

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

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

Online submission

Dear Committee,

Re: Criminal Code (Defence of Dwelling and Other Premises - Castle Law) Amendment Bill 2024

Thank you for the opportunity to provide a written submission in response to the *Criminal Code (Defence of Dwelling and other Premises - Castle Law) Amendment Bill 2024* ("the Bill").

YFS Legal is a community legal centre based in Logan. YFS Legal provides advice, representation and duty lawyer services to young and vulnerable people between the ages of 10 and 25 years of age in criminal courts. YFS Legal also provides the Children's Court duty lawyer service at the Beenleigh Childrens Court.

It is our position that the Bill fails to properly address the concerns of community safety. Multiple recent amendments to the Queensland justice system have shown that there has been continuous and systematic failure to consider evidence-based approaches in addressing community concerns and correlated social issues. Unsurprisingly, this approach is not working.

We further submit that the Committee rejects the Bill for the following reasons:

1. Existing legislation is sufficient to achieve the Bill's purpose;
2. The Bill promotes the use of violence that is not justified;
3. Castle Law is ineffective in reducing crime;
4. The proposal effectively condones violence against children; and
5. The Bill is incompatible with the *Human Rights Act 2019* (Qld) and inconsistent with principles of natural justice.

Existing legislation is sufficient

The "Castle Doctrine" is a principle contained in common law which recognises a person's right to defend their property without being subjected to legal consequences.¹ Whilst Queensland has not previously

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

adopted an explicit castle doctrine, similar protections are contained in the Queensland Criminal Code (“the Act”).²

The existing section which the Bill intends on amending is provisioned in section 267 of the Act. It currently provides:

‘267 Defence of dwelling

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.’

The above section already provisions for particular circumstances in which necessary force may be used to prevent or repel an intruder from entering or remaining on their property, that standard being a reasonable belief that the intruder intends on committing an indictable offence. There is no evidence referred to in the proposal of the Bill as to how the existing provision insufficiently addresses the concerns raised. The Bill also fails to consider the impact that legislating in favour of violence will have on community safety.

Promotion of unjustified violence

Decriminalising the use of force that is likely to cause death or grievous bodily harm to another person should be a serious cause for concern. It is apparent that the scope of the Bill goes beyond the need for increased protection of homeowners/occupiers, and instead creates a presumption in favour of causing the death or violence against others, including in circumstances of no threat of harm to person or property. The new section would allow the homeowner/occupier to use lethal force if the intruder enters or attempts to enter the dwelling or premises at night, or, if the intruder is in company of another person. This inherently increases the risk to the safety of both the homeowner/occupier and any other persons involved.

It should also be noted that whilst the 2022-2023 Queensland Crime Report (referred to in the Explanatory Notes of the Bill) tables the percentage increase of unlawful entry offences, it fails to detail the number of these offences which are actually violent e.g. where the intruder was armed or threatened to use or actually used violence.³

It is YFS Legal’s position that the proposed amendments condones vigilante responses to crime. It is necessary for evidence-based approaches to be implemented to protect the community rather than giving effect to ambiguous legislation which will undoubtedly increase the risk of harm to people.

² *Criminal Code Act 1899* (Qld).

³ Queensland Government Statistician’s Office, Crime Report, Queensland, 2022-23: <https://www.qgso.qld.gov.au/issues/7856/crime-report-qld-2022-23.pdf>.

Castle Law is ineffective in reducing crime

No state in Australia has previously legislated in favour of an explicit Castle Doctrine, however a number of States have similar provisions to that of section 267 of the Queensland Criminal Code. It is therefore imperative to consider the impact of such legislation in other jurisdictions. Between 2000 to 2010, over 20 States in the United States of America introduced the doctrine of Castle Law. Examination of the effect of these laws revealed that “the laws do not deter burglary, robbery or aggravated assault”.⁴

The Explanatory Notes of the Bill outlines that there are no known alternative ways to achieve the policy objectives. It is noted that there is no reference any evidence that supports the objective of the proposed amendments. YFS Legal submits that there has not been any proper evaluation of the likely impact and consequence of legislating in favour of the Castle Doctrine, and that further careful consultation is necessary.

Condoning violence against children

The legislation is targeted against children who commit property related offences. The Explanatory Notes of the Bill acknowledges that the objective of the Bill is to give rise to the “Castle Doctrine” in response to “an increase in home invasions due to unbridled youth crime and crime in general”.

Condoning use of violence against children in any situation is morally corrupt. When dealing with children entrenched in the youth justice system, we are often considering the most vulnerable children in the community. These children are often a victim of their circumstances, suffering from social and economic disadvantages such a mental health and cognitive impairments, lack of education, exposure to domestic and family violence, neglect, poverty, housing instability and other trauma. We also note the significant disproportionate number of First Nation’s children who have been exposed to the youth justice system.

The Explanatory Notes of the Bill references the most recent Queensland Crime Report which declares that 55% of all unlawful entry offences between 2022-2023 committed by 10-17 year olds.⁵ The same Crime Report outlined that breaches of domestic violence orders have increased by 27.2% over this period and sexual offences have increased by 5.8%.⁶ It is noted half of all sexual offences were committed against victims who were 19 years of younger.⁷ This is just one example of increasing adversity that is faced by young people yet we continue to fail to support the needs of the most vulnerable children in our community.

YFS Legal has consistently urged the Government to incorporate an evidence-based approach of early intervention to address youth crime. This approach ultimately assists in community safety. The Government has previously acknowledged that punitive measures do not work and that early intervention is the key to reducing youth crime. Unfortunately, The Bill strays further away further from early intervention and rehabilitation, and addressing the causes of youth offending. Instead, promoting the use of violence against children.

⁴ C Cheng and M Hoekstra, ‘Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansionsto Castle Doctrine’ (2013), Texas A&M University, *Journal of Human Recourses*, 1.

⁵ Queensland Government Statistician’s Office, *above n 3*, 64.

⁶ *Ib id*, 4.

⁷ *Ib id*, 78.

Incompatibility with Human Rights and Principles of Natural Justice

The *Human Rights Act*⁸ (*HRA*) has been consistently overridden without proper consideration or consultation by the current Government. YFS Legal submits that insufficient consideration, if any, has been provided to justify the limitation on human rights as required by section 13 of the *HRA*.

The Statement of Compatibility concludes that the Bill contravenes section 16 of the *HRA*, being the Right to Life.⁹ This is arguably the most fundamental human right. The Statement justifies the incompatibility on the basis that it instead promotes section 25 of the *HRA*, “a person’s right to not to have the person’s privacy, family, home or correspondence unlawfully or arbitrarily interfered with”.

YFS Legal agrees that the need to protect community should be paramount, however, we submit that condoning violence and legislating in favour of causing death to others is dangerous and ultimately fails to protect the community. This is of particular concern when the cohort of people that the Bill applies to are, unlike police officers, largely untrained people, who may be in situations where they “are not well-positioned to make instantaneous yet measured evaluation”, as noted in the Explanatory Notes of the Bill. It is the position of YFS Legal that the Bill places a higher risk to community safety and breaches section 25 of the *HRA*.

As noted above, the Bill targets children and actively condones the use of violence against children. Section 26 of the *HRA* provides, “Every child has the right, without discrimination, to the protection that is needed by the child, and is in the child’s best interests, because of being a child”. The proposed amendments fail to consider the serious impact that use of potential lethal violence against children will pose.

The principles of natural justice are principles developed from common law. The right to be heard requires that something should not be done to a person that will deprive the person of a right without the person being given an adequate opportunity to present their case to the decision-maker. It is YFS Legal’s position that the protections afforded by “Castle Law” in the draft Bill, allows for community members to administer “summary justice”, without the formalities and protections of legal procedure, and has the undertone of arbitrary and unfair judgement.

Section 31, Right to a fair hearing, *HRA*, notes that “a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing”.¹⁰ This right is complemented by the human rights protected in 32 Rights in criminal proceedings, *HRA*, which details the rights to certain minimum procedural guarantees in criminal trials.¹¹ Both sections are based on Article 14 of the International Convention on Civil and Political Rights (“ICCPR”), which Australia ratified in 1980. YFS Legal notes that the Statement of Compatibility fails to consider the inconsistency with fundamental common law principles and breaches of the human rights protections afforded by the *HRA* and the ICCPR.

⁸ *Human Rights Act 2019* (Qld).

⁹ Statement of Compatibility: Criminal Code (Defence of Dwellings and Other Premises —Castle Law) Amendment Bill 2024

¹⁰ *Human Rights Act 2019* (Qld), s 31.

¹¹ *Ib id*, s 32.

Need for evidence-based approach to justice

It is important to address the root causes of youth crime. As previously noted, the implementation of early intervention strategies is critical in reducing youth crime. It is important to also consider other contributing factors to the general offending the Bill seeks to address. A prevalent social issue that has been significantly impacting on the community is the rising cost of living. Unfortunately, YFS Legal has seen an increase in people have turned to property related offending to make ends meet in desperate times. It is therefore crucial for the government to consider options to support the community in financially difficult times. This type of approach is far more likely assist in the Bill's ultimate purpose.

Fundamental legal principles and human rights are contained within the justice system to protect the community, including the use of police and court processes. Legalising lethal force that is likely to cause grievous bodily harm or death to another person is not the solution and is more likely to reduce community safety.

We ask the Committee rejects the Bill.

Thank you for your consideration.

Yours faithfully



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