

Castle law: should it be easier for Australians to use force against burglars and home invaders?

What they said...

'It does give people the power to protect themselves in situations where crime has gotten out of control'

Katter Party MP Nick Dametto supporting the introduction of castle law in Queensland

'KAP's proposal removes the need to use reasonable force, meaning any person could legally kill another person for being on their property or damaging their property – any time another person feels under threat'

Queensland Law Society president Rebecca Fogerty pointing to the risk of castle law

The issue at a glance

On May 1, 2024, Nick Dametto MP, Member for Hinchinbrook, introduced the Criminal Code (Defence of Dwellings and Other Premises—Castle Law) Amendment Bill 2024 into the Queensland Parliament. <https://nickdametto.com/legislation-moved-to-adopt-castle-law-in-queensland>

The bill is an attempt to change the Criminal Code in Queensland to allow homeowners and residents to take stronger action against alleged intruders without facing the possibility of prosecution or conviction.

The bill was introduced as a private members bill; however, Nick Dametto is the deputy leader of Katter's Australian Party (KAP), and castle law is a KAP policy.

<https://www.facebook.com/bobkattermp/posts/do-you-want-to-feel-safe-within-your-own-home-and-think-you-deserve-the-right-to/991344002351734/>

By June 11, 2024, a parliamentary petition launched in conjunction with the bill to amend the Criminal Code had gained over 40,000 signatures. <https://nickdametto.com/finally-tally-40470-signatures-as-castle-law-petition-tabled-in-state-parliament> Civil liberties groups and legal authorities have opposed the bill. <https://www.theguardian.com/australia-news/article/2024/jun/09/katters-australian-party-castle-law-petition-intruders-deadly-force>

Background

Castle law or castle doctrine <https://constitutionwatch.com.au/does-australia-have-a-castle-doctrine/>

A castle doctrine, also known as a castle law or a defence of habitation law, is a legal doctrine that identifies a person's dwelling or any legally occupied place (for example, a vehicle or home) as a place which permits one, in certain circumstances, to use force (up to and including deadly force) to defend oneself against an intruder, free from legal prosecution for the consequences of the force used. The term is most applied in the United States, though many other countries draw on these principles in their laws.

Depending on the location, a person may have a duty to retreat to avoid violence if one can reasonably do so. Castle doctrines lessen the duty to retreat when an individual is assaulted within one's own home. Deadly force may be justified according to castle law when the

person taking defensive action reasonably fears imminent peril of death or serious bodily harm to him or herself or another. Castle law frequently allows the resident's perception of the threat to determine the reasonableness of the actions taken.

The difference between 'castle law' and 'stand your ground'

<https://www.shouselaw.com/ca/blog/castle-doctrine-vs-stand-your-ground/>

The castle doctrine allows homeowners or residents to use deadly force against intruders to defend themselves within their own homes. In contrast, the stand your ground doctrine allows proportional force to reasonably defend yourself at any location where you have a legal right to be.

Both doctrines require no duty to retreat. Though the castle doctrine is typically limited to a person's residence, the stand your ground doctrine applies anywhere. Also, the castle doctrine permits deadly force, whereas the stand your ground doctrine allows proportional force – which may or may not include deadly force depending on the danger being faced.

Current self-defence provisions in Australia <https://nswcourts.com.au/articles/when-can-i-kill-an-intruder-the-law-of-self-defence-in-nsw/>

The provisions outlined below relate to defending your home but are not limited to this situation as self-defence can also be used as a legal defence in other circumstances.

Self-defence is a complete defence throughout Australia. This means that if you raise self-defence in a case, the prosecution must then prove beyond reasonable doubt that you did not act in self-defence – otherwise, you must be found 'not guilty.' For example, if you were charged with assault and were able to raise some evidence that you were defending yourself, you would have to be found not guilty unless the other side could prove that you were not acting in self-defence.

Under section 418(2) the New South Wales Crimes Act 1900, a person is not guilty of an offence if they were:

1. Defending themselves or someone else
2. Preventing or ending unlawful deprivation of liberty of themselves or someone else
3. Defending their property from being taken unlawfully, destroyed, damaged, or interfered with
4. Preventing criminal trespass to any land or to remove a person committing criminal trespass

However, self-defence is not available if the person has either intentionally or recklessly caused death for above reasons three and four. And even if you are protecting yourself or someone else, the actions you take must a reasonable response to the threat as you perceive it. This means that:

1. You must believe that there is a threat,
2. Your belief must be on reasonable grounds, and
3. Your response must be reasonable to that threat. This is sometimes referred to as proportionality, that is, the level of force you employ must be reasonable or appropriate to the level of threat with which you are confronted.

Excessive force

Using excessive force can be used as a partial defence to murder– in some circumstances, reducing a charge of murder to manslaughter.

Excessive self-defence inflicting death occurs when:

1. You believe that your conduct is necessary to defend yourself or another person (or prevent unlawful deprivation of liberty), but
2. Your conduct is not reasonable in the circumstances

Home invasion laws in Western Australia and South Australia <https://tinyurl.com/mupeaxr2>
These two states have laws specifically dealing with self-defence to home invasion. These laws require that occupants who act in defence of themselves or another, or to protect property against an intruder, must believe on reasonable grounds that it is necessary to do so.

However, both states relax the proportionality requirement in the home occupier's response. This means your response may involve what is later judged as excessive force, but this would not be used to attach criminal liability to you as the home occupier.

Internet information

On July 6, 2024, The Daily Mail (Australia edition) published a report titled 'Aussies are becoming increasingly fed-up with break-ins. Now a concerning number are demanding a lethal American-style law be brought in'

The report details growing crime rates in Australia and then considers the advantages and the dangers of castle law as a response.

The full text can be accessed at <https://www.dailymail.co.uk/news/article-13606085/Queensland-castle-law-bill-kill-home.html>

On July 6, 2024, Cairns Post published an article titled "'We want protection": Crime victims speak out on KAP's Castle Law bill'

The report gives the views of a range of Queenslanders, including victims of home invasions, all of whom support castle law.

The full text can be accessed at <https://www.cairnspost.com.au/news/cairns/we-want-protection-crime-victims-speak-out-on-kaps-castle-law-bill/news-story/0ffce36ff78f06e307a1477655c9e4fe>

On June 26, 2024, Lawyers Weekly published a report titled 'Proposed castle law a "dangerous response to crime in Queensland"'

The report cites the opinion of several legal authorities explaining their opposition to the castle law proposal.

The full text can be accessed at [https://www.lawyersweekly.com.au/newLaw/39972-proposed-castle-law-a-dangerous-response-to-crime-in-queensland#:~:text=A%20proposed%20law%20in%20Queensland,and%20perilous%20response%20to%20crime.](https://www.lawyersweekly.com.au/newlaw/39972-proposed-castle-law-a-dangerous-response-to-crime-in-queensland#:~:text=A%20proposed%20law%20in%20Queensland,and%20perilous%20response%20to%20crime.)

On June 12, 2024, National Indigenous Times published an article titled 'Human rights and legal groups warn Queensland's proposed "castle law" law will encourage vigilantism'

The report cites the opinions of those who support the castle law proposal and those who consider it reckless.

The full text can be accessed at <https://nit.com.au/12-06-2024/11947/proposed-castle-law-law-in-queensland-will-allow-vigilantism-human-rights-legal-groups-say>

On June 11, 2024, ABC News published a report titled 'Castle Law petition to allow lethal force against home intruders tabled in Queensland parliament'

The report details that over 40,000 Queenslanders have signed a petition calling for Castle Law to allow Queenslanders to use lethal force against home intruders.

The full text can be accessed at <https://www.abc.net.au/news/2024-06-11/castle-law-petition-home-intruders-tabled-in-qld-parliament/103958648>

On June 10, 2024, The Guardian published an article titled ‘If home is your ‘castle’, how far can you go to defend it? In Queensland, it’s up for debate’.

The report cites the opinions of those who support the castle law proposal and those who consider it dangerous and unwise.

The full text can be accessed at <https://www.theguardian.com/australia-news/article/2024/jun/09/katters-australian-party-castle-law-petition-intruders-deadly-force>

On June 7, 2024, n Queensland published an article titled ‘As Katter pushes lethal force laws, ex-crim candidate says “it could have been me”’

The article gives the views of Michael Pugh, the Katter’s Australia Party candidate for the seat of Mundingburra in Townsville who supports castle law despite admitting that as a younger man he committed several crimes including housebreaking.

The full text can be accessed at <https://www.inqld.com.au/politics/2024/06/07/as-katter-party-pushes-lethal-force-laws-candidate-fesses-up-to-his-criminal-past>

On May 1, 2024, The North West Star published a report titled ‘Party takes physical defence law to parliament’

The article outlines the arguments offered by Katter Australia Party MP Nick Dametto supporting the adoption of castle law in Queensland.

The full text can be accessed at <https://www.northweststar.com.au/story/8612007/nick-dametto-calls-for-castle-law-in-queensland/>

On April 23, 2024, Katter Australia Party MP Nick Dametto posted on his Internet site a media release titled ‘Dametto defends Castle Law’

The media release details Dametto arguments in favour of Queensland adopting castle law.

The full text can be accessed at <https://nickdametto.com/dametto-defends-castle-law>

On April 22, 2023, The Conversation published an opinion piece by Caroline Light, Senior Lecturer on Studies of Women, Gender, and Sexuality, Harvard University, titled “‘Stand your ground’ laws empower armed citizens to defend property with violence – a simple mistake can get you shot, or killed’

The comment outlines the dangers inherent in United States stand your ground laws.

The full text can be accessed at <https://theconversation.com/stand-your-ground-laws-empower-armed-citizens-to-defend-property-with-violence-a-simple-mistake-can-get-you-shot-or-killed-204012>

On April 20, 2023, BBC News Washington published a report titled ‘What is a stand your ground law and which states have one?’

The report details the debate that has been sparked by the deaths of two unarmed people whose assailants were acting on stand your ground laws.

The full text can be accessed at <https://www.bbc.com/news/world-us-canada-65282084>

On April 19, 2023, CBS News published a report titled ‘What do "stand your ground" laws allow for — and which states have them?’

The report details the most common provisions of stand your ground laws and indicates which American states have these laws.

The full text can be accessed at <https://www.cbsnews.com/news/ralph-yarl-shooting-andrew-lester-stand-your-ground-laws/>

On January 10, 2023, RAND released an updated report titled ‘The Effects of Stand-Your-Ground Laws’

The report concluded that rather than acting as a deterrence to crime, stand-our-ground laws appeared to increase the incidence of it.

The full text can be accessed at <https://www.rand.org/research/gun-policy/analysis/stand-your-ground.html>

On January 18, 2022, The Duke Center for Firearms Law published a report titled ‘The Dangerous Expansion of Stand-Your-Ground Laws and its Racial Implications’

The report details studies that demonstrate that homeowners and others are likely to act on racial prejudice when using violence to defend themselves against supposed attacks.

The full text can be accessed at <https://firearmslaw.duke.edu/2022/01/the-dangerous-expansion-of-stand-your-ground-laws-and-its-racial-implications>

On March 10, 2021, the Journal of the American Public Health Association published a report titled ‘Effects of Laws Expanding Civilian Rights to Use Deadly Force in Self-Defense on Violence and Crime: A Systematic Review’

The reports findings dispute the view that castle law and similar doctrines act as a deterrent for those committing burglaries.

The full text can be accessed at

<https://ajph.aphapublications.org/doi/10.2105/AJPH.2020.306101>

On February 3, 2020, the lobby group Everytown Law published an editorial titled ‘Why We Stand Against Stand Your Ground Laws’ which detailed the harms the group believe are caused by these laws.

He full text can be accessed at <https://everytownlaw.org/why-we-stand-against-stand-your-ground-laws/>

On February 18, 2019, The Age published a report titled ‘Home invasions: Do you have the right to defend yourself?’

The article details what actions Australian law will allow homeowners and residents to take in the event of a home invasion.

The full text can be accessed at <https://www.theage.com.au/national/victoria/home-invasions-do-you-have-the-right-to-defend-yourself-20190218-p50y1p.html>

On March 30, 2016, The Conversation published an opinion piece by Marilyn McMahon Associate Professor in Law, Deakin University, titled ‘How far can you go to lawfully protect yourself in a home invasion?’

The comment examines the extent to which Australian law allows homeowners to defend their homes in the event of a robbery. It also compares Australian with United States laws.

The full text can be accessed at <https://theconversation.com/how-far-can-you-go-to-lawfully-protect-yourself-in-a-home-invasion-56900>

Arguments in favour of reducing restrictions on the use of force against home intruders

1. Australia has an increasing incidence of home burglaries and home invasions

Those who believe that Australian home occupants should have greater capacity to protect themselves against home intruders, including with the use of lethal force, note that since the decline that occurred at the beginning of the COVID epidemic, there has been a continued increase in the incidence of home burglaries and invasions. Supporters of greater self-protection rights claim these incidents are traumatic and place residents at risk of injury and death.

Recent data indicates an upturn in home invasions and burglaries in numerous Australian jurisdictions. A report published in The Herald Sun, on June 15, 2024, cited Victoria Police figures revealing 37,668 residential aggravated burglaries since 2014, with 90,000 victims left traumatised. <https://tinyurl.com/2yjzt5m9> On May 9, 2024, it was reported that data from the Victorian Crime Statistics Agency (CSA) reveals burglary and break-and-enter offences in residential locations have increased by 16 percent in the 12 months from 2022 to 2023. This is an increase from 21,752 incidents in 2022 to 25,260 in 2023.

<https://tinyurl.com/yfwv5k62> The seriousness of this offending is the reason Victoria Police has been allocating significant police resources towards a nightly Melbourne-wide operation named Trinity since March. This sees large numbers of local police working alongside the Air Wing, Dog Squad and Public Order Response Team every night to prevent burglaries and car thefts from occurring while the home occupants sleep.

<https://www.miragenews.com/victoria-police-responds-to-crime-data-for-year-1093408/> Similarly, Australian Bureau of Statistics data shows that the victimisation rate for attempted break-ins in Queensland increased from 2.3 percent of households to 3.2 percent between 2019-21 and 2021-23, an increase of nearly 50 percent. <https://www.abc.net.au/news/2024-03-20/australian-bureau-of-statistics-household-crime-qld-nt/103608778> Addressing a community gathering at Toowoomba in February 2023, Queensland Police Commissioner Katarina Carroll stated, ‘What we clearly see in the statistics in the last 12 months, there is a spike that we have seen, not only in Toowoomba but [also] across the state as well.’

<https://www.abc.net.au/news/2023-02-16/youth-crime-forum-toowoomba-community-safety-police/101977706>

Concern has been expressed about residential break-ins across the entire country. In the 2022-2023 financial year, 21,500 residents across Australia reported being confronted by a perpetrator during a break-in, according to the Australian Bureau of Statistics’ (ABS) Crime Victimisation Australia report. Over this period there were 185,300 reported break-ins and another 194,700 attempted break-ins. A Herald Sun report published on May 5, 2024, claimed that a home invasion takes place nearly once every 30 minutes in Australia.

<https://www.heraldsun.com.au/news/national/home-invasions-and-the-australian-suburbs-with-the-highest-crime-rates/news-story/50996f0c4d67dacc581f33c172f25185> The year before, during the 2020-2021 financial year, an estimated 3.5 percent of Australian households either experienced a break-in or attempted break-in with 4 percent (394,600) experiencing malicious property damage. <https://tinyurl.com/yr9mz327>

Recent news reports have stressed the trauma and injury victims can face during burglaries and home invasions. In February 2023, an octogenarian Queensland couple reported their fear when two teens, one armed with a metal bar and the other with a machete, tried to break into the couple’s home. <https://www.abc.net.au/news/2023-02-16/youth-crime-forum->

[toowoomba-community-safety-police/101977706](https://www.9news.com.au/national/cctv-released-hampton-park-burglary-melbourne/49f2b399-16eb-4f2a-aca4-50abbadce500) Also in February 2024 a septuagenarian couple had their home invaded when robbers pretending to be police broke down the couple's front door. The elderly couple were left anxious about further attacks.

<https://www.9news.com.au/national/cctv-released-hampton-park-burglary-melbourne/49f2b399-16eb-4f2a-aca4-50abbadce500> Another incident, in April 2024, involved a 66-year-old New South Wales man whose left arm was partially severed allegedly by one of two axe-wielding intruders who broke into his house.

<https://tinyurl.com/ybw29s3j> In May 2024, a woman resident's arm was fractured, and a wheelchair-bound man was stabbed in the neck during a home invasion by three intruders, one armed with a bladed weapon and the other with an axe.

<https://www.abc.net.au/news/2024-05-04/thornlie-home-invasion-and-burglary-leaves-man-and-woman-injured/103805504> Toowoomba South MP David Janetzki noted after a local community meeting called to voice concern about home burglaries, 'These are personal stories of men and women who are fearful in their homes, who sleep with baseball bats under their beds, locked windows in the middle of summer. We can't continue to live like that.'

<https://www.abc.net.au/news/2023-02-16/youth-crime-forum-toowoomba-community-safety-police/101977706>

2. The home is a special space which residents should be able to protect

Supporters of the homeowner or occupant's right to use up to lethal force against an intruder argue that home burglaries and invasions are intrusions that justify a forceful response. The home, they claim, is a privileged area requiring special protection.

Advocates of castle law argue they are reasserting the importance of controlling admission to an individual's home. They note that already the home is legally regarded as a private space to which there are limited rights of entry without the owner's expressed and continued permission. Even police cannot enter a person's home without their consent unless they have a warrant, are arresting a felon or have grounds for presuming a crime is being committed on the premises. <https://tinyurl.com/37fbbe7w>

Supporters of castle law claim that the home is a sanctuary within which the owner or occupant expects privacy and security. It is not a public space, where some level of intrusion or threat might be anticipated. In a statement advising residents how to respond in the event of a home invasion, Victoria Police acknowledge the extent to which most people see their homes as a place of refuge and expect to be safe there. The statement recognises, 'A home is a haven away from the world. It's the place we're at our most comfortable and relaxed.'

<https://www.news.com.au/national/courts-law/how-far-can-you-go-to-protect-yourself-and-your-family-inside-your-own-home/news-story/f611a412fa174bb7a80e17cd9dfd509b> Within the privacy and supposed security of their homes, people generally feel able to be vulnerable. For example, they may be asleep, undressed, bathing, engaged in intimate activity or recovering from illness. This vulnerability places the homeowner or occupant at a severe disadvantage relative to any intruder who enters the home intending theft or other harm. Queensland statistics indicate that the most common time for home invasions to occur is between 2am and 4am when occupants are likely to be asleep. The same Queensland data claims that one in eight of such home invasions involves a confrontation between the awakened occupants of the property and the invaders.

<https://pacificsecuritygroup.com.au/blog/reduce-the-risk-of-home-invasion/> For supporters of castle law, one response to this problem is to allow residents to use greater force to protect their properties. Queensland member of parliament Nick Dametto has stated, 'Your home should be your sanctuary and if someone intrudes or breaks into your sanctuary, you should

have the right to do what's necessary to protect your property, family or yourself.’
<https://www.northweststar.com.au/story/8612007/nick-dametto-calls-for-castle-law-in-queensland/>

Supporters of castle law also claim that force is justified in defence of one’s home because the intruder has often backed the occupier into a corner, leaving him or her without a safe option to retreat. In law, the duty to retreat, is a legal obligation in some jurisdictions. It is stated that a threatened person cannot harm another in self-defence (especially using lethal force) when it is possible instead to retreat to a place of safety. In Victoria, Victoria Police specifically advises homeowners against fronting up to an intruder. Instead, the organisation encourages homeowners to remember four steps to ‘help keep yourself and your family safe.’ These steps are ‘go to a safe place, call triple-0, stay calm and think as clearly as possible and, if possible, put a physical barrier between you and the threat.’
<https://www.news.com.au/national/courts-law/how-far-can-you-go-to-protect-yourself-and-your-family-inside-your-own-home/news-story/f611a412fa174bb7a80e17cd9dfd509b>

Supporters of castle law argue that when physically confronted by a burglar, the option of safe retreat is often taken away from the resident. New South Wales Police Detective Superintendent Joe Doueihi has claimed there has been a level of brazenness about some recent home invasions in his state. Victorian victim of a home invasion, Peter Dickson, made the same point, noting that the burglars seemed to seek physical confrontation with their victims. Dickson stated, ‘They knew we were there. They had no fear of that confrontation.’
<https://www.heraldsun.com.au/news/national/home-invasions-and-the-australian-suburbs-with-the-highest-crime-rates/news-story/50996f0c4d67dacc581f33c172f25185>

Some supporters of castle law make stronger claims. They argue that the resident is under no obligation to retreat within their own home. This more aggressive approach is often known as ‘stand your ground’ and is legally available within some United States jurisdictions. It permits a person who is threatened or attacked within their own home to stand their ground and claim self-defence even where an avenue of retreat or other means of avoiding the conflict is safely available. <https://theconversation.com/how-far-can-you-go-to-lawfully-protect-yourself-in-a-home-invasion-56900> The implication is that when an intruder enters another person’s home with the intention of committing a crime, the resident can automatically take self-protective action against the intruder, up to and including the use of lethal force.

3. Australian law should protect the home occupier’s right to self defence

Supporters of castle law argue that it is provided for by the right of all human beings to act in their own defence. <https://guide-humanitarian-law.org/content/article/3/self-defense/> They claim that current Australian laws need to be extended and clarified so that the right to self-defence during home invasions is explicitly protected by the law.

The rule of law in most nations of the world aims to protect individuals’ right to life. The Department of the Australian Attorney General states, ‘Under human rights law, countries ... must not deprive a person of life arbitrarily or unlawfully. Countries also have a duty to take appropriate steps to protect the right to life and to investigate arbitrary or unlawful killings and punish offenders.’ <https://tinyurl.com/4cwhnmyb>

This right to life determines the right to self-defence of citizens in Australia and many other nations around the world. Acting in self-defence involves an individual acting to prevent

another person unjustly or arbitrarily robbing them of life. The right to self-defence also extends to individuals defending themselves against others who present the threat of injury or the loss of property. These provisions are outlined on the homepage of the Department of the Australian Attorney General which states, ‘Conduct which would otherwise amount to an offence is not criminal if it is done in self-defence... The application of the defence [extends] beyond circumstances involving a threat of personal harm. A plea of self-defence is also available when action is taken to defend property or to repel or remove trespassers.’
<https://tinyurl.com/4jz7jxuv>

Critics of an individual’s right to act in self-defence claim that it has a range of limitations or restrictions. Under the law in most Australian states the application of a right to self-defence needs to be proportionate (that is, in accord with the level of threat presented). Those who want castle law used to extend the right to personal self-defence argue that proportionality provisions should be relaxed.

Supporters of castle law want to see the balance shifted in the application of the right to act in self-defence during a home invasion. Katter Party MP Nick Dametto, who represents the Queensland electorate of Hinchinbrook, wants to see presumptions change so that the law recognises the inherently aggressive intent of home invaders. He has emphasised that being able to defend yourself inside your own home is not promoting vigilantism or encouraging unnecessary violence. He has stated, ‘In a split-second decision it can be either fight or flight...the consequences of [a homeowner’s] fight response should be protected by legislation, but currently there are gaping holes in that.’
<https://www.townsvillebulletin.com.au/news/townsville/fight-response-mp-nick-dametto-calls-for-adoption-of-castle-law/news-story/35cb84e172ee4c719f602b6e5e7ad540>

The Katter Party position was detailed in a petition posted on May 2, 2024. The petition states in part, ‘Current legislation fails to adequately protect victims from prosecution following the act of defending themselves or others against an intruder after a home invasion.

Every Queenslanders deserves the right to protect themselves, their loved ones, and their property. Currently, in Queensland if a person chooses to defend themselves or others during a home invasion, they may only use force that is reasonably necessary in all of the circumstances. What is reasonable in all the circumstances is open to a broad interpretation. Homeowners may end up facing criminal charges such as assault or murder.

Queenslanders do not feel safe in their own homes knowing that offenders have more rights than occupants. The law does not protect victims of crime and forces them to second-guess their actions when faced with a split-second, life-threatening situation. Good laws should be in place to protect good people.

Castle Law (or the Castle Doctrine) is a principle grounded in the fundamental right to self-defence. Introducing Castle Law in Queensland would give victims the right to use whatever force necessary to protect themselves, others within the premises and their property if faced with an intruder. Giving victims the right to defend themselves without fear of prosecution puts the rights of victims before the rights of criminals.’
<https://www.parliament.qld.gov.au/Work-of-the-Assembly/Petitions/Petition-Details?id=407>

4. The circumstances of a home invasion justify the use of disproportionate force

Australian self-defence laws generally require that the force used against an assailant be proportionate to that being used against the victim of the attack. Supporters of castle law argue that the circumstances of a home invasion justify the use of what might otherwise be regarded as excessive force against the intruder. They claim that this can extend to lethal force.

Western Australia is currently the only Australian jurisdiction which allows disproportionate force as part of self-defence during a home invasion. Section 244 of the Criminal Code in Western Australia creates the 'defence against home invasion'. This defence was passed into law in 2000. It was introduced in response to a growing number of 'home invasion' offences during which burglars were assaulted by homeowners, and police were charging the homeowners for defending themselves in their own property. The defence gives persons in possession of a dwelling (i.e., a home) the right to use any force against a 'home invader.' This includes force which amounts to death if the home occupier believes the home invader will use or threatens to use violence to any person.

<https://www.jjacksoncriminaldefence.com.au/defence-against-home-invasion-an-alternative-to-self-defence/>

The Western Australian defence is based on the presumption that homeowners faced with an intruder often make decisions rapidly, without being able fully to think them through. The presence of the intruder in the victim's home is likely to create a sense of immediate and potentially lethal threat and thus the perceived need to act urgently. In such a scenario, the use of lethal force can be viewed as a proportionate response to the imminent danger posed by the intruder. The amount of force that is ultimately used is difficult to assess by reference to what a reasonable person in the position of the victim would do. Most people are unlikely to have ever encountered a home intruder and therefore have no reliable understanding of what constitutes 'reasonable' self-defence. They are likely to act instinctively rather than decide on a 'reasonable' and proportionate use of force based on previous experience.

<https://www.jjacksoncriminaldefence.com.au/defence-against-home-invasion-an-alternative-to-self-defence/>

Fear is also likely to lead the victim of a home invasion to respond in a way that is later judged disproportionate. Personal safety and wellbeing consultant Kevin Ellis has attempted to explain the level of threat a person is likely to feel in response to a home invasion. Ellis writes, 'Home invasions are a massively fearful and stressful situation that is being encountered more and more around our suburbs and towns. Such offences drive into every element of psychological security – people have entered your home without your permission and are intent on stealing or vilifying everything that is precious to you.'

<https://www.kevinellis.com.au/defending-ones-property-against-home-invasions/> Supporting the Western Australian 'defence against home invasion' law, Ian Dobinson, from the University of Technology Sydney, has stated, 'Given the circumstances of home invasion, they're not rational circumstances at all. They involve extreme fear, high emotion and all of these things need to be considered. So, if someone does kill and even where that may be seen to be excessive, in a home invasion situation, they are still entitled to a full defence.'

<https://www.sbs.com.au/news/insight/article/that-wasnt-murder-it-was-self-defence-how-far-can-you-legally-go-to-protect-yourself-against-an-intruder/6hco6sh7s>

Jerry Farsoun, a United States personal safety consultant, has outlined the range of responses that any individual might have during a home invasion. He writes, 'The amount of terror and fear experienced during a home invasion is immense. Because of this, victims often fail to

think clearly and make tragic mistakes. Some are overcome with fear and literally freeze in their tracks. Others run for their very lives. There are also some that immediately go into attack mode and attempt to fight off the intruders.’ <https://www.meetleelou.com/blog/item/11-what-to-do-during-home-invasion> Farsoun argues that all of these are instinctive reactions, products of the fight or flight response, and all (including the urge to attack) are predictable given the situation. Farsoun’s assessment suggests that expectations of an objectively reasonable and proportionate response to a home invasion are not realistic. Supporters of castle law argue that Australia should recognise the unique threat posed by home invasion and allow residents to use the level of defensive force they believe is necessary without facing legal repercussions.

5. Occupants using lethal force in self-defence can deter home invaders

Supporters of castle law argue that allowing homeowners or occupants to use lethal force in defence of their homes can act as a deterrent to potential intruders. The possibility of encountering armed resistance may dissuade criminals from attempting to break into homes, thereby contributing to overall community safety.

Nick Dametto, the Queensland MP who introduced the castle law private members bill into the Queensland Parliament, has stated, ‘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.’ <https://documents.parliament.qld.gov.au/com/CSLAC-40FE/CCDDOPCLAB-649D/Dametto%20written%20briefing.pdf>

Studies of particular jurisdictions demonstrate that the imposition of castle law and the shooting of alleged burglars can reduce the incidence of burglaries. The State of Texas enacted its castle doctrine law on September 1, 2007. Two months later, a 61-year-old computer technician, Joe Horn, fatally shot two men he believed were robbing a neighbour’s home. Mr Horn was subsequently not brought to trial. Harris County District Attorney Kenneth Magidson stated, ‘The use of deadly force is carefully limited in Texas law to certain circumstances. ... In this case...the grand jury concluded that Mr. Horn’s use of deadly force did not rise to a criminal offense.’

<https://abcnews.go.com/TheLaw/story?id=5278638&page=1> A study published in the journal of the American Psychological Association examined the deterrent effect of the Texas law change and the killing of two accused burglars that was sanctioned by the new law. The report stated, ‘The Horn shooting incident in Houston in November 2007, served to publicise the Texas law to a great extent.’ Daily data of residential and business burglary, over the period from January 1, 2007, to August 31, 2008, were obtained from the Houston Police Department. Interrupted time-series designs were employed in the study to analyse the intervention effects. The findings suggest a deterrent effect of the law and the Horn shooting; both residential and business burglaries were reduced significantly after the shooting incident in Houston. <https://awspntest.apa.org/record/2015-43603-005>

The study suggests that media coverage of incidents in which residents use lethal force enhances castle law’s deterrent effect. The Joe Horn shooting incident sparked a media frenzy via lengthy reports by Fox News, ABC, NBC, U.S.A. Today, the Associated Press, the Daily Telegraph London, the National Post Canada, and the New Zealand Herald. A search of the United States newspaper database revealed that there were 30 articles covering the story in Houston Chronicle in the month and half after the shooting incident, as well as reports on the

four local TV stations and many other local newspapers in the Houston metropolitan area. <https://tinyurl.com/bd28u5f2>

Those who conducted the Houston research note, ‘According to deterrence theory, two crucial components, certainty of detection and severity of punishment, largely determine the deterrent effect of a law.’ With castle law, the burglar’s punishment is inflicted immediately by the victim of the crime and because castle law can justify lethal force, the punishment can also be extreme. <https://tinyurl.com/bd28u5f2> The researchers believe that a combination of publicity, certainty and severity made castle law an effective deterrent.

Australian supporters of castle law also argue that the criminal justice system does not adequately deter potential burglars. Firstly, they claim that too many burglars go uncaught. Of the 17,246 non-aggravated residential burglaries committed in 2022, 14,621 remain unsolved. This is 85 percent. <https://tinyurl.com/3w9st4ps> Further, only a quarter of all aggravated burglaries committed in Victoria committed over the same period resulted in an arrest. Aggravated burglars, those who use significant force, have a three in four chance of not being punished for their crime. <https://vic.liberal.org.au/media-releases/2024-03-18-battin-lack-of-police-investment-leaves-crimes-unsolved> It has also been claimed that even when the criminal is found and convicted, the sentences being given are too lenient. Examining sentencing data in Victoria from 2005 to 2010, a 2011 study of sentencing practices found that the median term of imprisonment for aggravated burglary was two years. The available maximum penalty for this offence is 25 years’ imprisonment. The most given penalty is only 8 percent of the available maximum penalty. https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Aggravated_Burglary_Current_Sentencing_Practices.pdf Critics of current attempts in Australia to discourage burglary and home invasion argue that neither the chance of apprehension nor the length of time spent in prison is great enough to deter burglars. Castle law, they argue, is needed to act as a deterrence.

Arguments opposed to reducing restrictions on the use of force against home intruders

1. Castle law increases the danger associated with home invasions and lifts homicide rates. Critics of castle law argue that it puts homeowners and residents at greater risk and does not act as a deterrent to reduce the likelihood of these offences. Allowing lethal force increases the likelihood of fatal outcomes for both intruders and homeowners. Critics contend that situations may escalate quickly, resulting in unintended deaths that could have been avoided with less lethal means of defence.

It has been suggested that one response to castle law could be that burglars will become more heavily armed and home invaders more violent to counter possible pre-emptive attacks from homeowners and occupants. A 2013 study found that after castle law legislation was passed in Arizona in 2006 there was an increase in armed robbery. https://www.cjcj.org/media/import/documents/wallace_castle_doctrine.pdf This result was immediate and suggested to the researchers that burglars may have switched from unarmed to armed robbery as a response to castle law.

The general advice of government victim support agencies and the police is not to attack a burglar or home invader. The Victorian Government’s Victims of Crime advice site recommends, ‘The most important thing is to try to ensure your safety and that of anyone else

in the house. If you believe an intruder is on your property or if anyone is in immediate danger leave or find a safe place to hide, if possible. Call police...’

<https://www.victimsofcrime.vic.gov.au/aggravated-burglary> Victoria Police offer detailed advice which involves victims of a home robbery remaining passive and co-operative to minimise their risk of injury. The police advise ‘Remain calm. Activate an alarm, if safe to do so. Do exactly what the offender says, do not give them any items they did not ask for. Tell the offender before you move, so they aren’t surprised. Where possible, keep your distance from the offender. Speak only when spoken to. Avoid eye contact. Make sure the offender can see your hands.’ <https://www.police.vic.gov.au/responding-robbery-or-armed-robbery> This non-provocative behaviour is intended to minimise the likelihood of being harmed. Professional home security companies generally offer similar advice. Security.org’s website advises, ‘Don’t try to overpower them... You don’t know what weapons they might have on them, what training level they might have, or what they intend to do. You can be sure that any type of threat will almost certainly cause the situation to escalate.’ <https://www.security.org/home-security-systems/survive-home-invasion/>

Data gathered in Australian jurisdictions suggest that where residents attempt to defend their homes their likelihood of being attacked by an intruder is greater. In a 1989 study conducted by the Australian Institute of Criminology it was found that in 75.5 percent of robberies, victims did as they were told. Where victims did not do as they were told, the most common response was for burglars to physically attack the victim, with two robberies ending in death resulting from use of a weapon. <https://www.aic.gov.au/sites/default/files/2020-05/armed-robbery-from-an-offenders-perspective.pdf> In more recent United States studies in jurisdictions that have introduced castle law, there was found to be a significant increase in homicides, though the data did not discriminate between the deaths of burgled residents and the deaths of intruders.

A 2013 United States study found that in states where castle law had been implemented there was an 8 percent increase in murder and non-negligent manslaughter. The study’s researchers concluded, ‘The laws induce an additional 500 to 700 homicides per year across the 23 states in our sample that enacted castle doctrine laws.’

https://www.nber.org/system/files/working_papers/w18134/revisions/w18134.rev0.pdf One of the most recent United States studies of the impact of ‘stand your ground’ legislation or castle law arrived at similar findings. Published in 2022, it concluded, ‘This cohort study found that the staggered adoption of SYG (stand your ground) laws in US states was associated with increases in homicide and firearm homicide rates across the US. These increases reach 10 percent and higher in several Southern states, while no states had significant reductions in violent deaths, as advocates often argue when justifying these laws. The accumulation of evidence established in this, and other studies point to harmful outcomes associated with SYG laws. Despite this, SYG laws have now been enacted in most states, and the uptake of new SYG bills continues to be popular, unnecessarily risking lives.’ <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2789154>

Finally, studies have claimed that the introduction of castle law does not deter armed burglars from committing these crimes. A 2012 United States study specifically researched this question. The researchers concluded, ‘Results indicate that the prospect of facing additional self-defence does not deter crime. Specifically, we find no evidence of deterrence effects on burglary, robbery, or aggravated assault.’

https://www.nber.org/system/files/working_papers/w18134/w18134.pdf The Houston findings that castle law deterred residential burglaries has been queried because the effect

appeared to be dependent on a follow-up high profile case of two burglars being fatally shot. The same effect was not observed in other Texas cities.

https://www.cjcj.org/media/import/documents/wallace_castle_doctrine.pdf

2. Castle law leads to mistaken, ill-judged shootings and innocent casualties

Opponents of castle law claim that it has dangerous and unintended consequences, leading to the shooting of innocent people who were not burglars or home invaders. In high-stress situations, homeowners or occupants may misjudge threats or mistakenly identify innocent individuals as intruders, leading to tragic consequences. Critics argue that the use of lethal force in home defence increases the risk of such mistakes. It is also claimed that many of those claiming the right to use lethal force in self-defence may be unstable and have perceptions of threat that are based on prejudice.

As castle law spread to 45 American states, there have been increasing reports of innocent people being shot innocuous activities. In April 2023, a 20-year-old woman was shot and killed as a passenger in a car which accidentally pulled into the wrong driveway of a house in Hebron, New York. <https://edition.cnn.com/2023/04/18/us/woman-shot-wrong-driveway-upstate-new-york/index.html> This incident occurred only days after a 16-year-old African American boy in Kansas City was shot twice in the head by a white homeowner after going to the wrong address to pick up his siblings. <https://edition.cnn.com/2023/04/18/us/woman-shot-wrong-driveway-upstate-new-york/index.html> Also in the same month, an 18-year-old cheerleader from Elgin, Texas, was shot in the back and subsequently had her spleen removed after one of her friends accidentally tried to enter the wrong car. As the group of girls drove away, the owner of the other car fired into their vehicle. (Under United States law, castle law is often extended to include defence of a person's vehicle.)

<https://www.nbcnews.com/news/us-news/payton-washington-texas-cheerleader-shot-update-father-rcna80420> In September 2022, a 19-year-old Tampa University student was fatally shot when he mistakenly opened the rear door of a car he believed was his Uber ride.

<https://tinyurl.com/4xrsnxu9> Robert Spitzer, professor emeritus of political science at State University of New York, Cortland, has warned of the dangers he believes are created by castle law. Professor Spitzer has stated, 'It means more civilians owning guns and more civilians carrying guns with them around in society... Civilians lack the training, skill, judgment and therefore the likelihood of mistakes or the likelihood of road rage or the likelihood of spontaneous anger resulting in the deployment and firing of a gun by a person carrying it are much greater and the murder statistics bear that out.'

<https://www.pbs.org/newshour/show/stand-your-ground-laws-under-scrutiny-again-after-recent-spate-of-shootings>

United States data suggests that castle law and 'stand your ground' laws encourage gun owners with prejudiced, negative perceptions of young people and/or racial minorities to act on the mistaken belief they pose a threat and kill or injure members of these groups. In December 2019, the peer-reviewed journal Injury Prevention published an analysis of CDC mortality data treating gun-related homicides of Florida adolescents aged 15 to 19 years from 1999 to 2017. The study found a 45 percent increase in gun-related homicides of adolescents in this age group in Florida after the Stand Your Ground law was passed in October 2005. The increase in the rate of homicides of Black adolescents was even greater; there were 52 percent more homicides of Black adolescents reported in the period following the Stand Your Ground law passage compared to before the law. <https://everytownlaw.org/why-we-stand-against-stand-your-ground-laws/>

United States studies have shown that not only has castle law resulted in the deaths or serious injury of innocent people, drawn disproportionately from minority groups, but it has also encouraged people with histories of mental instability, drug addiction and criminal behaviour to take dangerous and ill-judged actions that they then claim were self-defence. A study of Florida's castle and 'stand your ground' laws through 2014 found that the laws' chief beneficiaries were 'those with records of crime and violence'. Nearly 60 percent of those making self-defence claims when a person was killed had been arrested at least once before, one-third had been accused of violent crimes or drug offenses in the past, and over one-third had illegally carried guns in the past or had threatened others with guns. In 79 percent, the assailant could have retreated to avoid the confrontation. In 70 percent of the cases, the person killed was unarmed. <https://rockinst.org/blog/stand-your-ground-the-castle-doctrine-and-public-safety/>

Australian critics of castle law are concerned that such provisions could also see innocent people being mistakenly shot in the name of self-defence. Queensland Law Society president Rebecca Fogerty has stated, 'The proposed legislation...is drafted in exceptionally broad terms, which mean that there is no requirement for there to objectively be a risk. That's a circumstance that's going to create all sort of serious situations where people who are entirely innocent could be killed, and then there's no recourse for the community. There's no recourse for a senseless loss of life, and that's not an acceptable outcome.' <https://nit.com.au/12-06-2024/11947/proposed-castle-law-law-in-queensland-will-allow-vigilantism-human-rights-legal-groups-say> Fogerty further stated, 'KAP's (Katter Australia Party) proposal removes the need to use reasonable force, meaning any person could legally kill another person for being on their property or damaging their property – any time another person feels under threat. This could result in tragic consequences; for instance, if two teenagers ran to their neighbours' house to escape domestic violence, they could be met with unaccountable gunfire.' [https://www.lawyersweekly.com.au/newLaw/39972-proposed-castle-law-a-dangerous-response-to-crime-in-queensland](https://www.lawyersweekly.com.au/newlaw/39972-proposed-castle-law-a-dangerous-response-to-crime-in-queensland)

3. Castle law undermines the principles of proportionate response and reasonable force in self defence

Critics of castle doctrine and 'stand your ground' laws argue that these provisions encourage excessive responses from people who perceive they are being attacked. Castle law can weaken the principle of proportionality in self-defence. Proportionality in this context refers to the idea that the level of force used in self-defence should be commensurate to the threat faced. This principle is crucial in legal systems to ensure that self-defence does not escalate into unnecessary harm or death.

Opponents of castle law argue that proportionality or 'reasonable force' is a fundamental safeguard required to ensure that a person who believes he or she is under attack does not respond excessively. Proportionality means that an act of self-defence in response to an apparent threat must reflect the severity of the threat itself. The force used in self-defence must be in proportion to the hazard being faced. For instance, using a weapon, such as a gun or a knife, against an unarmed assailant might be considered excessive or disproportionate. <https://strategiclawyers.com.au/what-counts-as-self-defence-under-australian-law/> The principle of proportionality allows anyone acting in self-defence to use only the level of force necessary to defend themselves. Opponents of castle law and 'stand your ground' provisions argue that these principles are being used to justify unnecessary force, up to lethal force, by people claiming they were acting in self-defence, without regard for the extent of the threat.

Critics claim that these new castle laws or ‘stand your ground’ laws have distorted the notion of self-defence to the point where it is possible to be excused for actions that would previously have been regarded as crimes. Every Town for Gun Safety, a United States lobby group seeking to reduce the country’s reliance on firearms, has stated, ‘Stand Your Ground laws upend centuries of traditional self-defence doctrine and threaten public safety by encouraging armed vigilantism, allowing a person to kill another person...even when they can clearly and safely walk away from the danger.’ <https://tinyurl.com/58a8h3re> Brady, a United States lobby group against gun violence, has similarly stated, ‘Stand Your Ground laws have fundamentally dismantled the standards for justifiable and proportional self-defence. They allow anyone who believes their life to be in danger to use lethal force on any perceived threat and completely remove the duty to retreat in a public space.’ <https://www.bradyunited.org/resources/issues/stand-your-ground-laws>

Studies have demonstrated that castle law and ‘stand your ground’ provisions have been successfully used by defendants in the United States to avoid charges or convictions for murder and manslaughter. The Tampa Bay Times examined the effects of Florida’s 2005 stand your ground law in more than 200 cases (about half of them fatal) through to mid-2012. It reported that the law appeared to advantage ‘those with records of crime and violence.’ Nearly 60 percent of those making self-defence claims had been arrested at least once before; a third of these 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. In many of these cases defendants appear to have employed what would formerly have been regarded as excessive force. In 79 percent of the cases, the assailant could have retreated to avoid the confrontation and in 68 percent, the person killed was unarmed. <https://tinyurl.com/58a8h3re> In nearly a third of the cases, The Tampa Bay Times explained, ‘defendants initiated the fight, shot an unarmed person or pursued their victim – and still went free’. Overall, ‘stand your ground’ claims resulted in dismissals nearly 70 percent of the time. Judges appeared uncertain about the boundaries of the doctrine, and court outcomes were inconsistent. <https://scholars.org/contribution/why-stand-your-ground-laws-are-dangerous>

Australian critics of castle law argue that, if implemented in Australia, this law would allow people to apply up to lethal force without considering whether this was appropriate. Dan Creevey, senior partner at Creevey Horrell Lawyers, has warned that the castle law bill proposed by the Katter Australia Party is a ‘dangerous response to crime in Queensland’ and that the amendment ‘should be met with extreme caution.’ Creevey has stated, ‘It is clearly inconsistent with the Criminal Code’s detailed interpretation of the use of “reasonable force.”’ For example, the draft laws within the bill will allow a person to use force that is intended to cause death or grievous bodily harm to intruders without the person reasonably believing that the use of the force is necessary to prevent death or grievous bodily harm.’ [https://www.lawyersweekly.com.au/newLaw/39972-proposed-castle-law-a-dangerous-response-to-crime-in-queensland](https://www.lawyersweekly.com.au/newlaw/39972-proposed-castle-law-a-dangerous-response-to-crime-in-queensland) Creevey further stated, ‘Unfortunately, the Bill would permit a form of murder without legal recourse in situations where there may be no direct threat to a person’s life. Ultimately, the Bill is a dangerous response to crime in Queensland.’ <https://tinyurl.com/53frtwft>

4. Under castle law, protecting property can be a justification for lethal force
In modern western societies, crimes against property, such as theft, are no longer capital offences for which the offender can be executed. These societies have progressively attached increasing value to human life above possessions. <https://tinyurl.com/yx8mpa4d> Critics of castle law argue that there are jurisdictions where this law can be used to justify the

homeowner or occupant taking a burglar's life to defend residents' property. Its opponents claim this is morally wrong and that no law should put property rights above human life. <https://www.austlii.edu.au/au/journals/SCULawRw/2001/4.pdf>

Most American states do not explicitly sanction homeowners or occupants using lethal force to defend their property. However, this is allowed in some states, and, in most others, laws allow a resident to kill to defend property in an escalating situation. Eugene Volokh, Senior Fellow at the Hoover Institution at Stanford, and Distinguished Professor of Law Emeritus and Distinguished Research Professor at UCLA School of Law has explained the extent to which United States law allows lethal force to defend possessions. Professor Volokh writes, 'In nearly all states, you can't generally use deadly force merely to defend your property. Texas appears to be an exception, allowing use of deadly force when there's no other way to protect or recapture property even in situations involving simple theft or criminal mischief.' Professor Volokh also notes that in all American states it is legal to use non-deadly force to defend property and if this then escalates into a lethal conflict in which the burglar is killed, then the homeowner will not be prosecuted. In many states it is also possible for residents to move immediately to the use of deadly force if they anticipate that defending their property through less extreme means would expose them to too great a risk.

<https://reason.com/volokh/2020/06/02/are-people-allowed-to-use-deadly-force-to-defend-property/>

The Joe Horn case is often presented as an example of the way in which laws such as those operating in Texas allow a resident to kill in defence of property. In November 2007, two months after Texas' new 'castle doctrine' law took effect, a 61-year-old retiree named Joe Horn called the police to report a pair of burglars in the home next to his. Horn explained that he was armed and asked the police dispatcher if he should shoot the burglars. He was told, 'Nope, don't do that. No property worth shootin' somebody over, OK?' After waiting several minutes, Horn went out into his yard, called on the fleeing burglars to stop and when they did not, fatally shot both. Horn had previously told the dispatcher, 'The laws have been changed...since September the first, and I have a right to protect myself. I ain't gonna let them get away with this shit.' <https://www.texasobserver.org/joe-horn-and-castle-doctrine-shootings-in-texas/> On June 30, 2008, a Harris County Grand Jury elected not to indict Horn for any criminal offence related to the shootings. It determined he had committed no criminal offence as his actions were justifiable given his perception of the threat he faced. Houston Criminal Attorney John Floyd and others have disputed this finding. Floyd writes, 'If that is the way a grand or a petit jury interprets the law of self-defence, then the right to life has succumbed to the value of property.' <https://www.johntfloyd.com/joe-horn-free-of-criminal-liability/>

Opponents of the Katter Australia Party's attempt to introduce castle law in Queensland are concerned that this would elevate property rights to the point where they can be used to justify taking the life of a burglar. Nick Dametto, the deputy leader of Katter's Australian Party (KAP), and the member for Hinchinbrook in the Queensland Legislative Assembly, said in defence of the proposed law, 'Your home should be your sanctuary and if someone intrudes or breaks into your sanctuary, you should have the right to do what's necessary to protect your property, family or yourself.'

<https://www.northweststar.com.au/story/8612007/nick-dametto-calls-for-castle-law-in-queensland/> Many of those who support the proposed legislation see it as giving homeowners and residents the entitlement to use lethal force in defence of property. One, apparently a former police officer, stated, 'Myself and many other former and serving Police colleagues,

believe that anyone should be allowed to use lethal force to protect life AND PROPERTY without the risk of being prosecuted. Give the power back to the victims.’

<https://tinyurl.com/mrxjyc7c> Opponents of these views argue that they have been repeatedly rejected by different Australian courts and parliaments. For example, in 2002, New South Wales introduced new laws extending the right to self-defence. However, the government was careful to ensure that this did not mean that protecting property became a justification for taking human life. It stated, ‘There can be no circumstances where it is appropriate to intentionally or recklessly take a human life in the protection of property or to prevent criminal trespass.’ <https://tinyurl.com/39wverm5>

5. Australian law already allows up to lethal force to be employed in self-defence. Critics of the castle law bill put before the Queensland parliament argue that the changes proposed in the bill are not necessary. They claim that the different states, including Queensland, already allow homeowners and residents to act in their own defence should they encounter burglars or home invaders.

Though every Australian state deals with this issue somewhat differently, the overarching principle is that self-defence can be used where a person believes on reasonable grounds that it is necessary to protect themselves, another person or their property. This can be found by reference to section 418 of the Crimes Act 1900 (NSW) and is summarised as follows: ‘A person is entitled to use such conduct as he or she genuinely believes is reasonable and necessary for a ‘defensive purpose’ (that is, in self-defence or in defence of another, or to prevent or end an unlawful imprisonment or protect property).’

<https://www.nationalcriminallawyers.com.au/stand-your-ground-can-you-be-charged-for-protecting-your-home/>

When assessing what is ‘reasonable’ and ‘necessary,’ the Courts can analyse and accept into evidence, subjective facts about the accused’s personal circumstances at the time of the offence. This could include for example, the mental state of the accused and whether his/her perception of danger directly influenced their response.

<https://www.nationalcriminallawyers.com.au/stand-your-ground-can-you-be-charged-for-protecting-your-home/> This means they are not imposing some externally defined standard of reasonable response. Rather they are recognising the nature of the threat as perceived from the victim’s perspective.

Australian legal experts acknowledge that the approach adopted under Australian law is more conservative than that followed in most of the United States, however, they argue that that does not disadvantage Australian homeowners and residents. In an opinion piece published in The Conversation on March 30, 2016, Marilyn McMahon, Associate Professor in Law at Deakin University, explained the actions allowable under Australian law to homeowners and residents in the event of a burglary or home invasion. Professor McMahon writes, ‘Although the laws of self-defence vary across Australia, most laws require in essence that the person believed on reasonable grounds that it was necessary in self-defence to do what they did. And, from their perspective, there must have been reasonable grounds for that belief.’

<https://theconversation.com/how-far-can-you-go-to-lawfully-protect-yourself-in-a-home-invasion-56900>

Professor McMahon further explains, ‘The approach generally adopted in Australia differs significantly from the “stand your ground” approach to self-defence that has been influential in the US. “Stand your ground” generally encourages “self-help” by removing any

requirement of retreat. It permits a person who is threatened or attacked to stand their ground and claim self-defence even where an avenue of retreat or other means of avoiding the conflict was safely available... Approaches to self-defence in Australia still tend to emphasise reasonable necessity and discourage vigilantism. Police advise Australian homeowners against keeping weapons for protection and instruct them to immediately contact police if they suspect an intruder is in their home.' <https://theconversation.com/how-far-can-you-go-to-lawfully-protect-yourself-in-a-home-invasion-56900>

Despite Australian law's more conservative response to self-defence, experts argue that Australian homeowners and residents are not disadvantaged so long as they act in the genuine belief that the defence measures they take are necessary. Sydney law firm National Criminal Lawyers have drawn on a recent case of a homeowner sent to trial after the death of a burglar outside his home. This case has been used to demonstrate the operation of Australian law in such circumstances and juries' readiness to support defendants' view of the need for violent action. A man had broken into the home of Ben Batterham and his young family. Mr Batterham discovered the intruder in the bedroom of his seven-month-old daughter, armed with several knives and high on methamphetamines. A struggle ensued which led to Mr Batterham using a chokehold on the intruder in the middle of a suburban street. The intruder subsequently died, and Mr Batterham was tried for murder and found not guilty, despite having pursued the intruder into the street and used a stranglehold. The jury judged that the homeowner's response was reasonable from his perspective. <https://www.nationalcriminallawyers.com.au/stand-your-ground-can-you-be-charged-for-protecting-your-home/>

Further implications

Concern has been expressed that widespread adoption of castle law in Australia could upset the current consensus regarding strict gun regulation in this country.

Australia is internally recognised as a country which has effectively limited gun ownership. The regulatory system in Australia requires both the licensing of the individual shooter and registration of each individual firearm, and prospective gunowners face a national registry and 28-day wait period before approval is granted. <https://au.news.yahoo.com/australia-applauded-at-us-press-conference-after-traumatising-mass-shooting-225247256.html> Prospective gunowners must also be at least 18, undergo firearms safety training, provide a 'genuine reason' for buying a gun other than personal protection, and provide documentation about storage arrangements for their weapon. <https://www.businessinsider.com/does-gun-control-work-2018-2> Legal reasons for owning a gun include hunting, sport shooting, pest control, and collecting. Farmers and farm workers are specifically seen to require firearms for pest control and the humane dispatch of injured animals; however, they are unable to have unlicensed firearms and all the qualifications and restrictions that apply to the general population regarding safety and psychological fitness also apply to them. Licences must be renewed every 3 or 5 years (or 10 years in the Northern Territory, South Australia, and Queensland). https://en.wikipedia.org/wiki/Gun_laws_of_Australia#:~:text=The%20states%20issue%20firearms%20licences,least%2018%20years%20of%20age.

The above regulations were instituted as part of Australia's National Firearms Agreement in 1996, following the Port Arthur massacre. Since the adoption of this regulatory system there has been a dramatic decline in gun ownership. In 1997, the year after the Port Arthur

massacre, Australia had 6.52 licensed firearm owners per 100 population. By 2020, that proportion had almost halved, to 3.41 licensed gun owners for every 100 people. While the proportion of households owning a firearm has also dropped by 75 percent over the last several decades. <https://tinyurl.com/khb4ky7z> Part of the reason for this decline is that Australia does not regard personal protection as a legitimate reason for owning a gun. Currently, Australia has successfully broken the nexus between self-defence and gun-ownership.

A very different situation exists within the United States. 72 percent of United States gunowners say protection is the major reason they own a gun. Only 32 percent say they own a gun for hunting, 30 percent for sport shooting, 15 percent for collecting and just 7 percent because it relates to their work. <https://www.pewresearch.org/politics/2023/08/16/for-most-u-s-gun-owners-protection-is-the-main-reason-they-own-a-gun/> Where less than 4 percent of Australia's population owns a gun, in the United States the figure is 32 percent, with 44 percent living in a household where a gun is kept. <https://news.gallup.com/poll/264932/percentage-americans-own-guns.aspx> One of the major differences between the two nations appears to be their attitude to gun ownership; while Australians no longer see guns as necessary for self-defence, in America, protection is the primary reason for owning one.

This situation would be less concerning if increased gun ownership actually made Americans safer. The opposite appears to be the case. In 2022, 48,117 people died by firearms in the United States — an average of one death every 11 minutes. Over 26,993 people died by firearm suicide, 19,592 died by firearm homicide, 472 died by unintentional gun injury, and an estimated 649 were fatally shot by law enforcement. <https://tinyurl.com/3yk8sfux> A 1998 study of gun-related fatalities inside people's homes in three major United States cities sheds light on these more recent figures. The study found that for every time a gun in the home was used in a self-defence or legally justifiable shooting, there were four unintentional shootings, seven criminal assaults or homicides, and 11 attempted or completed suicides. The researchers concluded, guns kept in homes are more likely to be involved in a fatal or nonfatal accidental shooting, criminal assault, or suicide attempt than to be used to injure or kill in self-defence. <https://pubmed.ncbi.nlm.nih.gov/9715182/> The precise nature of the criminal assaults or homicides in the 1998 study was not explained, but it is unlikely that these deaths or injuries all occurred at the hands of intruders. Over half of all intimate partner homicides in the United States are committed with guns and an American woman is five times more likely to be murdered when her abuser has access to a gun. <https://efsgv.org/learn/type-of-gun-violence/domestic-violence-and-firearms/>

The link between using violence in home defence and increased gun ownership seems clear. If Australian homeowners accept that they should have a right to physically defend themselves against intruders, it seems likely that many will begin to demand a relaxation of Australia's gun laws. The difficulty here is that if this were to happen, Australians are likely to be less safe rather than more so. American data suggests that increased gun ownership and an aggressively defensive posture results in increased gun-related fatalities of all types.