

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

**Submission No:** 009

**Submission By:** Queensland Council for Civil Liberties

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The Secretary  
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Dear Madam

**CRIMINAL CODE (DEFENCE OF DWELLINGS AND OTHER PREMISES – CASTLE LAW)  
AMENDMENT BILL 2026**

Kindly accept this submission in relation to the above Bill.

**1. PURPOSE OF BILL**

In order to attempt to understand what mischief this amendment of the law is intended to address, we have reviewed the following comments from Mr. Katter in his speech introducing the Bill:

The wording in the existing legislation is that you must have a proportionate response. If you boil that down, you need an intercom system at the front gate to ask the intruder what he is carrying so you can make sure you have a proportionate response if he comes in and you try to defend yourself and your family. It is absolutely ridiculous. You should not have to consider that.

The explanatory note contains the following

Castle law principles recognise that a person should not be required to retreat from their own home, nor hesitate in the face of violent intrusion out of fear of prosecution.

Under the current section 267, when faced with a home invasion, an individual is limited to only using 'necessary' force to prevent or repel the home invasion and it must be done under the 'reasonable belief' that the intruder was entering the dwelling with intent to commit an indictable offence. An individual cannot be expected to think completely objectively and respond in proportion when faced by a home invasion when any underestimation of the threat could result in severe consequences (for instance, their own death or serious harm, or that of a family member). Therefore, the test in section 267 of the Code is inadequate to offer the necessary protection to homeowners or occupiers who respond to the threat of a home invasion with force.

**2. LEGAL BACKGROUND**

In our view, the legislation is based on a fundamental misunderstanding of the current law. To see how that is, we must go back to the Common Law.

The Common Law in relation to the defence of a family home was stated by the English Court of Appeal in the decision of *R v Hussey* (1925) 18 Cr App R 160 at page 161:

In defence of a man's house, the owner or his family may kill a trespasser who would forcibly dispossess him of it, in the same manner as he might, by law, kill in self-defence a man who attacks him personally; with this distinction, however, that in defending his home he need not retreat, as in other cases of self-defence, for that would be giving up his house to his adversary.



In essence, the Common Law in relation to defence of the home was the same as that in relation to self-defence of a person. It is important to note that contrary to the quotation from the explanatory note, not even the Common Law required a person to retreat from their home.

One of the issues in relation to the Common Law has been the role of proportionality. I.e. does the person defending a property have to demonstrate that they used the least violent means necessary to defend the property.

The proposition that this was necessary was stated by Justice Smith in the Victorian Full Court decision of *R v Mckay* [1957] VR 560:

We take one great principle of the common law to be that though it's sanctions the defence of man's person, liberty and property against illegal violence, and permits the use of force to prevent grinds, to preserve the public peace and to bring offenders to justice, yet all this is subject to the restriction that force used is necessary; that is that the mischief sort to be prevented could not be prevented by a less violent means; and the mischief done by, or which might reasonably be anticipated from, the force used is not disproportionate to the injury or mischief which it is intended to prevent" 572-3.

The acts done must have been necessary, in the sense that the mischief sought to be prevented could not have been prevented by less violent means; and what was done must not have been out of proportion to that mischief" page 573.

But the High Court in its important decision In *Zecevic V Director of Public Prosecutions (Vic)* (1987) 71 ALR 641 at page 653 made it clear that proportionality was a factor to be considered but not a separate requirement.

However, it has been made clear that section 267 of the *Criminal Code* does not involve such a requirement. This was held by the Queensland Court of appeal in *R v Cuskelly* [2009] QCA 375, where the Court said:

s 267 does not require that the force used by an accused be no more than is reasonably necessary to make an effectual defence of his or her person against a would-be intruder. Further, if lethal force is used, the accused need not reasonably apprehend death or grievous bodily harm from the accused's assault in order to raise a defence under s 267.4 [27]

The respondent argued that where a defence of self-defence is raised by the accused, s 271 and 272 of the Criminal Code operate to the exclusion of s 267. I am unable to accept that submission. Where it arises on the evidence, s 267 affords a separate, and more extensive, ground of defence to an accused. It is apparent that s 267 is informed by policy considerations different from the affirmation of the legitimacy of proportionate force in self-protection embodied in s 271 and s 272. Section 267 gives effect to a policy of the law which recognises the legitimate use of force to defend hearth and home and to prevent the commission of offences by others in one's home. This policy would not be well-served if the defence afforded by s 267 were to be subsumed in practice by s 271 or s 272. [30]

It would seem then that to address the issue raised in the speech of Mr Katter and the explanatory note no changes are needed to the law

### 3. ANALYSIS

From a strict civil liberties perspective, it would most probably be said that the Common Law represents a better balancing of the competing interests in this situation. As we have noted above the Common Law already recognises that protecting one's home is different from protecting somewhere else.

But we do not intend to argue in this submission for the current section to be amended to reflect the Common Law.

But the proposed law is worse than the current section, it would on our reading allow the following situation:

A homeless person is found at night during a bad storm sleeping in a carport attached to a house. The owner of the house finds the person asleep and they ask them to leave. The homeless person is reluctant to leave, perhaps even suggesting that they won't leave until the storm is over. They are not violent in anyway. They are just homeless and don't want to go out in a bad storm. But the homeowner takes to the person with a weapon doing them serious harm.

On our interpretation of the proposed section the homeowner would have a defence notwithstanding that the homeless person did nothing other than wanting to keep out of a storm in their carport<sup>1</sup>. This follows because the language used in the proposed section is relevantly the same as that used in the current section 267 i.e. "the person using the force believes on reasonable grounds". As is intended, there is no necessity for proportionality and given the event occurs at night the section authorises grievous bodily harm.

However, under the current section 267 the owner would not have a defence as on the facts the homeless person clearly had no intent to commit an indictable offence. To answer Mr Katter's point a homeowner who could not understand that in the situation described they had no moral, let alone legal, right to take that action clearly has no moral sense.

Private property is no doubt an important right. But it is not an absolute right. The use of the word "castle" to describe this law is particularly disturbing because it seems to ignore the fact that the castles of Europe were established by an elite of robber barons (of whom the Normans were a particularly extreme example) for the purposes of allowing them to extract the surplus from the peasantry around them. They were a source of violence and exploitation.

The problem with this proposed law is that it would allow homeowners unnecessary and excessive power. It does not get the balance between the interests in play right.

We note that the law extends to all premises. That term is defined in the Code to include—

- (a) a building or structure, or part of a building or structure, of any type; and
- (b) a group of, or part of a group of, buildings or structures, of any type; and
- (c) the land or water where a building or structure or a group of buildings or structures is situated; and
- (d) a vehicle, or a caravan; and
- (e) a tent, or a cave; and

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<sup>1</sup> that the carport is part of the house follows from the definition of dwelling which "includes any building or structure, or part of a building or structure, which is for the time being kept by the owner or occupier for the residence therein of himself or herself, his or her family, or servants, or any of them, and it is immaterial that it is from time to time uninhabited.

A building or structure adjacent to, and occupied with, a dwelling is deemed to be part of the dwelling if there is a communication between such building or structure and the dwelling, either immediate or by means of a covered and enclosed passage leading from the one to the other, but not otherwise."

The carport is attached to the house

- (f) premises in which more than 1 person has ownership.

The explanatory note says the term 'premises' does not appear in the current section 267 defence. It has been included in the Bill for the purpose of including invasions of motor vehicles, caravans, tents, etc.

But this change would permit the same scenario described above to occur in relation to a factory. If this Bill is to be passed, we **recommend** that it should be amended to say that a premise is only included if it is being used as a place of residence.

#### 4. AMERICAN EXPERIENCE

The assumption innate in the Bill is that allowing people to use deadly force to protect themselves and their dwelling will improve community safety and deter crime. However, outcomes of similar legislation in the USA show across the board that increasing legislative permissiveness of deadly force correlates with increased violent crime, unnecessary death, institutional racism, and no crime deterrence.

##### 4.1 Self-defence in the USA

Castle Doctrine, or 'Castle Law' in the Bill, is a self-defence law permitting the use of force, explicitly including deadly force, by homeowners or occupiers where they consider it reasonably necessary to protect themselves or others from unlawful entry or harm in their home. Examples of the doctrine can be found in England, Italy, Poland and the USA.

American self-defence laws vary widely, with states falling across a spectrum of 'Duty to Retreat' (DtR) and 'Stand Your Ground' (SYG) regimes.

Duty to retreat (DtR) regimes aim to reduce preventable death by abrogating the defence in certain circumstances where the accused had a reasonable opportunity to retreat from confrontation. The duty to retreat does not apply to dwellings in any US states and has also been abridged in respect of workplaces and vehicles in some states. DtR regimes make up the minority of US states and include states such as Minnesota, New York and Hawaii.

The Stand Your Ground (SYG) regimes present in a majority of US states abolish the duty to retreat in all circumstances, allowing a person to use deadly force when they believe it to be reasonably necessary for self-defence. SYG regimes began gaining popularity in the USA due to increased concerns over public safety following 9/11, and generally take the shape of expanding pre-existing castle doctrine laws to the greater public sphere. As has also been argued by the proponents of this Bill, SYG advocates argue that these laws deter crime through an increased threat of retaliatory violence.

While Castle Doctrine is often construed as a midpoint between SYG and DtR in US analysis, in practice, it applies across the board. All US states uphold, in some form or another, the principle that a person should be permitted to defend and not be made to retreat from their home. This makes analysis of the effect of Castle Doctrine alone in the USA difficult. Confounding factors, such as heterogeneity of American gun laws and other socioeconomic factors further complicate analysis. However, despite significant statistical difficulty, studies tracking the effect of widening Castle Doctrine (through comparison to other states or the focus state prior to the change) suggest that, overall, legislation that explicitly permits the use of deadly force and fails to encourage de-escalation only worsens public safety. In general, States with limited self-defence laws have improved public safety and lower crime rates.

## 4.2 Increased Homicide

Rather than deterring violence, expansions to self-defence increases it. A 2021 study synthesising two decades worth of literature on Castle Doctrine and SYG laws in the USA found that expanding civilian rights to use deadly force in self-defence was associated with modest increases in violent crime rates countrywide. This finding corroborates with a 2023 study that found that SYG was linked to a 8-11% increase in homicide rates. This increase was split across unlawful as well as 'justified' killings. While permitted by the State, the homicides deemed 'justified' under such laws are not immune from scrutiny, as they are often not actually carried out in situations justifying the killing. In a 2012 investigation, the Tampa Bay Times determined that Florida SYG claims succeeded 67% of the time despite 79% of cases being ones where the assailant could have retreated to avoid confrontation. This reflects a clear discordance of the law with legislative intent – the majority of killings 'deemed' lawful under these regimes are ones that are not reasonably necessary for the person's safety. Instead, people feel encouraged by permissive legislation to take risks and act aggressively, resulting in unnecessary death and increased injury, at significant public cost.

## 4.3 Increased Violent Crime

These laws encourage, not deter, criminal behaviour. A 2018 review of the literature suggests a strong positive relationship between SYG laws and unlawful homicide as well as a mild association with other violent crimes. Studies identified increases of approximately 5 percent for robbery, rape, and aggravated assault rates as a result of expanded self defence laws. While, the data for these relationships is more variable than it is for homicide, with positive associations having only mild to moderate strength, this is likely due to the heterogeneity of self-defence laws and interacting legislation across US states, making averaging inferences more difficult. The evidence for a positive correlation between these laws and violent crime, taken together with the fact that no study has identified a negative correlation, suggests that these policies are not meaningful deterrents, and tend to harm instead of help. This inference is supported by evidence that the chief beneficiaries of these laws are perpetrators. In the Tampa Bay Times study, "nearly 60 percent of those making self-defence claims when a person was killed had been arrested at least once before; a third of those had been accused of violent crimes in the past; over a third had illegally carried guns in the past or had threatened others with them." As stated above, these defences had a 67% success rate. Instead of reducing crime, they hand criminals a license to kill.

## 4.4 Psychological Impact

The negative effects detailed above are explained, at least in part, by the law's psychological impact. While those petitioning for such change may believe it will make them feel safer, the evidence shows otherwise. Increased permissiveness of violence by the law leads people to expect violence threats, increasing paranoia and ultimately escalating violence. The culture of crime created by these laws leads to increased weapon-holding and reactivity in the public, causing them to respond violently in situations where they wrongly believe themselves at risk and further inducing criminals to carry firearms and act without hesitation to defend against anticipated attack. It is a self-fulfilling prophecy that permeates even previously peaceful neighbourhoods.

## 4.5 Racial Discrimination

Naturally, laws that heighten public fears of violence and legitimise 'defensive' acts against perceived threats, will disproportionately be weaponised against minoritised groups. Stereotypes of criminality lead to disproportionate perceptions of threat that put black people, teenagers, people with mental illness and the homeless at significant risk in

jurisdictions where violence against a person 'reasonably' believed to be a threat is state sanctioned.

In the USA, the invocation of self-defense laws is extremely racialised, in terms of who they are invoked against and who may successfully invoke them. This is true in both non-SYG and SYG states, indicating that self-defence laws in general are conducive to discrimination due to structural racism and entrenched cultural biases. Moreover, SYG states experience significantly greater racial disparities, demonstrating the facilitative effect of broadening so-called 'self defence laws. On average, in the USA homicides are deemed justifiable less than 1% of the time when the shooter is black and the victim is white. In contrast, they are deemed justified 9.5% of the time in the reverse scenario. In SYG states, this value nearly doubles. Furthermore, when the homicide occurs between strangers and neither party is law enforcement (i.e., the situation contemplated by the Bill), less than 3% of black on white homicides are deemed justified, while 29% of white on black homicides are, climbing to 39% in SYG states without any parallel increase in the justification rate of the latter.

These clear disparities result due to entrenched social and structural bias and the facilitative effect laws sanctioning violence have on it. Imported into the Queensland context, these laws will undoubtedly disproportionately affect First Nations People, as well as the homeless and teenagers.

#### **4.6 Increased Public Costs**

Increases in violent crime, weapon-holding and associated injury all come at significant cost. They increase the load on police, emergency services and the courts, requiring greater public spending and reducing access to resources for those in need. This is not a policy that has demonstrated any ability to produce benefit for Queenslanders, only an unnecessary burden.

#### **4.7 Summary**

American self-defense laws, while not identical to the Bill, illustrate that its founding premise, that increasing people's right to use violence as self-defence will improve public safety, is grievously flawed. Legislation explicitly condoning the use of violence causing grievous bodily harm or death in specific situations, holding people to lower standards than under the current act, will only result in increased homicide, violence, racial disparities and decreased community safety, all at considerable public cost.

We thank our interns Charlie Barksdale and Falak Ibrahim Shaikh for their research on the American experience. We trust this is of assistance to you in your deliberations.

**Please direct correspondence concerning this letter to [president@qccl.org.au](mailto:president@qccl.org.au)**

Yours Faithfully



Michael Cope  
President  
For and on behalf of the  
Queensland Council for Civil Liberties  
21 April 2026