



Nick Dametto

Member For Hinchinbrook

4 June 2024

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

By email: 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 briefing 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 information that may assist the committee in its examination of the Castle Law Bill.

Background

The policy objectives of the Castle Law Bill and the reasons for them are clearly outlined in the Explanatory Notes that accompany the bill.¹ In summary, the Castle Law Bill was born out of the alarming rate of violent home invasions as well as the apprehension felt across the community about how the Government was failing to manage youth crime. The Castle Law Bill aims to amend section 267 of the Queensland Criminal Code, providing clearer legal protection and guidance for individuals defending themselves or others within their homes.

Current laws, which require homeowners to use only 'necessary' force under a 'reasonable belief' of the intruder's criminal intent, are insufficient.² Homeowners cannot be expected to make calm, objective judgments during such high-stress and quickly evolving situations. The proposed amendment, reflecting the Castle Doctrine, would broaden the circumstances under which individuals can lawfully use force, including lethal force, against intruders, thus ensuring their safety and peace of mind. With crime rates surging,

¹ Explanatory Notes: <https://documents.parliament.qld.gov.au/bills/2024/3203/5724T729-2882.pdf>

² Section 267 Criminal Code Defence of Dwelling https://www5.austlii.edu.au/au/legis/qld/consol_act/cc189994/s267.html

It is lawful for a person who is in peaceable possession of a dwelling, and any person lawfully assisting him or her or acting by his or her authority, to use force to prevent or repel another person from unlawfully entering or remaining in the dwelling, if the person using the force believes on reasonable grounds—

(a) the other person is attempting to enter or to remain in the dwelling with intent to commit an indictable offence in the dwelling; and

(b) it is necessary to use that force.



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evidenced by a near twenty year high in unlawful entry offences with violence in 2022-23³, the Castle Law Bill seeks to empower homeowners to protect themselves without fear of legal repercussions.

Castle Doctrine

The “castle doctrine” is not a new concept. It stems from as far back as the 1600 English common law where it was held by the Court of King’s Bench in the famous *Semayne’s* case 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*”.⁴ The view that one’s home is their castle has remained deeply embedded in our society and is regularly debated by legal commentators, right up to the present day.⁵

In more recent years Castle Law has become closely aligned with the United States of America where the legal doctrine operates in some states but not all.⁶ This explains the common mistaken belief that Castle Law, wherever it operates, automatically permits the use of firearms, however it must be noted that America has a completely different gun regime and legal system to Australia. It is for this reason that comparisons should not be drawn between the Castle Law Bill currently being considered by your committee and the Castle Law concept that operates in certain American states. Neither the Castle Law Bill, the Explanatory Notes or the Explanatory speech⁷ include any reference to the use of firearms or any changes to the *Weapons Act 1990 (Qld)*. It would be erroneous of your committee to direct any of their investigation of the Castle Law Bill towards firearms or firearm legislation in Queensland. Aside from making this point, there will be no further reference to firearms in the remainder of this briefing document.

Community Consultation

At the core of Castle Law is the fundamental belief that individuals have an inherent right to feel safe and secure in their own home. Currently, many people across Queensland do not feel safe or secure in the confines of their own home. It is one thing for residents to be in fear of going to the shops or attending public places, it is quite another when they do not feel safe in the one place that should give them the ultimate protection and comfort from others. It was due to a vast amount of feedback from residents that the Castle Law Bill was created, and the feedback post bill introduction was even more overwhelming.

In a period of less than one month, a Parliamentary Petition calling for the Queensland Parliament to do all in its power to legislate Castle Law in Queensland has attracted over 36,000 signatures.⁸ This powerful response is indicative of the level of frustration felt by residents who feel let down by our current laws and would feel safer taking matters into their own hands when forced into a split-second, self-defence situation

³ Queensland Crime Statistics <https://mypolice.qld.gov.au/queensland-crime-statistics/>

⁴ *Semayne v Gresham (1604) 5 Co Rep 91; 77 ER 194 ('Semayne's Case')*.

⁵ See for example: Melbourne University Law Review (2018) Volume 42(1) https://law.unimelb.edu.au/data/assets/pdf_file/0008/2892680/01-Duffy.pdf

⁶ National Conference of State Legislatures <https://www.ncsl.org/civil-and-criminal-justice/self-defense-and-stand-your-ground>

⁷ Explanatory Speech: https://documents.parliament.qld.gov.au/events/han/2024/2024_05_01_WEEKLY.pdf#page=55

⁸ Queensland Parliament, Petitions <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Petitions/Petition-Details?id=4077>



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during a home invasion. It would be remiss of your committee and the Minister responding to the petition to ignore the significant number of signatories who have shown support for the Castle Law Bill.

Benefits of Castle Law

The primary benefit of Castle Law is that it provides homeowners with the legal authority to defend themselves without the fear of legal repercussions. This is particularly important in situations where the homeowner must make split-second decisions in response to a perceived threat. In the heat of the moment, it is impossible for a person to quickly assess and determine all the elements that would apply when faced with an intruder such as the intruders size, age, strength, whether they are armed, under the influence of an intoxicating substance, or even if they are alone. Residents shouldn't be forced to make such a measured calculation before deciding what steps to take to protect themselves or their loved ones. The last thing a victim of a home invasion should be worried about is whether the next battle they face will be a legal one to keep themselves out of jail.

A common question asked in relation to Castle Law is: "How many people have been sent to jail for defending themselves?". I believe this is the wrong question. What we should be focused on instead is: "How many people have died as a result of a home invasion?" and "Had that person known they had the legal ability to defend themselves by any means necessary, would they still be alive today?"

That aside, there have been cases in Queensland and other states where victims of home invasions have been tried either criminally or examined through coronial inquests.⁹ Both processes have negative impacts on the person under scrutiny and leave a lasting impact.

A further benefit to Castle Law is the deterrence aspect. The presence of a robust Castle Law regime can act as a deterrent to potential intruders. Knowing that homeowners are legally protected in using force against intruders can discourage criminal activities like break-ins and home invasions. In response to those who say criminals will simply arm themselves with weapons and become more violent, I would say they are not fully informed of the true extent of what is already occurring today with weapons and physical violence being used more often than not during home invasions and car-jackings.

The current legal defence available under section 267 of the Criminal Code requires an individual to demonstrate that their use of force was reasonable and necessary. Castle Law simplifies this process by presuming that force used in the defence of one's home, self or others was justified, thus reducing the legal burden on homeowners, police and the judicial system.

Simply knowing that homeowners have one portion of the law on their side can create greater peace of mind to the many Queenslanders who are currently living in a state of fear and uncertainty. Knowing that they have the legal right to protect themselves and their loved ones is invaluable psychological and physical security.

⁹ For example see: <https://www.abc.net.au/news/2019-12-17/home-owner-to-recoup-legal-costs-after-wrongful-prosecution/11806862>, and https://www.courts.qld.gov.au/_data/assets/pdf_file/0011/697250/cif-christensen-cj-davy-it-20211006.pdf



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Criminal Code - Section 267 vs Section 271

Legal experts who have weighed in on the debate of Castle Law have claimed that the existing provisions in section 267 and also 271 of the Criminal Code are sufficient to give victims of home invasions all the legal defence they require. This is disputed.

Section 267

As stated above, under the current section 267 of the Criminal Code, when encountering a home invasion, a person is restricted to using only 'necessary' force to prevent or repel the intrusion. This action must be taken under the 'reasonable belief' that the intruder is entering with the intent to commit an indictable offence. It is unrealistic to expect an individual to think completely objectively and respond proportionally in such a situation, as any misjudgement of the threat could lead to severe consequences, such as their own death or serious harm, or that of a family member. Thus, the criteria set by Section 267 of the Code are insufficient to provide the needed protection for homeowners or occupants who use force in response to a home invasion.

Section 271¹⁰

Section 271 of the Criminal Code has no bearing on Castle Law. This provision applies in any location whereas Castle law specifically applies to only a dwelling or premises, therefore limiting its application in a reasonable sense. Section 271 also only applies to an individual who is being assaulted and only allows them to defend themselves, not others and not their property, which is the overarching rationale behind Castle Law (the right to defend one's castle).

In summary, the proposed amended section 267 of the Criminal Code would allow victims of home invasions to protect themselves, their loved ones and/or their property from within their own dwelling or premises. The amended section is so specifically drafted that the only entry to a property that wouldn't be captured by the new Castle Law is a standard trespass offence.¹¹

¹⁰ Section 271 Criminal Code, Self-defence against unprovoked assault

https://www5.austlii.edu.au/au/legis/qld/consol_act/cc189994/s271.html

(1) When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for the person to use such force to the assailant as is reasonably necessary to make effectual defence against the assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

(2) If the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm, and the person using force by way of defence believes, on reasonable grounds, that the person can not otherwise preserve the person defended from death or grievous bodily harm, it is lawful for the person to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous bodily harm.

¹¹ Summary Offences Act 2005 (Qld), Section 11, Trespass

https://www5.austlii.edu.au/au/legis/qld/consol_act/soa2005189/s11.html



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Response to Police Minister's comments

I am aware that the Police Minister has recently made comments in the media about Castle Law that I consider misplaced. Specifically, I wish to refute the Minister's claims in relation to:

- Current laws being robust.
- If people are in danger, they should call the police who will get there as quickly as possible.
- Castle Law goes beyond the powers that police have.

Firstly, if Queensland's laws were robust we would not be experiencing the rate of deaths and injuries that we do as a result of home invasions. The fact that almost 40,000 Queenslanders have signed the Parliamentary Petition in support of Castle Law indicates that at least 40,000 people do not consider current laws robust or sufficient. This cannot be ignored.

There can be no doubt that police are doing the best they can in the current climate and in very trying conditions. However, the reality is that without a police officer posted at every street corner at all times, it is impossible for police to respond quick enough when an occupant is faced with a split second home invasion. In those circumstances, it is also highly likely that the victim will not have the time to even phone triple zero let alone be in a position to wait for police arrival.

Castle Law is not about encouraging citizens to use excessive force. No ordinary person wishes to be forced into a situation where they have to defend themselves and possibly cause harm to another. To say that Castle Law would give citizens greater powers than police makes a mockery out of both the Castle doctrine and our police service.

Conclusion

In closing, while Castle Law offers many benefits, I wish to acknowledge that of course this proposal is not without controversy. However, on the balance, it is far less controversial than the rate at which Queenslanders are coming to harm at the hands of violent home intruders and the Government of the day doing nothing to prevent it from occurring.¹²

Finally, I wish to express my disappointment that the Castle Law Bill, despite gaining such widespread community support has seemingly been pushed back to a date beyond the State election in October. The outcome of that will mean the bill will lapse on the dissolution of the parliament, therefore robbing Queenslanders of the right to hear the bill being debated and voted on. Queensland residents deserve to hear what both sides of the House have to say about this topic that is clearly very important to them.

¹² Recent cases where civilians have been harmed either in their own homes or vehicles are readily available however have not been referenced in this briefing paper due to many being subject to the sub judice convention.



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I therefore urge the Committee, in conjunction with the Leader of the House, to bring forward the bill and all relevant proceedings such as public briefings, public hearings and the final report date in order to have the bill listed for debate prior to the dissolution of the 57th Parliament.

I trust that the information above is of assistance to the committee and I look forward to your further consideration of the Castle Law Bill and being invited to attend a public briefing in the near future.

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