

South Australia

Criminal Law Consolidation (Self Defence) Amendment Act 2003

An Act to amend the *Criminal Law Consolidation Act 1935*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Criminal Law Consolidation (Self Defence) Amendment Act 2003*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

4—Amendment of section 15—Self defence

- (1) Section 15(1)—after paragraph (b) insert (as a note to paragraph (b)):

Note—

- 1 See, however, section 15C. If the defendant establishes that he or she is entitled to the benefit of that section, this paragraph will be inapplicable.

- (2) Section 15(2)—after paragraph (b) insert (as a note to subsection (2)):

Note—

- 1 See, however, section 15C. If the defendant establishes that he or she is entitled to the benefit of that section, the defendant will be entitled to a complete defence.

5—Amendment of section 15A—Defence of property etc

- (1) Section 15A(1)—after paragraph (c) insert (as a note to paragraph (c)):

Note—

- 1 See, however, section 15C. If the defendant establishes that he or she is entitled to the benefit of that section, this paragraph will be inapplicable.

- (2) Section 15A(2)—after paragraph (c) insert (as a note to subsection (2)):

Note—

- 1 See, however, section 15C. If the defendant establishes that he or she is entitled to the benefit of that section, the defendant will be entitled to a complete defence.

6—Insertion of sections 15B and 15C

After section 15A insert:

15B—Reasonable proportionality

A requirement under this Division that the defendant's conduct be (objectively) reasonably proportionate to the threat that the defendant genuinely believed to exist does not imply that the force used by the defendant cannot exceed the force used against him or her.

15C—Requirement of reasonable proportionality not to apply in case of an innocent defence against home invasion

- (1) This section applies where—
- (a) a relevant defence would have been available to the defendant if the defendant's conduct had been (objectively) reasonably proportionate to the threat that the defendant genuinely believed to exist (the *perceived threat*); and
 - (b) the victim was not a police officer acting in the course of his or her duties.

- (2) In a case to which this section applies, the defendant is entitled to the benefit of the relevant defence even though the defendant's conduct was not (objectively) reasonably proportionate to the perceived threat if the defendant establishes, on the balance of probabilities, that—
- (a) the defendant genuinely believed the victim to be committing, or to have just committed, home invasion; and
 - (b) the defendant was not (at or before the time of the alleged offence) engaged in any criminal misconduct that might have given rise to the threat or perceived threat; and
 - (c) the defendant's mental faculties were not, at the time of the alleged offence, substantially affected by the voluntary and non-therapeutic consumption of a drug.

- (3) In this section—

criminal misconduct means conduct constituting an offence for which a penalty of imprisonment is prescribed;

drug means alcohol or any other substance that is capable (either alone or in combination with other substances) of influencing mental functioning;

home invasion means a serious criminal trespass committed in a place of residence;

non-therapeutic—consumption of a drug is to be considered non-therapeutic unless—

- (a) the drug is prescribed by, and consumed in accordance with the directions of, a medical practitioner; or
- (b) the drug is of a kind available, without prescription, from registered pharmacists, and is consumed for a purpose recommended by the manufacturer and in accordance with the manufacturer's instructions;

relevant defence means a defence under section 15(1) or section 15A(1).