised under section 7.	28 29
(2) The prosecutor must prove beyond doubt that the occupant or invitee did not have the belief required for section 7.	30 31

**10 Immunity from civil liability**

(1) This section applies if an occupant of a dwelling house or an invitee in the dwelling house acts against an intruder in a way that is authorised under section 7.

(2) The occupant or invitee is not civilly liable for any personal injury or property damage suffered by the intruder, or by anyone else claiming under or through the intruder, caused by, through or in connection with the occupant or invitee acting against the intruder in the way authorised.

(3) In this section—

“personal injury” includes—

- (a) fatal injury; and
- (b) prenatal injury; and
- (c) psychological or psychiatric injury; and
- (d) disease.

**PART 4—AMENDMENT OF CRIMINAL CODE****11 Act amended in pt 4**

This part amends the Criminal Code.

**12 Omission of s 267 (Defence of dwelling)**

Section 267—

*omit.*