

HOME INVASIONS — USE OF FORCE BY HOMEOWNER

185. Mr F. ALBAN to the Attorney General:

I refer to the recent high-profile case in my electorate of an elderly Western Australian who found himself forced to defend himself and his family by using a gun. The actions he had to take to protect his loved ones resulted in him wounding his assailant. Can the Attorney General advise the house on the current state of the law on such home invasions?

Mr C.C. PORTER replied:

I thank the member for the question. I am aware of the matter that occurred in the member's electorate, as it received some degree of media attention. There was some confusion in the minds of the populace after this event.

Mr J.N. Hyde: Continue on, Tiberias, to the populace!

Mr C.C. PORTER: Obviously, this is an important issue to some, if not all, of us.

This gentleman found himself barricaded in his house, and fired a shotgun at a person in the house who appeared to be committing an aggravated burglary. There was quite a bit of confusion in the media about his situation. It is important to take this opportunity to clarify precisely what the situation is. Some amendments were made to the legislation about this time last year. Before that time, part of section 244 of the Criminal Code dealt with home invasion. Under that section, almost any amount of force was permissible for removing an invader from a person's home. It was lawful for the occupant who was in peaceful possession of the dwelling to use any force or do anything else the occupant believed on reasonable grounds to be necessary to prevent the home from being invaded, to cause a home invader who is wrongfully in the dwelling to leave the dwelling, or to make effectual defence against violence used. That provision, as used to be the case, applied right up to the use of lethal force. Some very important amendments were made by the Criminal Law Amendment (Homicide) Bill 2008. Some very important debates took place in this house about what level of force a person might be able to use in the protection of a home. Under the original amendments proposed by the bill, a homeowner would not have the ability to defend up to the level of grievous bodily harm unless he had a reasonable suspicion. Sometimes, homeowners do not have the time available to form a reasonable suspicion about why the assailant was in the home. I remember the debate between the then Attorney General and the then member for Nedlands. An opposition amendment was quite properly accepted by the then Attorney General, the member for Fremantle, to allow a home occupier to defend his home to the extent of using force that could do grievous bodily harm without necessarily having gone through the process of forming a reasonable suspicion. I thank the member for his question, and I hope that my answer clarifies the situation for the general population. It may not be as important to members opposite as it is to people in the electorate of the member for Swan Hills, but there it is.