

Criminal Code (Defence of Dwellings and Other Premises—Castle Law) Amendment Bill 2026

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Office of the
Victims' Commissioner

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Submission to the Justice, Integrity and
Community Safety Committee
April 2026

Commissioner's Introduction

The Criminal Code (Defence of Dwellings and Other Premises - Castle Law) Amendment Bill 2026 (the Bill) proposes to amend the 'Defence of dwelling' provision set out in s 267 of the *Criminal Code Act 1899* (Qld).

In his introductory speech, Mr Robbie Katter MP stated that the Bill responds to concerns that 'Queenslanders do not feel safe in their own homes.' Mr Katter said that the Bill addresses community sentiment for greater clarity about when force can be used to defend an invasion, as set out in an e-petition to the Queensland Parliament which attracted more than 100,000 signatures.¹

Through my engagement with victims, we have heard about the profound impact of crime on a victims' sense of safety. Often these impacts are not confined to a single moment of time; they can be ongoing. Crime – whether violent or non-violent – can impact victims' sense of personal safety, psychological safety, and feeling safe in the community. These impacts can endure indefinitely and permeate into the community, impacting broader perceptions of community safety.

In Mr Katter's introductory speech, he notes the Bill is meant to make it clearer when people can use force to protect their home. By expanding the 'Defence of dwelling' provision and spelling out when serious force (grievous bodily harm or death) can be used, the aim is to clarify when homeowners can defend themselves and their property, and to discourage home invasions.²

The 'Defence of dwelling' provision is one of a number of defences available to a person who uses force to defend themselves or their property, or who assists in the defence of another person or their property. The Queensland Law Reform Committee (QLRC) has recently undertaken a thorough review of a number of these defences,³ with the final report very recently tabled in Parliament. While 'Defence of dwelling' was outside the scope of the QLRC's review, the review highlighted the complexity of defences generally, and the need to carefully consider how they intersect in their operation. The QLRC also had a particular focus on how defences may apply in the context of domestic and family violence, an equally important consideration with respect to the proposed amendment in the Bill.

I recognise the need to reassure the public about protection and support available to help people feel safe in their homes. However, it is my view that any changes to defences should be considered in conjunction with the findings of, and any reform arising from, the recommendations of the QLRC review.

Note on language

I use the term 'victim' and 'victim-survivor' throughout this submission. I acknowledge some individuals may prefer 'victim' as it emphasises their experience of harm, while 'victim-survivor' acknowledges the ongoing impacts of crime and highlights the strength and resilience of individuals with lived experience. By incorporating both terms, I hope to honour these perspectives. I may also use the term 'victim' when referring to legislation as it is a term commonly used in legal frameworks.

Role of the Victims' Commissioner

The role of the Victims' Commissioner is established under the *Victims' Commissioner and Sexual Violence Review Board Act 2024 (Qld)* (VCSVRB Act). My role is to protect and promote the rights and needs of victims of crime. My statutory functions include:

- Providing information to victims of crime to help them navigate the criminal justice system
- Dealing with complaints under the Charter of Victims' Rights
- Conducting systemic reviews
- Listening to victims to hear about their own, lived experiences
- Advocating for victims' rights by making recommendations and providing advice to government and non-government entities about improvements to policy, practices, procedures and systems to uphold the rights of victims and better meet their needs.
- Monitoring the implementation of recommendations.

Under section 6 of the VCSVRB Act, a victim includes a person who suffers harm because a criminal offence (including domestic violence) is committed against the person. This includes:

- people who have a criminal offence committed against them directly
- family members or dependants of a person who has a criminal offence committed against them
- people who are harmed because they helped another person who had a criminal offence committed against them
- witnesses of crimes.⁴

The VCSVRB Act defines harm as including physical, psychological or emotional harm, damage to or loss of property, and financial or economic loss.⁵ This definition recognises the range of impacts that a crime can have on an individual.

Review of the Charter of Victims' Rights

In February 2025, the Office of the Victims' Commissioner (OVC) commenced a systemic review of the Charter of Victims' Rights, pursuant to my functions under section 9(a) of the VCSVRB Act. The review aims to ensure the Charter of Victims' Rights effectively promotes and protects the rights of diverse victims of crime, in line with recommendations by the Women's Safety and Justice Taskforce⁶ and the Queensland Parliament's Legal Affairs and Safety Committee's Inquiry into support provided to victims of crime.⁷

The review is being informed by engagement with victims of crime, their advocates, family members and professionals who work with victims of crime. I will provide a report to the Minister for Youth Justice and Victim Support and Minister for Corrective Services by December 2026. More information about the review can be found on the OVC's [website](#).

This submission is informed, in part, by the views and experiences shared with the OVC thus far, as well as the victims who have provided feedback or made complaints to the OVC.

Victims' Commissioner's submission on the Bill

The Criminal Code (Defence of Dwellings and Other Premises - Castle Law) Amendment Bill 2026 (the Bill) proposes amendments aimed at:

1. Extending section 267 'Defence of dwelling' to include 'premises' which is defined in section 1 of the *Criminal Code Act 1899* (Qld) to include a vehicle, caravans, tents or cave.
2. Clarifying when force that is intended or is likely to cause death or grievous bodily harm may be used.

The Bill seeks to address concerns that:

- 'Queenslanders do not feel safe in their own homes'⁸
- that there is lack of clarity about what action can be taken to defend one's home from intruders
- a fear that doing so may result in criminal punishment.

These concerns were reflected in a petition signed by over 100,000 Queenslanders.⁹ The proposed expansion of the defence to 'or other premises' is intended to reflect a broader definition, reflecting different types of accommodation being used, in particular by people experiencing homelessness.¹⁰

Current available defences

The 'Defence of dwelling' provision is one of several defences that make it lawful for Queenslanders to use force to defend themselves, their property or other people.

The 'Defence of dwelling' provision in its current form provides a defence for individuals in peaceable possession of a dwelling who use force, provided they hold a reasonable belief that the intruder intends to commit an indictable offence *and that the use of force is necessary to prevent or repel the intrusion*.

Case law has clarified that a 'dwelling' may include adjacent structures, caravans, and motel units.¹¹

As noted by the Honourable Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity (the Attorney-General) in her response to the e-petition, while the person using force must believe on reasonable grounds that the other person is attempting to enter or remain in the dwelling with an intent to commit an indictable offence (such as stealing),

The court also recognises a person defending their home cannot always weigh the exact action they should take to avoid a threat and that they are unlikely to have an opportunity for calm deliberation or detached reflection. The court's consideration of whether the defence applies is approached in a practical way taking into account the particular situation.¹²

Other relevant defences currently available include:

- *Self-defence against unprovoked assault*¹³ which enables a person to use the force necessary to defend themselves against an assault that they have done nothing to provoke. This extends to the use of force that may cause death or grievous bodily harm if they reasonably fear death or grievous bodily harm themselves, and they believe they cannot otherwise defend themselves.
- *Aiding in self-defence*¹⁴ which allows a person, when assisting to defend another person, to use a like degree of force to that which the person who is defending themselves is using.
- *Defence of premises against trespassers—removal of disorderly persons*¹⁵ which allows a person in peaceable possession of the premises (or a person assisting them) to use force reasonably necessary to prevent a person from wrongfully entering premises or remove them from the premises. The use of force must not extend to grievous bodily harm.
- *Defence of possession of real property or vessel with claim of right*¹⁶ which allows a person in possession of any land, structure, or vessel (or a person assisting them), to use force reasonably necessary to defend the person's possession. The use of force must not extend to grievous bodily harm.

In some respects, 'Defence of dwelling' is more extensive than self-defence, with the limitations on use of force in self-defence not applying to the Defence of dwelling.¹⁷

Should a matter go to trial, the defendant does not need to prove defence of dwelling or self-defence, rather the prosecution must exclude or negate the defence, beyond reasonable doubt, to establish that the person acted unlawfully.

There is limited evidence in the material accompanying the Bill to demonstrate that the current provisions are not operating as intended, or are deficient. There are number of high-profile cases reported in the media where persons defending themselves or their

property have not been charged.¹⁸ There are also cases where a person defending themselves has been charged, but has successfully relied upon the 'Defence of dwelling' and there are cases where, on appeal, the court has found that the jury should have been directed on the defence as it was available on the evidence.¹⁹

I have heard from some victim advocates that there is a need for greater clarity about how Queenslanders can lawfully defend themselves to home invasions and I note the significant positive public sentiment towards the proposed amendments, including as indicated by the significant numbers of petitioners. However, I have also heard from some victim advocates about their concerns about the proposed amendments, and its possible impacts on people who seek to defend themselves, their homes or others, such as the possible increase in surveillance measures in homes as an evidentiary safeguard.

On 1 December 2025, the QLRC delivered its final report and recommendations to the Attorney-General on its review of particular criminal defences. While the review excluded 'Defence of dwelling', it considered in detail other offences such as self-defence and provocation and highlighted the importance of considering the connection between various defences to ensure consistency and clarity in their application.²⁰ The QLRC specifically considered how the defences are operating in the context of domestic and family violence (DFV), including to understand how defences may be used by perpetrators and victim-survivors of DFV with the intention that any recommendations must reflect contemporary knowledge and community attitudes towards DFV.²¹

The final QLRC report was tabled in Parliament on 20 April 2026. In its report, the QLRC recommends a range of significant reforms to criminal defences in Queensland. The QLRC's recommendation of a new 'duress' defence with application to threats of harm or detriment proposes retaining the definition of 'detriment' in section 1 of the Criminal Code to include detriment to property, noting threats to damage property is often a feature of coercive control.²² The report also notes that some jurisdictions include the defence of property within self-defence and that there was some support for this approach in Queensland, however, the QLRC did not consider the approach in detail, noting it was outside the scope of the review.²³

Given that criminal defences intersect significantly in their operation, and the considerations in relation to the context of DFV are also relevant to the proposed amendments, it would be desirable to await the outcomes of any reforms resulting from the QLRC's review before considering the reforms proposed in the Bill.

Recognising victim harm

Through our office's engagement with victims, we have heard that home invasions can result in victims experiencing a sense of violation, as their homes cease being a place of safety and instead become places of fear and danger. This can lead to long-term

psychological impacts, such as post-traumatic stress disorder (PTSD), depression, and anxiety.²⁴ There can be ongoing impacts on victims' sense of personal safety, psychological safety, and their sense of being safe in the community. These impacts can permeate into the community, impacting broader perceptions of community safety.

Under the VCSVRB Act, people who are victims of home invasions that involve actual, or the threat of, violence, have rights under the Charter of Victims' Rights.

A person who is harmed by someone who has defended their dwelling may also have rights under the Charter of Victims' Rights, having regard to section 39 of the VCSVRB Act:

(2) For deciding whether an act or omission constitutes an offence mentioned in subsection (1)(a), (b), (c) or (d)-

(a) any justification, excuse or defence a person may have for doing the act or making the omission is to be disregarded.

Through my office's review of the Charter of Victims' Rights, I am considering whether it is clear who has rights under the Charter of Victims' Rights, and how easy the Charter is to understand and interpret.

Endnotes

- ¹ Queensland, Parliamentary Debates, Legislative Assembly, 4 March 2026, 454 - 458 (Robbie Katter MP).
- ² Queensland, Parliamentary Debates, Legislative Assembly, 4 March 2026, 454 - 458 (Robbie Katter MP).
- ³ Queensland Law Reform Commission, *Review of particular criminal defences: Our terms of reference* (Background Paper 1, 2023).
- ⁴ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) ('VCSVRB Act') s 6.
- ⁵ VCSVRB Act s 6.
- ⁶ Women's Safety and Justice Taskforce. *Hear her voice: Women and girls' experiences across the criminal justice system* (Report 2, 2021) 14.
- ⁷ Legal Affairs and Safety Committee, *Inquiry into support provided to victims of crime* (Report No. 48 to 57th Parliament, 2023) vi.
- ⁸ Queensland, Parliamentary Debates, Legislative Assembly, 4 March 2026, 455 (Robbie Katter MP).
- ⁹ Queensland, Tabled Paper, Legislative Assembly, 30 October 2025, E-petition 'Castle Law' (Nick Dametto MP) <<https://www.parliament.qld.gov.au/Work-of-the-Assembly/Petitions/petition-details/4267-25>>.
- ¹⁰ Queensland, Parliamentary Debates, Legislative Assembly, 4 March 2026, 457 (Robbie Katter MP).
- ¹¹ *R v Cuskelly* [2009] QCA 375 [30]; *R v Bartram* [2013] QCA 361 [19] - [20]; *R v Rose* [1965] QWN 34; *R v Halloran and Reynolds* [1967] QWN 34. See also Home Invasions and the Criminal Law Amendment Bill 1996 (Qld) 4-6.
- ¹² Queensland, Tabled Paper, Legislative Assembly, 1 December 2025 (Deb Frecklington MP); See also Supreme and District Court Criminal Directions Benchbook, *Chapter 88. Defence of a Dwelling House: s 267*, April 2026.
- ¹³ *Criminal Code Act 1889* (Qld), s 271.
- ¹⁴ *Criminal Code Act 1889* (Qld), s 273.
- ¹⁵ *Criminal Code Act 1889* (Qld), s 277.
- ¹⁶ *Criminal Code Act 1889* (Qld), s 278.
- ¹⁷ *R v Cuskelly* [2009] QCA 375 [30].
- ¹⁸ Dominic Cansdale, 'Police investigating death of female intruder restrained by Gold Coast homeowner' *ABCNews* (online, 28 March 2023) <<https://www.abc.net.au/news/2023-03-28/woman-dies-after-being-restrained-at-home-in-tugun-gold-coast/102153014>>; *Inquest into the deaths of Corey James Christensen and Thomas Ian Davy* [2021] Coroners Court 2018/4350, 2018/4351.
- ¹⁹ *R v Elkerton-Sandy* [2023] QSC 032 [51]; Laine Clark, 'Man found not guilty of manslaughter over deadly Australia Day stabbing in 2020' *9News* (online, March 1 2023) <<https://www.9news.com.au/national/australia-day-stabbing-joshua-lindsay-elkertonsandy-not-guilty-manslaughter-brisbane-court/425525f4-1db7-4615-957f-46c0764feadc>>; *R v Rimene* [2023] QSC 12; *R v Byrne*; *R v Poid* [2006] QCA 241 [19], [21], [46]; *R v Cuskelly* [2009] QCA 375 [25], [31]; *R v McMartin* [2013] QCA 339 [25] - [26]
- ²⁰ Queensland Law Reform Commission, *Review of particular criminal defences: Equality and integrity: Reforming criminal defences in Queensland* (Consultation Paper, 2025) 22.

²¹ Queensland Law Reform Commission, *Review of particular criminal defences: Understanding domestic and family violence and its role in criminal defences* (Background Paper 3, 2025) 22.

²² Queensland Law Reform Commission, *Review of particular criminal defences: Just, clear and modern: Reformed criminal defences for Queensland* (Final Report, 2025) 124.

²³ Queensland Law Reform Commission (n 22) 79.

²⁴ Maarten Kunst and Dante Hoek, 'Psychological Distress Among Domestic Burglary Victims: A Systematic Review of Possible Risk and Protective Factors' (2024) 25(1) *Trauma Violence Abuse* 431.