

Review of particular criminal defences

Self-defence information sheet

Version November 2023

Self-defence is in sections 271 and 272 of the Criminal Code.

With certain limitations, **self-defence allows a person to use force that is reasonably necessary to defend themselves** from assault. The law attempts to balance the interests of the attacker and the person who responds, as well as broader community values.

There are 2 forms of self-defence when a person is assaulted:

- self-defence against an unprovoked assault in section 271, and
- self-defence against a provoked assault in section 272.

The application of the defences also depends on whether the assault causes a reasonable apprehension of death or grievous bodily harm.

Sections 271 and 272 provide complete defences to an offence involving the use of force, including assault and homicide.

Section 271 provides for self-defence against an **unprovoked assault**. It applies if a person is unlawfully assaulted and has not provoked the assault. In this case the person may use such force as is reasonably necessary to defend themselves, provided it is not intended or likely to cause death or grievous bodily harm. However, if the person reasonably fears death or grievous bodily harm from their attacker, they may use the force that is necessary to defend themselves, even if it may cause death or grievous bodily harm.

271 Self-defence against unprovoked assault

- (1) When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for the person to use such force to the assailant as is reasonably necessary to make effectual defence against the assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.
- (2) If the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm, and the person using force by way of defence believes, on reasonable grounds, that the person can not otherwise preserve the person defended from death or grievous bodily harm, it is lawful for the person to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous bodily harm.

Section 272 provides for self-defence against a **provoked assault**. It applies in limited cases to a person who started the fight or provoked the assault and then finds the need to defend themselves from retaliation. If a person unlawfully assaults or provokes an assault from someone else, they may use reasonable force to defend themselves only if the other person's response is so violent that the person reasonably fears death or grievous bodily harm. The defence is not available if the person:

- first started the assault with intent to kill or do grievous bodily harm
- used force causing death or grievous bodily harm before it became necessary
- did not decline further conflict and try to retreat from it before such force became necessary.

272 Self-defence against provoked assault

- (1) When a person has unlawfully assaulted another or has provoked an assault from another, and that other assaults the person with such violence as to cause reasonable apprehension of death or grievous bodily harm, and to induce the person to believe, on reasonable grounds, that it is necessary for the person's preservation from death or grievous bodily harm to use force in self-defence, the person is not criminally responsible for using any such force as is reasonably necessary for such preservation, although such force may cause death or grievous bodily harm.
- (2) This protection does not extend to a case in which the person using force which causes death or grievous bodily harm first begun the assault with intent to kill or to do grievous bodily harm to some person; nor to a case in which the person using force which causes death or grievous bodily harm endeavoured to kill or to do grievous bodily harm to some person before the necessity of so preserving himself or herself arose; nor, in either case, unless, before such necessity arose, the person using such force declined further conflict, and quitted it or retreated from it as far as was practicable.

Section 273 of the Criminal Code allows the use of force to defend another person on the same conditions as sections 271 and 272, as long as the person using force acts in good faith.

273 Aiding in self-defence

In any case in which it is lawful for any person to use force of any degree for the purpose of defending himself or herself against an assault, it is lawful for any other person acting in good faith in the first person's aid to use a like degree of force for the purpose of defending the first person.

The Criminal Code also authorises the use of force in particular circumstances to defend the possession of property – under sections 267 and 274–279.

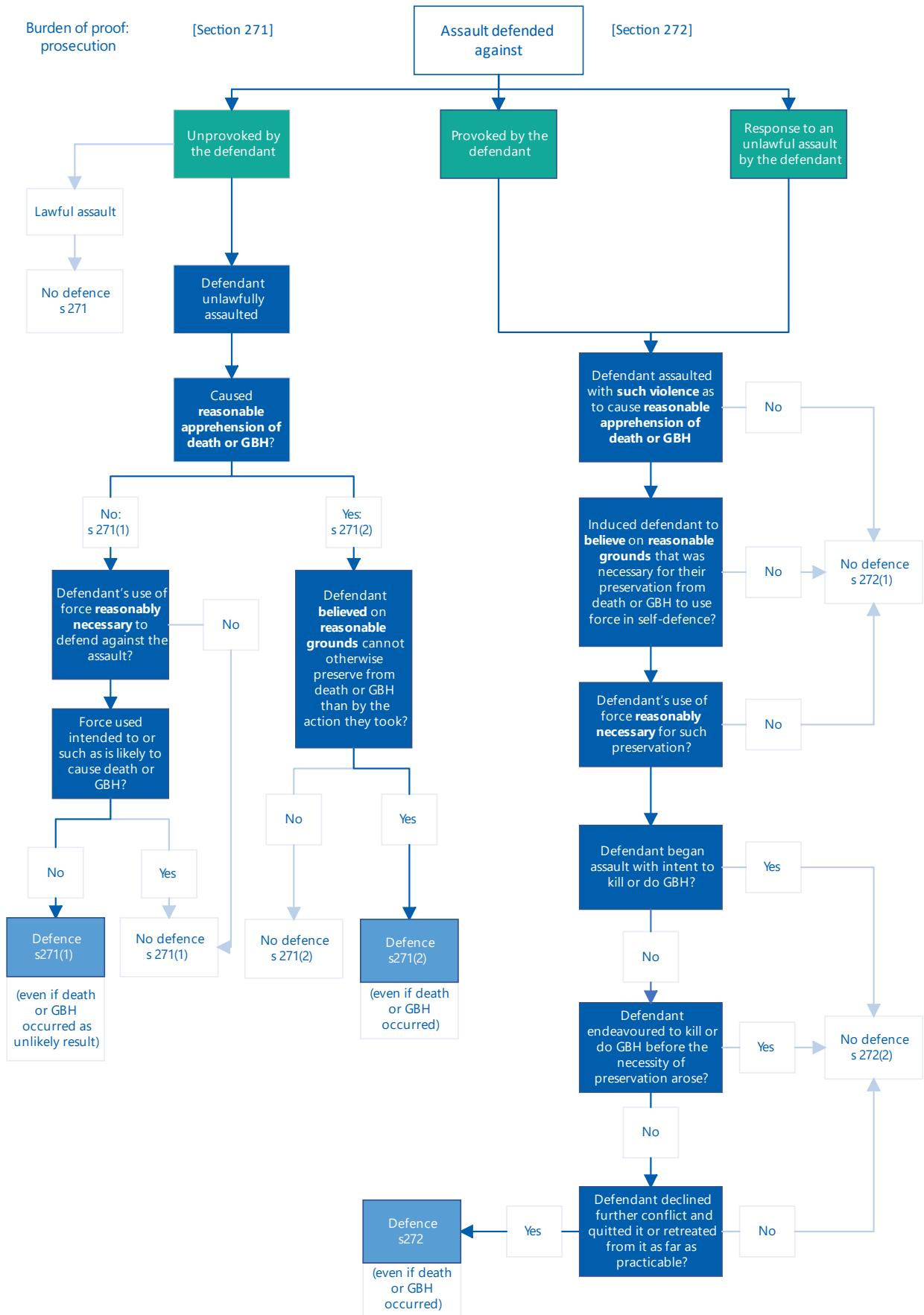
The self-defence provisions in sections 271–272 were based on earlier common law and included in the Code when it first came into force in 1901. The provisions have not been changed since that time. But case law on what the provisions mean and how the defences operate has continued to develop.

The self-defence provisions have attracted criticisms, for example that:

- they are complex, difficult to understand and difficult for judges to direct juries on¹
- some requirements have been given conflicting interpretations in case law²
- in some circumstances they may be difficult to run as a defence for a victim-survivor of domestic and family violence who uses force against their abuser.³

In a recent Court of Appeal decision, Dalton JA found that section 272 is ambiguous and observed that the self-defence provisions need reform.⁴

Figure 1: self-defence provisions in Queensland



As part of their duty to ensure a fair trial, judges in criminal trials are required to sum up the case and give the jury directions about the law and how to apply it, and how to assess the evidence. To help judges with this, suggested directions in the Queensland Supreme and District Courts Criminal Directions Benchbook offer guidance on the directions that should be given.

The following extracts are from the suggested directions in the benchbook on self-defence under sections 271(1), 271(2) and 272. View the full text on the [Queensland Courts website](#).⁵

Suggested directions for section 271(1): self-defence against unprovoked assault

The criminal law does not only punish; it protects as well. It does not expect citizens to be unnaturally passive, especially when their safety is threatened by someone else. Sometimes an attacker may come off second best but it does not follow that the one who wins the struggle has committed a crime. The law does not punish someone for reasonably defending himself or herself.

... You should appreciate that the law of self-defence is drawn in fairly general terms to cover any situation that may arise. Each jury has to apply it to a particular situation according to the facts of the particular case. No two cases are exactly alike, so the results depend heavily on the common sense and community perceptions that juries bring into court.

... You will see from the section that there are four matters you must consider in respect of this defence.

They are –

1. whether there has been an unlawful assault on the defendant;
2. whether the defendant has provoked that assault;
3. whether the force used by the defendant upon the complainant was reasonably necessary to make effectual defence against the assault; and
4. whether the force used was intended, or such as was likely, to cause death or grievous bodily harm.

The burden remains on the prosecution at all times to prove that the defendant was not acting in self-defence (that is, that the defendant was acting unlawfully), and the prosecution must do so beyond reasonable doubt before you could find the defendant guilty.

... Whether the degree of force used was reasonably necessary to make effectual defence against an assault is a matter for your objective consideration and does not depend on the defendant's state of mind about what he/she thought was reasonably necessary.

In considering whether the force used by the defendant was reasonably necessary to make effectual defence, bear in mind that a person defending himself/herself cannot be expected to weigh precisely the exact amount of defensive action that may be necessary. Instinctive reactions and quick judgments may be essential. You should not judge the actions of the defendant as if he/she had the benefit of safety and leisurely consideration.

...

Suggested directions for section 271(2): self-defence against unprovoked assault when there is death or GBH

... A defendant who has been the victim of an unprovoked assault may lawfully respond in self-defence with lethal force (that is, force which may kill or do grievous bodily harm) when the assault upon him/her was of such a nature as to cause reasonable apprehension of death or grievous bodily harm.

... Speaking generally, you will not be surprised to know that if the violence of the attacker is such that the person defending himself/herself reasonably fears for his/her life or safety, then the justifiable (or lawful) level of violence which may be used by the person attacked in self-defence will be greater also.

The level of violence in self-defence that is justifiable, or lawful, depends on the level of danger created by the attacker and the reasonableness of the defendant's reaction to it.

... Several matters arise for your consideration.

They are -

1. whether there has been an unlawful assault upon the defendant;
2. whether the defendant has provoked that assault.
3. whether the nature of the assault was such as to cause reasonable apprehension of death or grievous bodily harm;
4. whether the defendant believed, on reasonable grounds, that he/she could not otherwise preserve themselves from death or grievous bodily harm, other than by acting as they did.

...

Suggested directions for section 272: self-defence against provoked assault, including when death or grievous bodily harm occurs

... Section 272 of the Criminal Code excuses a person from using lethal or near lethal force in certain circumstances. By 'lethal or near lethal' I mean force that kills or does grievous bodily harm.

This section may apply where the defendant had good reason to believe he/she was in serious danger of losing his/her own life, or suffering a very serious injury, even though he himself provoked the assault.

... This section raises several matters for your consideration, namely:

1. Whether the defendant unlawfully assaulted the deceased/complainant or provoked an assault from them?
2. Whether the response from the deceased/complainant was so violent as to cause reasonable apprehension of death or grievous bodily harm?
3. Whether the defendant **believed**, on **reasonable grounds**, that it was **necessary**, in order to preserve himself/herself from death or grievous bodily harm, to use force in self-defence?
4. Whether the force in fact used was such as was **reasonably necessary** for his/her preservation from death or grievous bodily harm?

Suggested directions for section 272: self-defence against provoked assault, including when death or grievous bodily harm occurs cont.

... The defence does not apply where:

- The defendant first began the assault with intent to kill or to do grievous bodily harm to the [deceased/complainant/some person]; or
- The defendant endeavoured to kill or to do grievous bodily harm to the [deceased/complainant] before the necessity of so preserving himself arose;
- **Nor unless**, the defendant declined further conflict, and quitted it or retreated from it as far as was practicable, before the necessity to preserve himself/herself from death or grievous bodily harm arose.

The burden remains on the prosecution at all times to prove that the defendant was not acting in self-defence (that is, was acting unlawfully), and the prosecution must do so, beyond reasonable doubt before you may find the defendant guilty.

...

Queensland is the only Australian jurisdiction to distinguish between self-defence against unprovoked and provoked assaults. Many places have simplified their self-defence provisions, focusing on the use of force that is reasonable in the circumstances.⁶ Some follow the approach of the Model Criminal Code⁷ and some, like New Zealand, reduce the defence to a single statement.

Some jurisdictions, like Western Australia, also include a partial defence to murder of excessive self-defence which applies if the person uses greater force than is reasonable but believes it is necessary.⁸ And some places, like Victoria, include a provision about the operation of self-defence in the context of domestic and family violence – for example, to provide that a person’s use of force in self-defence may be reasonable even if it exceeds the force that was used against them.⁹

Model Criminal Code

10.4 Self-defence

- (1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self-defence.
- (2) A person carries out conduct in self-defence if and only if he or she believes the conduct is necessary:
 - (a) to defend himself or herself or another person; or
 - (b) to prevent or terminate the unlawful imprisonment of himself or herself or another person; or
 - (c) to protect property from unlawful appropriation, destruction, damage or interference; or
 - (d) to prevent criminal trespass to any land or premises; or
 - (e) to remove from any land or premises a person who is committing criminal trespass;and the conduct is a reasonable response in the circumstances as he or she perceives them.
- (3) This section does not apply if the person uses force that involves the intentional infliction of death or really serious injury:
 - (a) to protect property; or
 - (b) to prevent criminal trespass; or
 - (c) to remove a person who is committing criminal trespass.
- (4) This section does not apply if:
 - (a) the person is responding to lawful conduct; and
 - (b) he or she knew that conduct was lawful.

However, conduct is not lawful merely because the person carrying it out is not criminally responsible for it.

The Model Criminal Code is not in force as legislation but is a draft of suggested provisions developed in the 1990s with the aim of providing for uniform or consistent criminal laws around Australia.¹⁰

Crimes Act 1961 (NZ)

48 Self-defence and defence of another

- (1) Every one is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.

...

Criminal Code (WA)

248 Self-defence

- (1) In this section—

harmful act means an act that is an element of an offence under this Part other than Chapter XXXV.

- (2) A harmful act done by a person is lawful if the act is done in self-defence under subsection (4).

- (3) If—

(a) a person unlawfully kills another person in circumstances which, but for this section, would constitute murder; and

(b) the person's act that causes the other person's death would be an act done in self-defence under subsection (4) but for the fact that the act is not a reasonable response by the person in the circumstances as the person believes them to be,

the person is guilty of manslaughter and not murder.

- (4) A person's harmful act is done in self-defence if—

(a) the person believes the act is necessary to defend the person or another person from a harmful act, including a harmful act that is not imminent; and

(b) the person's harmful act is a reasonable response by the person in the circumstances as the person believes them to be; and

(c) there are reasonable grounds for those beliefs.

- (5) A person's harmful act is not done in self-defence if it is done to defend the person or another person from a harmful act that is lawful.

- (6) For the purposes of subsection (5), a harmful act is not lawful merely because the person doing it is not criminally responsible for it.

Table 1: self-defence provisions in Queensland and other jurisdictions

Name of Act and jurisdiction	Defence of self or others	Defence of property	Partial defence to murder of excessive self-defence	Related provisions
Criminal Code (Qld)	<ul style="list-style-type: none"> ✓ self-defence against unprovoked and provoked assaults: ss 271, 272 ✓ aiding others in self-defence: s 273 	<ul style="list-style-type: none"> ✓ separate provisions for defence of property: ss 267, 274–279 	✗	<ul style="list-style-type: none"> ✓ provisions about jury directions and evidence, including when self-defence in response to domestic violence is an issue: pt 6A Evidence Act 1977
Criminal Code (ACT)	<ul style="list-style-type: none"> ✓ to defend self or others or to prevent or end unlawful imprisonment: s 42 	<ul style="list-style-type: none"> ✓ to protect property, to prevent criminal trespass or remove a criminal trespasser: s 42 	✗	–
Crimes Act 1900 (NSW)	<ul style="list-style-type: none"> ✓ to defend self or others or to prevent or end unlawful deprivation of liberty: s 418 	<ul style="list-style-type: none"> ✓ to protect property, to prevent criminal trespass or remove a criminal trespasser: ss 418, 420 	<ul style="list-style-type: none"> ✓ if the conduct is not a reasonable response but the person believes it is necessary to defend self or others or to prevent or end unlawful deprivation of liberty: s 421 	–
Criminal Code (NT)	<ul style="list-style-type: none"> ✓ to defend self or others or to prevent or end unlawful imprisonment: ss 29, 43BD 	<ul style="list-style-type: none"> ✓ to protect property, to prevent criminal trespass or remove a criminal trespasser: ss 29, 43BD 	✗	–
Criminal Law Consolidation Act 1935 (SA)	<ul style="list-style-type: none"> ✓ to defend self or another, or to prevent or end unlawful imprisonment: s 15(1) 	<ul style="list-style-type: none"> ✓ to protect property, to prevent criminal trespass or remove a criminal trespasser: s 15A(1) 	<ul style="list-style-type: none"> ✓ if the conduct is not reasonably proportionate to the threat but the person genuinely believes it is necessary and reasonable: ss 15(2), 15A(2) 	<ul style="list-style-type: none"> ✓ provisions about self-defence in the context of family violence: s 15B ✓ provisions about serious home invasion: s 15C
Criminal Code (Tas)	<ul style="list-style-type: none"> ✓ in defence of self or another: s 46 	<ul style="list-style-type: none"> ✓ separate provisions for defence of property: ss 40–45 	✗	–

Name of Act and jurisdiction	Defence of self or others	Defence of property	Partial defence to murder of excessive self-defence	Related provisions
Crimes Act 1958 (Vic)	✓ in self-defence, defence of another or to prevent or end unlawful deprivation of liberty; limited in the case of murder to where the person believes the conduct is necessary to defend self or another from death or really serious injury: s 322K	✓ in the protection of property: s 322K	*	✓ provisions about self-defence in the context of family violence: ss 322J, 322M
Criminal Code (WA)	✓ to defend self or another against unlawful harmful acts, including acts that are not imminent: s 248(2), (4)	✓ separate provisions for defence of property: ss 251-256	✓ if the act is not a reasonable response but the person believes, on reasonable grounds, that it is necessary to defend self or another from harmful act: s 248(3)	✓ provisions about home invasion: s 244
Criminal Code (Cth)	✓ to defend self or others against unlawful conduct, or to prevent or end unlawful imprisonment: s 10.4	✓ to protect property, to prevent criminal trespass or remove a criminal trespasser: s 10.4	*	-
Crimes Act 1961 (NZ)	✓ in defence of self or another: s 48	✓ separate provisions for defence of property: ss 52-56	*	-
Criminal Justice and Immigration Act 2008 (UK)	✓ to defend self or others, under common law as modified by statute in England, Wales and Northern Ireland: s 76(2)(a) ✓ to defend self or others, under common law defence in Scotland ¹¹	✓ in defence of property, under common law as modified by statute in England, Wales and Northern Ireland: s 76(2)(b)	*	✓ provisions about use by 'householders' of disproportionate force in self-defence in England, Wales and Northern Ireland: s 76(5A), (8A)-(8F)
Canada Criminal Code RSC 1985 c C-46	✓ in defence of self or another: s 34	✓ to protect property, prevent entry to or to remove a person from property: s 35	*	-

References

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- ¹ See e.g. *R v Dayney* [2023] QCA 62 at [76] (Dalton JA); *R v Gray* (1998) 98 A Crim R 589 at 592 (and generally at 591–5); *R v Messent* [2011] QCA 125 at [29].
 - ² See e.g. *R v Dayney* [2020] QCA 264 at [41]–[51] (Sofronoff P), [112]–[114] (Fraser and McMurdo JJA), discussing Criminal Code (Qld) s 272(2).
 - ³ See e.g. Women’s Safety and Justice Taskforce, Options for Legislating against Coercive Control and the Creation of a Standalone Domestic Violence Offence, Discussion paper 1, 2021, p 24; G Mackenzie & E Colvin, Victims who Kill their Abusers, Discussion paper, April 2009, pp 21–2; Report of the Taskforce on Women and the Criminal Code, February 2000, p 148.
 - ⁴ See *R v Dayney* [2023] QCA 62 at [39], [54], [76] (Dalton JA).
 - ⁵ Queensland Courts, Queensland Supreme and District Courts Criminal Directions Benchbook, 14 September 2021, <https://www.courts.qld.gov.au/court-users/practitioners/benchbooks/supreme-and-district-courts-benchbook>. See chs 94, 94A, 95, 96 on self-defence.
 - ⁶ See e.g. Crimes Act 1900 (NSW) s 418; Criminal Code (Tas) s 46; Crimes Act 1961 (NZ) s 48.
 - ⁷ Model Criminal Code ch 2 pt 2.3 cl 10.4. See Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, Model Criminal Code: Chapters 1 and 2 general principles of criminal responsibility, December 1992, viewed 14 June 2023 <https://www.ag.gov.au/crime/publications/model-criminal-law-officers-committee-reports>.
 - ⁸ See e.g. Crimes Act 1900 (NSW) s 421; Criminal Law Consolidation Act 1935 (SA) s 15(2); Criminal Code (WA) s 248(3).
 - ⁹ See e.g. Criminal Law Consolidation Act 1935 (SA) s 15B(1); Crimes Act 1958 (Vic) s 322M(1).
 - ¹⁰ See Australian Attorney-General’s Department, ‘Model Criminal Law Officers Committee Reports’, viewed 14 June 2023 <https://www.ag.gov.au/crime/publications/model-criminal-law-officers-committee-reports>.
 - ¹¹ See generally Judicial Institute for Scotland, ‘Self-defence’ in Jury Manual, 15 August 2023, pp 44.1–44.6, <https://judiciary.scot/home/media-information/publications/judicial-institute-publications>.