

How does Self-Defence Work in Court?

Sometimes there are legitimate reasons for breaking the law. Our justice system recognises this and provides defences in situations where acting contrary to the law is justified.

According to the NSW [Crimes Act](#), a person is not criminally liable if they broke the law and were acting in self-defence. You've probably heard about this defence but may not be sure exactly how it works or what it covers.

Self-defence, unlike what its name suggests, encompasses not only protection of yourself but:

- Defending not only yourself but another person
- Preventing or ending unlawful deprivation of liberty either of yourself or another person
- Preventing property from any unlawful damage, taking or interference
- Preventing or removing a person from committing criminal trespass

For these last two reasons, however, death that is a result of intentional or reckless force to kill is not a defence.

However self-defence according to some, is actually not classified as a 'defence' at all, because the onus of proof in proving that it was self-defence actually does not rest on the accused.

The prosecution must prove beyond a reasonable doubt that the person was not acting in self-defence.

A defendant must have been acting on the belief that it was necessary to act the way they did. This belief must have been reasonable.

Self-defence must be:

- A belief in the mind of the accused
- A belief on reasonable grounds

This includes an honest but mistaken belief that a person is going to be attacked.

The proportionality test does not, however mean that the defendant must have weighed up the precise amount of force needed to repel an attacker. In the moment of an attack when a person may be required to make a split second judgment, this kind of analysis is not necessary.

First of all, it must be proportionate. Getting out your shotgun in retaliation to a slap in the face is hardly an appropriate reaction.

In one recent [Downing Centre Local Court](#) case, the career of an off-duty policeman was put on the line after he punched a woman in the face.

The policeman was walking home from a Sydney hotel with his girlfriend, and a woman who had earlier had an altercation with his girlfriend approached.

His girlfriend was set-upon by the woman and policeman Michael Simmons intervened. He got her on the ground and then straddled her.

He punched her once in the face, and even though she had been swinging her arms at him, the judge didn't find his reaction proportionate.

Simmons was much bigger and stronger than the attacker, and so although his conduct was provoked, it was deemed to be excessive.

Simmons got 200 hours of community service and a 12-month good behaviour bond. He is currently suspended from the police

force without pay and working as a security guard.

Self-defence is a full, not partial defence, meaning that it exempts the person from any kind of criminal liability, if successful. It can be used not just for murder but other offences, for example assault.

Excessive self-defence is a partial defence – if a person kills another and the conduct was not reasonable, a person will be found guilty of manslaughter and not murder, if they believed that the conduct was necessary to:

- Defend themselves or another person; or
- To prevent or terminate unlawful deprivation of liberty

In other words, if a person believed honestly but mistakenly that the amount of force they used was necessary, excessive self-defence will act as a partial defence, meaning that the person is not criminally responsible for murder, but manslaughter.

Of course, if you have been charged with an offence and think you may need to know about self-defence or any other defence it is best to speak with a lawyer to get professional information about your case.