

## **Criminal Code (Defence of Dwellings and Other Premises - Castle Law) Amendment Bill 2024**

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The above address and contact details are not for inclusion in submission publication.

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Submission:

CRIMINAL CODE (DEFENCE OF DWELLINGS AND OTHER PREMISES - CASTLE LAW)  
AMENDMENT BILL 2024

Dear Community Safety and Legal Affairs Committee,

The incident of a farmer confronting a knife-wielding intruder at his back door at 3 a.m. with an unloaded firearm, acting to safeguard his wife and young children, represents one of several instances where the authorities have paradoxically penalised the victims. These cases highlight a contentious issue regarding the defence of one's home and family, where individuals taking action to protect their loved ones encounter legal repercussions, thus prompting a critical examination of the balance between lawful self-defence and the enforcement of prohibition laws.

The Border News reported the details of this incident under the heading:

**Border farmer has guns taken after confronting man armed with a knife at his home.**

By Journalist Blair Thomson  
September 15, 2017

The imposition of strict prohibition laws on the use of firearms, including those possessed intended for pest control or sport, can be seen as particularly unfair in the context of individuals who find themselves in situations where they feel a compelling need to protect themselves and their loved ones. The case of the father who faced a home invasion serves as a poignant example.

It highlights the complex dilemma between ensuring public safety through gun control and upholding the right to self-defence.

In his scenario, the father might argue that having his firearm seized after using an unloaded rifle to defend his home points to an inflexibility in the law that fails to take into account the intentions and circumstances of the firearm owner. While the prevention of gun-related violence is a critical goal, critics of such prohibition laws would argue that responsible citizens should not be penalised for attempting to defend their homes and loved ones, especially in emergent situations where the threat is immediate, and the intentions are defensive rather than aggressive.

The law about weapons in Queensland is primarily governed by the Weapons Act 1990 and the Weapons Regulation 2016. The principles and object of the Weapons Act are –

1. Firearm possession and use are subordinate to the need to ensure public and individual safety;
2. Imposing strict controls on firearm possession and requiring the safe and secure storage and carriage of firearms improves public and individual safety.
3. The object of this Act is to prevent the misuse of firearms.

In the incident involving a farmer who deterred a potential assailant holding a knife from breaching the sanctity of his home, the subsequent actions taken against him raise pertinent legal and ethical questions. Despite a distinct lack of evidence to suggest any misconduct relating to the firearm's usage, the farmer faced punitive measures solely for possessing a legally licensed firearm – designated for pest control purposes – during his Act of Self-defence.

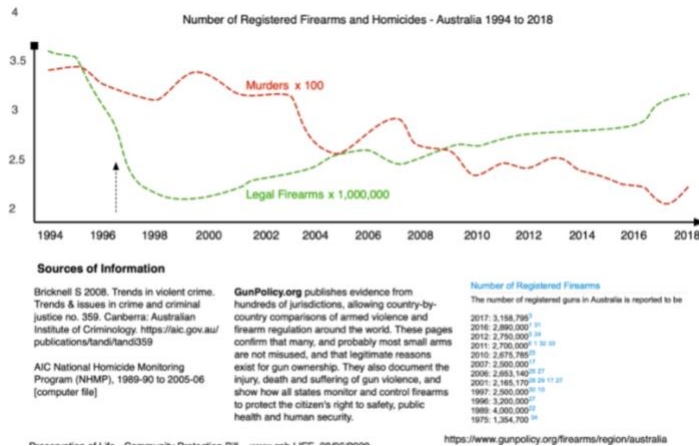
This instance underscores the dichotomy between the farmer's instinctive response to a direct threat and the rigid application of prohibition clauses within firearms legislation. It is worth noting that common law has long recognised the principle that merely possessing a firearm is not inherently wrongful or malevolent. The right to personal safety and the defence of one's domicile are foundational elements of common law, which traditionally acknowledges the legitimacy of using reasonable force, including using a legally held firearm when faced with imminent danger.

Cases such as this, where the mere possession of a firearm during an act of self-preservation is penalised, necessitate a closer look at the laws governing firearms and self-defence.

Given that the firearm was not employed in a harmful manner, nor was there intent to use it unlawfully, the punitive action taken against the farmer appears incongruent with the principle that the law should not only punish wrongdoing but also respect individuals' rights to protect themselves and their property.

One potential trend that may be observed in a chart detailing the relationship between the number of registered firearms and homicide rates is a spike in homicides following a government-led campaign to remove firearms from communities. This pattern could suggest a correlation between promoting disarmament and the mentality of those who commit home invasions.

Number of Registered Firearms Vs. Homicides Australia 1994 to 2018:



Another important factor to consider is the extent to which crimes go unreported. Due to legal technicalities, individuals may fear repercussions for reporting a deterrent incident. This phenomenon may lead to significant underreporting of crimes, skewing our understanding of the true impact of firearm regulations on crime rates, particularly in country areas where firearm ownership is more prominent.

Legislation Proposal:

Considering cases such as the farmer's confrontation with a home intruder, where individuals facing threats in self-defence may encounter legal implications for using legally licensed firearms for pest control or sporting activities, it is crucial to strike a balance between lawful self-defence and the enforcement of prohibition technicalities of law when the firearm owner has committed no criminal offence.

A new provision should be added to the proposed Castle Act to safeguard individuals' rights to protect themselves and their families in emergent situations and prevent punitive action against law-abiding citizens.

## Section X: Protection of Individuals Acting in Self-Defence

In cases where an individual lawfully possesses a firearm for pest control, sport, or other purposes and uses it in self-defence to deter or neutralise a threat against themselves or their loved ones whilst, within the property lines of their property, that individual shall be immune from prosecution or penalty for the lawful possession and use of the firearm in such circumstances.

Law enforcement authorities shall not confiscate the firearm used in self-defence by an individual unless there is clear evidence of misuse or a breach of firearm regulations unrelated to the Act of self-defence.

The prosecution shall bear the burden of proof to demonstrate that the individual's actions in self-defence were unlawful or in violation of existing firearm laws rather than placing the burden on the individual to justify their actions retrospectively.

Under this provision, individuals who reasonably believe using a firearm was necessary to protect themselves and their loved ones are entitled to legal protection and immunity from punishment through the Act of Disarmament.

By depriving individuals of the means to defend themselves following a recent threat, especially in situations where an assailant is still at large and poses a potential risk of returning, the state may be failing in its duty to ensure the safety and security of its citizens as outlined in Article 3 of the Universal Declaration of Human Rights. This violation of fundamental human rights, to which Australia is a signatory, states that "Everyone has the right to life, liberty, and security of person."

While the act of self-defence is not considered a human right but rather a legal right, the state's action of disarming individuals after an attempted home invasion can be viewed as a violation of human rights.

This action not only diminishes the individual's ability to protect themselves but also undermines their right to security and personal safety. Therefore, it is essential for the State to uphold its responsibility in ensuring that individuals are able to defend themselves in situations where their safety is at risk following an attempted home invasion, in order to protect their fundamental human rights. Case in Point – the farmer and the attempted home invasion:

If the home invader had not been apprehended by the police and instead observed them disarming the farmer, it is possible that they may interpret the situation as an opportunity to return to the farmer's property without fear of resistance. The sight of the farmer being disarmed could embolden the invader to carry out a subsequent attack, knowing that the farmer is now defenceless and vulnerable. This lack of protection could put the farmer, his wife and young children at greater risk and potentially result in further harm or danger during a return visit by the invader.


This section shall not impede the prosecution of an individual who consciously and intentionally misuses a firearm in a manner that violates firearm laws or poses a threat to public safety, regardless of the circumstances.


This provision aims to strike a balance between ensuring public safety through firearm regulations and upholding individual rights to self-defence in circumstances where firearm use is deemed necessary to avert imminent harm or danger. By incorporating these protections into the Castle Act, individuals licensed for pest control, sports, or other purpose can exercise their right to protect themselves and their families without fear of legal repercussions.

Signed:

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Lawrence Lyons

Retired Queensland Police Officer 

  
Favourable Police Service Certificate,  
Police Commissioner James O'Sullivan