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**Nick Dametto**

Member For Hinchinbrook

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22 July 2024

Community Safety and Legal Affairs Committee  
Parliament House  
George Street  
Brisbane Qld 4000

By email: [cslac@parliament.qld.gov.au](mailto:cslac@parliament.qld.gov.au)

Dear Mr. Russo,

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

I refer to your correspondence dated 3 May 2024 and the request for a written response to issues raised in submissions made on the Criminal Code (Defence of Dwellings and Other Premises—Castle Law) Amendment Bill 2024 (the Castle Law Bill).

I am pleased to provide the following response that may assist the committee in its examination of the Castle Law Bill.

**Summary**

A total of 63 submissions were received for the Castle Law Bill. Of these submissions, fifty-one (51) were supportive, seven (7) were opposed, and five (5) were confidential.

The feedback received during the bill's consultation period, along with the written submissions, demonstrates two distinct perspectives on the Castle Law Bill. Firstly, the supporters, who come from various sectors but share a common element: lived experience. This group is the largest, as evidenced by the Castle Law Parliamentary Petition, which received 40,470 signatures, and the 51 supportive submissions made to the committee.

Secondly, there are those who oppose the bill. This group consists of individuals or organisations who submitted to the committee, or expressed limited views via media platforms. On the face of it, those opposed appear to be community members or spokespersons with little lived experience, forming their views 'off paper' rather than from real-life experience. I do however accept that it is reasonable for different views to arise on a topic of this nature.

**Supportive Submissions**

Throughout the 51 supportive submissions, a common and recurrent theme emerged. Submitters frequently emphasised the necessity for deterrence and accountability for criminals. They overwhelmingly advocated for greater community rights and the need to feel a sense of safety. Such strong and heartfelt views, even beyond the context of Castle Law, should prompt the current government to reflect on a deeply rooted societal issue: why do residents feel unsafe in their own homes and that they have no rights? Is this truly the society our State Government envisions? One would presume not.



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For ease of efficiency, I wish to refer specifically to seven (7) individual supportive submissions that I believe the committee should strongly consider.

#### **Submission – 15**

*"The right to protect innocent life and property represents nothing new in the Australian community. They are implicit in the Ten Commandments, which instruct us that "You shall not murder" (the Sixth) and "You shall not steal" (the Eighth)."*

As a man of strong faith and Christian values, this phrase resonated with me. It is a reminder that at its core, Castle Law is simply about our natural human right to protect innocent life and property.

*"Law abiding people don't want to initiate trouble, but they must be able to safely stop troublemakers, who are themselves bent on crime. In a free society, its morally legitimate and proper to do so, when the situation requires it, in order to preserve the communities' good order and safety."*

This addresses a concern I have held since the Castle Law Bill was first introduced. Opponents of the bill automatically presumed that those who might find themselves utilising this criminal defence are people of bad character. On the contrary, this bill aims to protect law-abiding individuals who did not initiate trouble in any way but find themselves in a situation where they need to prevent harm to themselves, others, or their property. The good order and safety of the community cannot solely depend on a government body.

*"We are at a point today, when Queenslanders cannot take their right to safety and security, as a given."*

It is human nature to possess some degree of autonomy, and it should be a fundamental and widely accepted right to protect oneself and one's property.

#### **Submission – 23**

This submission includes a harrowing account from a victim of crime who was confronted with a knife wielding intruder at his family home. The submitter describes how:

*"... I was confronted by the silhouette of a person stood between my house wall and vehicle. My eyes had not adjusted to the dark and the person was wearing a hoodie - I was unsure of their age, sex, accurate size or level of threat to me. The only thought that went through my head was 'don't hurt this criminal or I will be the one to go to jail'."*

...

*"Given that scenario again, as a resident I should feel full confidence to defend myself and my property WITHOUT hesitation or doubt."*

This precisely illustrates the type of scenario that the Castle Law Bill was designed to address. The submitter describes being awakened in the early hours of the morning and confronted by an intruder of unknown age, gender, size, and threat level. The intruder was armed with a knife and used it in a manner that clearly intended to kill or cause serious harm to the victim. Despite the imminent threat, the submitter's first thought was the fear of legal repercussions for



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defending himself. This should not be the primary concern for an innocent person facing an intruder. In life-and-death situations, every second is critical. Victims should not be disadvantaged by hesitation in protecting themselves, especially when they are already at a disadvantage due to the element of surprise, whereas the intruder is fully aware of their actions.

*"Since this incident, I have felt ongoing frustration, anger & doubt stemming from the helpless impotence I felt in the initial moments of encountering this criminal trying to enter my home with a knife. Queensland's current laws do not support residents or property owners in their moment of need, they rather shield and protect the criminals who willfully [sic] choose to perpetrate against other members of society. Castle law for Queensland would send a clear message to the residents and would-be-criminals alike."*

The submitter describes the frustration, anger, and doubt that followed this encounter, along with the sense of helplessness experienced at the time. Such emotions do not contribute to a positive mindset. Law-abiding citizens should feel supported and empowered after facing such a challenging situation, rather than feeling helpless and victimised. Our current system undermines the optimism and faith of good people.

#### **Submission – 29**

*"Police response times are not quick enough in most situations of a home invasion leaving the occupants vulnerable to attack causing injury or death."*

I recall the Police Minister's comments in the media regarding the Castle Law Bill. The Minister described our current laws as "robust" and advised that individuals in danger should call the police, who would arrive as quickly as possible. With all due respect, this perspective seems indicative of someone who has never faced a split-second, life-threatening scenario. The issues with this response are numerous, starting with the assumption that it would even be possible to call the police in such a situation, not to mention the uncertainty of how long it might take for them to arrive.

These concerns are clearly felt by the community, who argue that police response times are insufficient in such scenarios as per the submission above. This is not a criticism of the police; it is simply not feasible for them to respond instantaneously to every call for help. Without a police officer stationed at every corner, it is reasonable to expect that some time will elapse before they can arrive at an incident. During this period, residents and victims should feel legally justified in taking whatever measures are necessary to protect themselves or others until help arrives.

#### **Submission – 45**

*"Currently Queenslanders do not feel safe in their home, we are being terrorised by youths armed with knives, machetes and other hand held weapons. At present you can't go shopping, run errands or even go to work without the fear of being assaulted and carjacked. Of a night many residents face sleepless nights wondering if these kids and in some cases their adult compatriots will return to take their hard earned possessions, attack them or commit any manner of other heinous crimes against them and their loved ones."*



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In response to Castle Law, some commentary has suggested that intruders will arm themselves with weapons if they know that occupants have the legal right and ability to protect themselves. However, it is evident that intruders are already arming themselves with weapons. Numerous well-publicised incidents across Queensland have involved occupants being seriously harmed or killed by weapon-wielding intruders. It is nonsensical and naive to believe that intruders are not already armed. It is reasonable to assume that a home intruder will likely be in possession of some sort of weapon. Enclosed at **Annexure A** are examples of the types of weapons recovered from stolen vehicles in Townsville, demonstrating the serious level of weaponry that home intruders are currently using. These photographs were taken on the 16th of July 2024.

The above submission addresses the issue of youth crime, which brings me to another important point. It is often assumed that Castle Law is purely a response to youth crime and would be used as an excuse to harm juvenile offenders. This is not the case. Castle Law is applicable to offenders of any age. Additionally, the submission highlights a relevant concern: youth offenders frequently have "adult compatriots." This trend is becoming increasingly prevalent, with many reports indicating that adults are playing a role in youth crime.

#### **Submission – 49**

*"The perpetrators are oftentimes [sic] high on illicit drugs are [sic] will stop at nothing to steal occupants cash, credit cards and car keys to take the car. In their quest to steal the aforementioned items they are prepared to threaten the occupants lives and do violence against them if the occupants wake up."*

The above submission raises an important point, similar to that mentioned in Submission 23, regarding the inability to determine an intruder's physical composition or the extent to which they may be under the influence of drugs. When someone deliberately breaks into your home, the primary concern should be self-protection, whether through fight or flight. Victims should have the clarity of mind to respond in whatever manner they deem safest to protect themselves and neutralise any threat if necessary. A victim's mind should not be clouded with doubt and hesitation in such a critical moment.

#### **Submission – 54**

*"A few years ago a criminal who was well known to the justice system broke into my house. This occurred in the middle of the night whilst my wife and both my daughters were asleep. As a victim of a break and enter / home invasion crime I am fully aware that I was completely powerless due to existing laws pertaining to the use of force."*

In its current form, section 267 of the Criminal Code does grant an occupier some legal authority to use force in self-defence, provided they reasonably believe such force is necessary. Despite this, a prevalent sentiment among everyday Queenslanders is that they feel "completely powerless" in the face of home invasions. As lawmakers in this state, we must ask ourselves why this is the case and what can be done to rectify this perception. Change is urgently required, and the solution I propose is Castle Law. If, after following the democratic process, my fellow parliamentarians do not agree, I would be most interested to see what alternative solutions are proposed. Given the significant number of Queenslanders who have expressed their feelings of helplessness, our parliament can no longer ignore this issue.

*"The basic fact is the criminal holds all the power even though they have entered someone else's house unlawfully. It is the criminal that dictates the level of force that I am able to use and the force that I use is reactive in nature. I can only*



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*respond to the level of force presented by the criminal in a proportionate manner but it is completely reactive in nature meaning the criminal has the upper hand by determining the initial aggression. This I believe is completely immoral and unethical whereby a law-abiding citizen is determined to have less powers than a criminal whilst in their own home. The basic fact is the existing laws relating to the Defence of Dwellings are putting homeowners at risk due to their inherent weaknesses and homeowners are paralysed to act due to the risks of being charged and going to jail themselves. Also as the legal system stands there is very little deterrence stopping criminals from committing break and enters or home invasions. The law is soft, the rewards can be significant and the risks (actions of the homeowner) are kept low by the law itself."*

Again, this reinforces the view held by many law-abiding citizens that they have less powers than criminals, even whilst in their own home. This is not conducive of a content society.

*"Another fact I wish to raise is that due to my previous occupation I have some insight into the mindset of the everyday criminal. I am well aware that the vast majority of criminals are carrying weapons, in particular knives whilst committing break and enter / home invasion crimes. Many criminals are also affected by substances and have an altered mindset when committing these crimes. A criminal with an altered mindset, carrying weapons solely meant for violence, is capable of conducting the most heinous of crimes, especially those who are disturbed in the act of committing the crime."*

Similar to Submission 49, the above submission highlights that many criminals operate under the influence of illicit substances, resulting in an altered mindset. Our current laws were not drafted in the same social climate we live in today and were not designed to address the types of crime we currently face. Laws must continually evolve and adapt to keep pace with societal changes, including our criminal laws and defences.

*"The fact is in QLD there is a significant problem with the justice system in relation to break and enters / home invasions and it is a fact that innocent people have died as a result. It is of no great surprise that QLD is widely promoted as having the highest crime rates in Australia and that is by a long margin. "Queensland has been crowned 'the crime capital of Australia', recording the most victims of crime in any state or territory". Nine News, 2024. The Australian Bureau of Statistics revealed QLD recorded 49,490 unlawful entries for 2023. Given these facts it is very clear that QLD has a criminal justice problem that needs to be addressed."*

Many Queenslanders are aware that they live in a state with a serious crime problem. The hurt and anguish of victims coupled with the frustration of the community is reaching its limits. It is frightening to consider that the community has lost faith in the very institutions that are responsible for protecting them.

### **Opposing Submissions**

There are seven (7) opposing submissions to the Castle Law Bill that raise a variety of issues with the drafting of the bill and its policy objectives.

Whilst there is value in some of the issues raised, there is one overarching factor that none of the opposing submissions addressed and that is the fact that if an occupant kills an intruder in the course of defending themselves or their property, they must still endure a criminal trial and fight to prove their innocence. One of the main elements of the section 267 defence is the reasonable belief held by the occupier. The objective of the Castle Law Bill is to remove this element, thereby placing a higher evidential burden on the prosecution. A case with low merits is unlikely to proceed to trial or even result in charges being laid.



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### **Conclusion**

There is overwhelming public support from the people of Queensland for the Castle Law Bill. Although this draft legislation only seeks to change one section of the Criminal Code, it has a much larger meaning beyond just a legislative change. It is about empowerment of the everyday person and assuring Queenslanders and victims that their rights are in fact important and rank higher than the rights of criminals who terrorise our homes.

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# ANNEXURE A

