

Criminal Code (Defence of Dwellings and Other Premises—Castle Law) Amendment Bill 2024

Explanatory Notes

Short title

The short title of the bill is the Criminal Code (Defence of Dwellings and Other Premises—Castle Law) Amendment Bill 2024.

Policy objectives and the reasons for them

The objective of the Bill is to amend section 267 of the Queensland Criminal Code (the Code) and provide clearer guidance and legal protection for individuals who use force to defend themselves or others within their homes. This amendment is commonly referred to as the ‘castle doctrine’¹.

Section 267 of the Queensland Criminal Code governs the use of force in situations where a homeowner or occupier defends their property, however an increase in home invasions due to unbridled youth crime and crime in general across Queensland have called into question the clarity and applicability of this provision. The proposed amendment seeks to broaden the circumstances in which an individual can lawfully respond to a home invasion with such force that may result in grievous bodily harm or even death to the intruder.

According to the Queensland Government Statistician’s Report there was a staggering 11.2 per cent increase in Queensland’s crime rate in 2022-23 compared to the year before, with 11,089 offences committed per 100,000 people. There were 51,000 break and enters recorded in 2022-23.²

The Castle Doctrine

The "castle doctrine" is a legal principle that recognises a person's right to defend their home against intruders without facing legal consequences. The roots of the Castle Doctrine can be found in the English common law as far back as 1604 in the famous *Semayne’s case*. There, the Court of King’s Bench held that, “*The house of everyone is to him as his castle and fortress, as well for his defence against injury or violence as for his repose*”. It stems from the idea that one's home is their castle, a place where they should feel safe and secure. This doctrine strikes at the very core of an individual’s fundamental right to protect themselves and their loved ones within their own property.

By allowing individuals to use force, including lethal force if necessary, to repel intruders, the Castle Doctrine reduces the burden on homeowners to prove the necessity of their actions and provides them with legal protection and peace of mind in times of crisis.

Under the current section 267, when faced with a home invasion, an individual is limited to only using ‘necessary’ force to prevent or repel the home invasion and it must be done under the ‘reasonable belief’ that the intruder was entering the dwelling with intent to commit an indictable offence. An individual cannot be expected to think completely objectively and respond in proportion when faced by a home invasion when any underestimation of the threat could result in severe consequences (for instance, their own death or serious harm, or that of a family member). Therefore, the test in section 267 of the Code is inadequate to offer the necessary protection to homeowners or occupiers who respond to the threat of a home invasion with force.

¹ *Semayne v Gresham* (1604) 5 Co Rep 91; 77 ER 194 (*‘Semayne’s Case’*).

² <https://www.qgso.qld.gov.au/issues/7856/crime-report-qld-2022-23.pdf>

A householder startled by an intruder in the night is not well-positioned to make an instantaneous yet measured evaluation regarding the intentions of, or the level of threat posed by an intruder and this Bill seeks to remove the requirement of an individual to do so.

The inclusion of ‘Premises’ to the defence

The term ‘premises’ does not appear in the current section 267 defence. It has been included in the Bill for the purpose of including invasions of motor vehicles, caravans, tents, etc.

Pursuant to Schedule 1 of the Code, the definition of ‘Premises’ includes— (a) a building or structure, or part of a building or structure, of any type; and (b) a group of, or part of a group of, buildings or structures, of any type; and (c) the land or water where a building or structure or a group of buildings or structures is situated; and (d) a vehicle, or a caravan; and (e) a tent, or a cave; and (f) premises in which more than 1 person has ownership.

Achievement of policy objectives

This Bill achieves its policy objectives by allowing an individual to use force that is likely to cause death or grievous bodily harm against an intruder in circumstances where the intruder:

- enters or attempts to enter the dwelling or premises **in the night**; or
- uses or threatens actual **violence**; or
- is or pretends to be **armed** with a dangerous or offensive weapon, instrument or noxious substance; or
- is **in company** with 1 or more persons; or
- **damages**, or threatens or attempts to damage, any property.

The above circumstances are identical to the circumstances of aggravation that already exist in the Code in section 419 Burglary, section 427 Unlawful entry of vehicle for committing indictable offence and 408A Unlawful use or possession of motor vehicles, aircraft or vessels.

Failing the presence of any of the above circumstances, the amendment also provides that it is lawful if the individual using the force reasonably believes that the intruder is attempting to enter, or to remain in, the dwelling or premises with intent to **commit an indictable offence** in the dwelling or premises and that the force is necessary to prevent the commission of the offence.

Further, it is also lawful if the use of the force is necessary to **prevent the death of, grievous bodily harm or bodily harm to**, the person or another person.

Definitions

It is not proposed to amend any definitions under the Schedule 1 of the Code. Any terms contained in the Bill are already sufficiently defined in the Code.

Alternative ways of achieving policy objectives

There are no known alternate ways of achieving the policy objectives. The defence in section 267 of the Code in its current form is insufficient to adequately protect the rights of individuals who retaliate against home invasions. The amended section 267 sends a message to society that home invasions will not be tolerated and will act as a deterrence to potential home intruders.

The Bill will provide people with a greater sense of security at home by supporting community values and historic legal policy that has revolved around a person’s right to defend their home.

Estimated cost for government implementation

It is not anticipated that this Bill will draw significantly on any additional funds from the Queensland Government's consolidated revenue.

Consistency with fundamental legislative principles

The Bill may not be consistent with or may breach the fundamental legislative principles as defined in Section 4 of the *Legislative Standards Act 1992*. The clauses of the Bill may impact on the rights and liberties of offenders by being inconsistent with natural justice (section 4(3)(b) however, it is considered justified to address the seriousness of the increase in home invasions across the State and the risks posed to the community.

Consultation

Consultation has occurred over a period of years directly with victims of crime and otherwise through stakeholder engagement during committee hearings for other Bills proceeding through this Parliament.

Consistency with legislation of other jurisdictions

Each state in Australia deals with this issue differently, however the overarching principle is that self-defence must only be used where a person believes on reasonable grounds that it is necessary to do what they did in order to protect themselves, another person or their property.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that the short title of the Act is the *Criminal Code (Defence of Dwellings and Other Premises—Castle Law) Amendment Act 2024*.

Clause 2 provides that the Act will amend the Criminal Code.

Clause 3 amends the defence in section 267 (Defence of dwelling). Amended section 267 (Defence of dwelling or other premises):

- (1) It is lawful for a person (the occupant) who is the owner or occupier of a dwelling or other premises, and a person who helps the occupant or acts under the occupant's direction, to use force against another person (the intruder) if the person using the force reasonably believes the force is necessary to prevent the intruder from—
 - (a) unlawfully entering the dwelling or other premises; or
 - (b) unlawfully remaining in the dwelling or other premises.
- (2) However, this section does not authorise the use of force that is intended or is likely to cause the death of, or grievous bodily harm to, the intruder unless—
 - (a) the intruder—
 - (i) enters or attempts to enter the dwelling or other premises in the night; or
 - (ii) uses or threatens actual violence; or
 - (iii) is or pretends to be armed with a dangerous or offensive weapon or instrument, or a noxious substance; or

(iv) is in company with 1 or more persons; or

(v) damages, or threatens or attempts to damage, any property; or

(b) the person using the force reasonably believes that—

(i) the intruder is attempting to enter, or to remain in, the dwelling or other premises with intent to commit an indictable offence in the dwelling or other premises and the force is necessary to prevent the commission of the offence; or

(ii) the use of the force is necessary to prevent the death of, or bodily harm to, the person or another person.

Clause 4 inserts new Part 9, Chapter 112, section 767 (Transitional provisions for Criminal Code (Defence of Dwellings and Other Premises—Castle Law) Amendment Act 2024).

Subsection (1) provides despite the *Criminal Code (Defence of Dwellings and Other Premises—Castle Law) Amendment Act 2024*, former section 267 continues to apply in relation to a use of force before the commencement.

Subsection (2) provides that new section 267 applies in relation to a use of force after the commencement.

Subsection (3) provides that:

former section 267 means section 267 as in force from time to time before the commencement.

new section 267 means section 267 as in force from the commencement.