

Telephone: 07 3900 6000

Reference: [REDACTED]

Secretary
Community Safety and Legal Affairs Committee

Via email: [REDACTED]

Dear Community Safety and Legal Affairs Committee,

Thank you for the opportunity to provide a submission to the Community Safety and Legal Affairs Committee's inquiry into the *Criminal Code (Defence of Dwellings and Other Premises-Castle Law) Amendment Bill 2024* (the Bill). The Queensland Family and Child Commission (QFCC) recognises the importance of a safe Queensland for all and acknowledges the Bill's intention to achieve greater confidence in community safety through amendments to the *Criminal Code 1899*.

The QFCC is a statutory body of the Queensland Government responsible for promoting the safety, wellbeing and best interests of children and young people. The QFCC has made an explicit commitment to leading a child rights agenda in Queensland and assisting others to integrate a child rights approach in policy reform and is guided by the core principles of the United Nations Conventions on the Rights of the Child.¹

The *Statement of Compatibility*² notes that the proposed amendments are in conflict with the Human Rights Act, namely section 16, "Right to life", which states that "every person has the right to life and has the right not to be arbitrarily deprived of life".³ The explanatory notes of the Bill suggest that the proposed amendments are necessary to protect the rights of victims of crime as they relate to defending one's home. Victims of crime, including of home invasion, maintain their rights including the right to own property (s 24(1) & (2)), to protect their family and children (s26), and the right to liberty and security of person (s 29) under the existing provision in the *Human Rights Act 2019*. The *Human Rights Act 2019* stipulates that human rights are protected (s 14) and may only be limited in specific circumstances including to preserve the human right and where there are no other less restrictive or reasonably available ways to achieve the purpose (s 13).

The Bill notes the community concern for crime, particularly home invasions, and seeks to generate a greater deterrence to offenders through the proposed amendments whereby a

¹ UNICEF (1989). *United Nations Convention on the Rights of the Child*. [unicef-simplified-convention-child-rights.pdf](https://www.unicef.org/child-rights-convention) [kc-usercontent.com]

² Queensland Parliament – Community Safety and Legal Committee. (2024). *Criminal Code (Defence of Dwellings and Other Premises – Castle Law) Amendment Bill 2024 – Statement of Compatibility*. [57247736-f6bf.pdf](https://www.parliament.qld.gov.au/57247736-f6bf.pdf) [parliament.qld.gov.au]

³ *Human Rights Act 2019* (Qld). Part 2 Div 2 s 16. [Human Rights Act 2019](https://www.legislation.qld.gov.au/legislation/viewDetails?id=57247736-f6bf.pdf) [legislation.qld.gov.au]



resident would be legally protected should they use lethal force in response to an intruder. Studies in the United States of America where similar 'castle doctrine' laws have been employed have shown that such policies do not reduce crime.⁴ These studies also highlighted the concerns regarding the racial inequalities which were noted in the application of such laws⁵ and the concern for a higher incidence of serious violence and increasing risk of physical harm in break-and-enter type offences. A systematic review⁶ of 25 studies which analysed the impact of the introduction of similar laws in the United States found no change to break-and-enter type offences, or found increases in violent crimes, including statistically significant increase in murders in some cases.⁷

The policy objective of the *Criminal Code (Defence of Dwellings and Other Premises – Castle Law) Amendment Bill 2024* states to “provide clearer guidance and legal protection for individuals who use force to defend themselves or others within their homes”. The QFCC considers the current legal protections included in the *Criminal Code 1899* (the Code), namely “defence of provocation” (s 269), “self-defence against unprovoked assault” (s 271), and “aiding in self-defence” (s 273)) provide sufficient legal safeguard for residents who use force in response to an unlawful entry to their home.

Section 267 of the Code allows the use of force against intruders to a dwelling if the accused person reasonably believes that the intruder is “attempting to enter or to remain in the dwelling with intent to commit an indictable offence in the dwelling” and that the force used by the person is ‘necessary’.⁸ The legal application of the defences provided in these sections of the Code consider the environmental factors influencing one’s assessment of a ‘reasonable belief’ that an intruder intends to commit an indictable offence, and considers the subjectivity of ‘necessary’ action or force based on the perspective of the resident. The QFCC believes these sections provide clarity for application in several situations where a resident may be impacted by an unlawful entry into their home and may respond forcefully. Appreciating the information from community consultation in the introduction of the Bill, the QFCC considers that greater awareness and understanding of these sections of the Code as they presently exist may assist in supporting community confidence in the current provisions and the function of the defences as a member of the community, a resident, or the victim of an intrusion.

⁴ Ackermann, N., Goodman, M. S., Gilbert, K., Arroyo-Johnson, C., & Pagano, M. (2015). Race, law, and health: Examination of ‘Stand Your Ground’ and defendant convictions in Florida. *Social Science & Medicine*, 142, 194-201.

<https://doi.org/10.1016/j.socscimed.2015.08.012>

⁵ Ackermann, N., Goodman, M. S., Gilbert, K., Arroyo-Johnson, C., & Pagano, M. (2015). Race, law, and health: Examination of ‘Stand Your Ground’ and defendant convictions in Florida. *Social Science & Medicine*, 142, 194-201.

<https://doi.org/10.1016/j.socscimed.2015.08.012>

⁶ Yakubovich, A. R., Esposti, M. D., Lange, B. C. L., Melendez-Torres, G. J., Parmar, A., Wiebe, D. J., & Humphreys, D. K. (2021). Effects of Laws Expanding Civilian Rights to Use Deadly Force in Self-Defense on Violence and Crime: A Systematic Review.

American Journal of Public Health, 111(4), e1–e14. <https://doi.org/10.2105/AJPH.2020.306101>

⁷ Cheng, C., & Hoekstra, M. (2013). Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine. *The Journal of Human Resources*, 48(3), 821–853. <https://doi.org/10.1353/jhr.2013.0023>

⁸ *Criminal Code Act 1899* (Qld), Schedule 1 Section 267. [CRIMINAL CODE 1899 - SECT 267 Defence of dwelling \(austlii.edu.au\)](https://www.austlii.edu.au/au/other/dfat/special/qld/criminalcode/1899/s267.html)



The QFCC cannot agree therefore that the proposed amendments in the Bill are necessary or appropriate to address criminal behaviour including breaking and entering offences. We also acknowledge the potential for the proposed amendment to have a disproportionate impact on cohorts of children, young people and their families who experience social disadvantage or vulnerabilities, and we urge consideration of these factors as part of this reform process and ensure that any measures taken do not inadvertently put these members of the community at risk.

The QFCC actively engages in consultation with key stakeholders, Parliamentary Committees, and the community sector to explore evidence-based responses to criminal behaviour, particularly as it relates to children and young people in conflict with the law. The QFCC maintains that any response to criminal behaviour must address the root causes of behaviour and must include a holistic approach to crime prevention. This approach requires the government and wider community to address drivers of criminality, including supporting young people at risk of entering the criminal justice system, through individualised intervention. Evidence shows that punitive measures do not have a significant impact on reducing recidivism and may in fact contribute to reoffending or more harmful behaviour.⁹

Improving community safety, and community perception of safety, is important. Addressing criminal offending requires evidence-based responses that address all factors contributing to antisocial behaviours, and any legislative or policy change must consider the rights of all parties affected by such reform.

If you or your officers have any queries in relation to this matter, they may contact me via telephone on [REDACTED] or via email at [REDACTED]

Yours sincerely

[REDACTED]
Luke Twyford
Principal Commissioner
Queensland Family and Child Commission

24 June 2024

⁹Edwards J. A (2017). Just System? How Punitive Youth Justice Systems Increase the Risk of Crime. *Children Australia*, 42(4), 233-239. doi:10.1017/cha.2017.39



Title	Summary	Reference
May 2024 <i>Community Safety Bill 2024</i>	This submission reiterates the QFCC's position on the need for evidence-based, restorative justice policies and practices that addresses the root-causes of youth offending.	QFCC Submission – Community Safety Bill 2024
January 2024 <i>Submission – Inquiry into Youth Justice Reform in Queensland – Commissioner Luke Twyford</i>	Commissioner Twyford's individual submission focused on the need for any changes to the youth justice system to be designed and implemented strategically, with clear whole-of-system outcomes.	Commissioner Submission – Inquiry into youth justice reform in Queensland – PCMR Luke Twyford
January 2024 <i>Submission – Inquiry into Youth Justice Reform in Queensland – Commissioner Natalie Lewis</i>	Commissioner Lewis' individual submission focused on a child rights-based approach to youth justice and the manner in which such a system would encompass all the systems that can help prevent the entry of children into the youth justice system.	Commissioner submission – Inquiry into youth justice reform in Queensland – CMR Natalie Lewis
October 2023 <i>Who's responsible: Understanding why young people are being held longer in Queensland watch houses</i>	The QFCC completed a review of Queensland's use of watch houses to understand why children are increasingly being held in watch houses for extended periods and to identify who is responsible for monitoring and reducing the trend. The review makes five recommendations for immediate implementation to reduce the time children are detained in watch houses, including improving cross-agency collaboration, transparency of record-keeping and public reporting, and reducing unsentenced detention.	QFCC Publication – Who's responsible: Understanding why young people are being held longer in Queensland watch houses
September 2023 <i>First Nations Children's Report</i>	The First Nations Children's Report showcases the stories of Aboriginal and Torres Strait Islander children and families, who are thriving despite the challenges of structural racism and the impacts of colonialism. First Nations children and young people thrive when they can fully enjoy their right to family, community, culture, and Country. The report demonstrates their strength and resilience and shows the positive outcomes that are possible when their rights are upheld. The report celebrates stories of strong First Nations children and young people, their families and communities in the areas of health and emotional wellbeing; safety and home environment; learning and skills and economic empowerment; and culture and connection.	QFCC Publication – First Nations Children's Report



August 2023 <i>Queensland Child Rights Report 2023</i>	The report details the state of children's rights in Queensland. It analyses how Queensland upholds children's rights, and it identifies the changes needed to embed a child rights approach across government policy, legislation and systems to deliver better, more equitable outcomes for Queensland children.	QFCC Publication – Queensland Child Rights Report 2023
June 2023 <i>Restorative Justice Conferencing in Queensland</i>	This desktop review paper examines the state of Restorative Justice Conferencing in Queensland to determine what our state is doing well and what we can be doing better so that Restorative Justice Conferencing effectively diverts children and young people from the youth justice system.	QFCC Publication – Restorative Justice Conferencing in Queensland
April 2023 <i>Inquiry into Support Provided to Victims of Crime</i>	A detailed submission into the improvements needed to support timely and accessible supports and services to victims of crime and their families, which respond to the harm they have experienced. The submission highlights the use of restorative justice processes to empower victim-survivors and improve accountability and behaviour change for individuals who perpetrate harm against others.	QFCC Submission – Inquiry into victims of crime
February 2023 <i>Strengthening Community Safety Bill 2023</i>	In this submission, the QFCC emphasised that any improvements to the youth justice system should place weight on all four pillars of the Youth Justice Strategy 2019-2023; intervene early, keep children out of court, keep children out of custody and reduce reoffending. If the long-term goal of reducing youth crime is to be achieved, efforts and investment should focus on reducing the factors that contribute to a young person committing crime, and specialised services for the young people already in the statutory system who are committing most of the crime – and their families.	QFCC Submission – Strengthening Community Safety Bill 2023

