

# Report on the Stand Your Ground Principle in State Castle Doctrines

Integration with Section 119 of the Australian Constitution and Protections Against Predatory Incursions, Foreign/Domestic Attacks, and Gang Violence

Drafted for illustrative and analytical purposes

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## 1 Executive Summary

This report examines the incorporation of the “stand your ground” principle into state castle doctrines within the Australian federal framework. It provides a refined definition of “predatory incursion” as encompassing foreign external attacks, transitioning to include state-level domestic violence, as referenced in section 119 of the Australian Constitution. The report emphasizes that governments, including states, must empower citizens to protect themselves from such threats, including predatory incursions, foreign or domestic attacks, and domestic gang violence.

Castle doctrines traditionally affirm the right to use force, including deadly force, in defense of one’s home or property without a duty to retreat. The stand your ground principle extends this to public spaces, removing the duty to retreat when lawfully present and facing imminent harm. In the context of the hypothetical *Federal Firearms Licensing Act 2026* (Cth) (the Act) and proposed constitutional amendment section 114A (right to bear arms), this report recommends state-level adoption of these principles, guided by federal standards to ensure uniformity under section 117 (rights of residents in States) and alignment with section 119 obligations.

The rationale underscores public safety, individual liberty, and constitutional duties, while balancing regulations under the Act to prevent misuse.

## 2 Preliminary Concepts

### 2.1 Castle Doctrine Overview

- A castle doctrine is a legal principle that allows individuals to use reasonable force, including deadly force, to defend against an intruder in their home or occupied vehicle without a duty to retreat.
- It is rooted in the common law concept that “one’s home is one’s castle,” providing immunity from civil or criminal liability when force is justified.
- In Australia, states may tailor castle doctrines to their jurisdictions, as encouraged

under hypothetical section 114A(3), but must align with federal guiding principles for congruence.

## 2.2 Stand Your Ground Principle

- Extends castle doctrine protections beyond the home to any place where a person has a legal right to be (e.g., public spaces).
- Removes the traditional “duty to retreat” if retreat is safely possible; instead, one may “stand their ground” and use force if facing imminent threat of death, serious injury, or certain felonies.
- Justification requires reasonable belief in the necessity of force, proportionality, and absence of provocation by the defender.

## 3 Refined Definition of Predatory Incursion

### 3.1 Core Definition

A “predatory incursion” is defined as an aggressive, unprovoked intrusion or assault intended to cause harm, theft, or domination, originating from external or internal threats. This encompasses:

- **Foreign External Attacks:** Invasions or incursions by foreign entities, agents, or non-citizens, including border violations, espionage-related assaults, or terrorist acts with international origins.
- **Transition to State Domestic Violence:** Extending to internal threats, such as organized domestic violence, riots, or uprisings that threaten public order, as contemplated under section 119 of the Constitution (Commonwealth protection against invasion and domestic violence upon state request).
- **Inclusion of Domestic Gang Violence:** Localized predatory acts by gangs, criminal syndicates, or groups engaging in violence, extortion, or territorial control, treated as micro-level “incursions” that mimic broader threats.

### 3.2 Constitutional Tie-In (Section 119)

Section 119 mandates: “The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence.” This report interprets “invasion” broadly to include predatory incursions (foreign or transitional domestic), obligating governments to enable citizen self-protection where state response is delayed or insufficient.

## 4 Government Obligations to Empower Citizen Self-Protection

### 4.1 Constitutional and Statutory Imperatives

- (1) **Federal and State Duties:** Under section 119, the Commonwealth must aid states against invasion/domestic violence. States, in turn, must legislate castle doctrines and stand your ground laws to allow citizens to act as first responders in predatory scenarios.
- (2) **Integration with Hypothetical Section 114A:** The right to bear arms reinforces self-defense capabilities, subject to federal licensing for higher-risk firearms (semi-automatic/full-automatic).
- (3) **Protections Against Specific Threats:**
  - **Predatory Incursions:** Citizens may use force without retreat in home/public if facing unprovoked aggression.
  - **Foreign/Domestic Attacks:** Includes defense against terrorist acts (foreign) or riots (domestic), with proportionality requirements.
  - **Domestic Gang Violence:** Stand your ground applies to gang-related assaults, empowering victims in high-crime areas.

### 4.2 Recommended State Legislative Framework

- **Uniform Guiding Principles:** Federal guidance (via the Act's Doctrine) ensures states adopt consistent standards, e.g., reasonable belief thresholds, no aggressor disqualification.
- **Tailoring to Economic Climate:** States may adjust for urban/rural differences (e.g., broader rural applications for farm protection).
- **Safeguards:** Require post-incident reporting; align with Act prohibitions (e.g., no use by those under federal orders).

## 5 Rationale for Incorporation

- (1) **Public Safety and Deterrence:** Empowers citizens to deter predatory acts, reducing reliance on delayed law enforcement, especially in remote areas.
- (2) **Constitutional Compliance:** Fulfills section 119 by decentralizing protection, transitioning federal duties to state-enabled self-defense.
- (3) **Well-Regulated Liberty:** Balances rights under section 114A with Act regulations, preventing abuse while protecting against violence.
- (4) **Equity for Vulnerable Groups:** Supports Indigenous landcare and rural viability, addressing gang violence in disadvantaged communities.
- (5) **Prevention of Escalation:** Stand your ground reduces victim retreat risks, potentially de-escalating threats through deterrence.

## 6 Conclusion and Recommendations

Integrating stand your ground into state castle doctrines, with a refined predatory incursion definition tied to section 119, strengthens Australia's self-defense framework. Governments must legislate these protections to fulfill constitutional duties against foreign/domestic threats and gang violence.

### **Recommendations:**

- States enact tailored castle/stand your ground laws within 12 months of Act commencement.
- Federal guidance via Doctrine includes model clauses for uniformity.
- Stakeholder reviews assess implementation, incorporating safety data.

This approach positions Australia as a model for balanced, liberty-focused self-defense regulation.