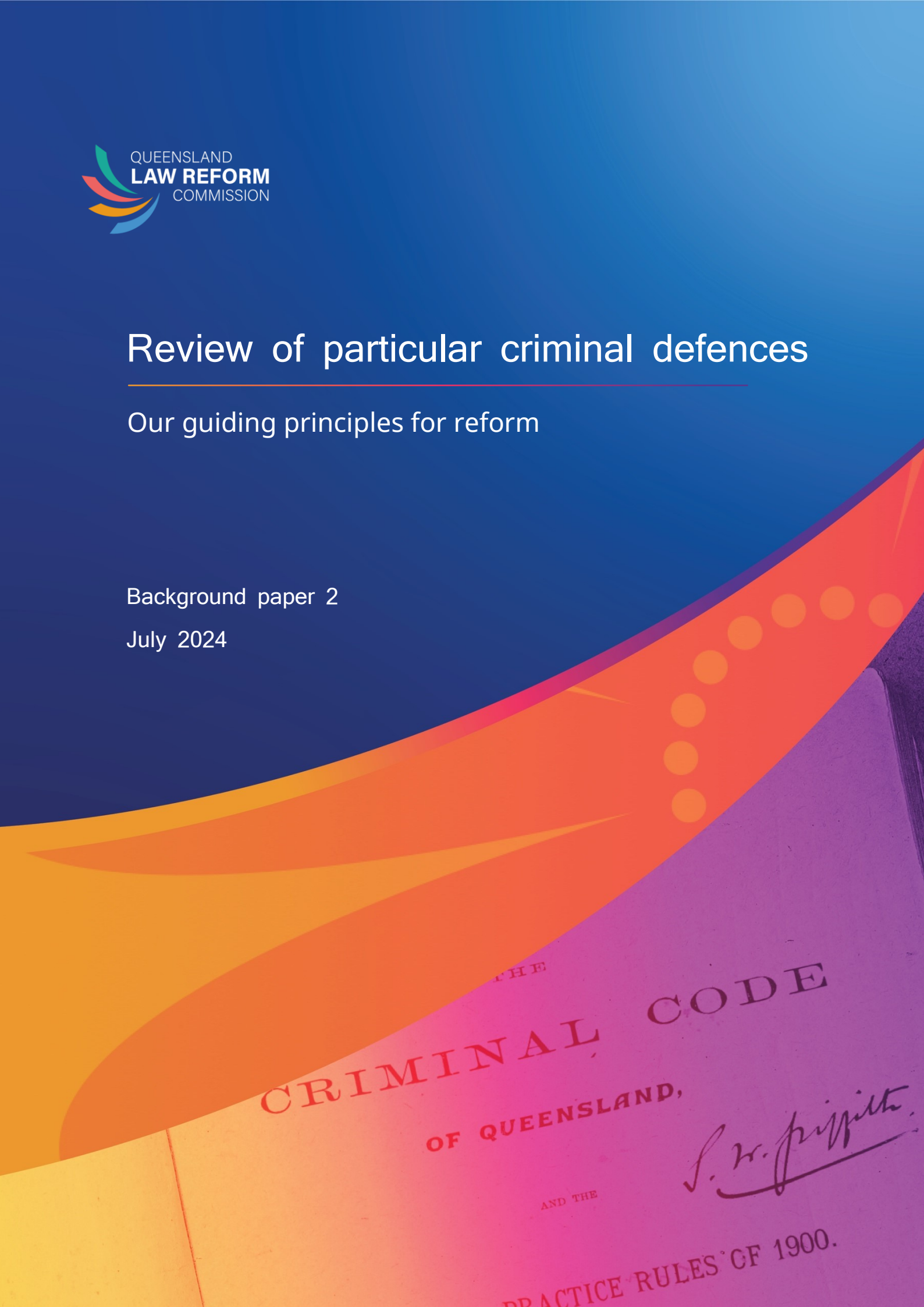


Review of particular criminal defences

Our guiding principles for reform

Background paper 2

July 2024



THE
CRIMINAL CODE
OF QUEENSLAND,
AND THE
PRACTICE RULES OF 1900.
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Introduction

We have been asked to examine and make recommendations about particular defences in the Criminal Code, and whether the mandatory penalty of life imprisonment for murder should be removed. The particular defences in the review are:

- self-defence,
- provocation as a defence to assault,
- provocation as a partial defence to murder,
- the partial defence to murder of killing for preservation in an abusive domestic relationship, and
- domestic discipline.

In our first background paper, we outlined our terms of reference, described the current law and explained the general scope and focus of our review. The background paper and the full terms of reference are available on our [website](#).¹

This is our second background paper in the review. It outlines our guiding principles for reform. We have identified 5 main principles to guide our review and help develop our recommendations for reform. The purpose of the paper is to set out these principles and what they include. This will form a backdrop to our ongoing work and conversations in our review.

The paper also outlines our review process and next steps.

Our [website](#) also has a series of information sheets and resources which include the full text and diagrams of the current law, a timeline of previous legislative changes, and comparative tables of the law in other jurisdictions.

What we are asked to do

1. The Government has asked the Commission to examine and make recommendations about the following defences in the Criminal Code:²
 - self-defence in sections 271 and 272,
 - provocation as a defence to assault in sections 268 and 269,
 - provocation as a partial defence to murder in section 304,
 - the partial defence to murder of killing for preservation in an abusive domestic relationship in section 304B, and
 - domestic discipline in section 280.
2. We have been asked to recommend whether any changes are needed to reform the law, practice or procedure about those defences. We have also been asked to consider:³
 - the impact of the mandatory penalty of life imprisonment for murder on the operation of those defences, and
 - whether the mandatory penalty should be removed.
3. If we recommend legislative reforms, we have been asked to prepare draft legislative provisions based on our recommendations.
4. In making our recommendations, the Commission is asked to have regard to a number of things, including:⁴
 - existing legal principles of criminal responsibility,
 - the need to ensure Queensland's criminal law reflects contemporary community standards,
 - the need for Queensland's criminal law to ensure just outcomes by balancing the interests of victims and accused persons,
 - the nature and impacts of domestic and family violence and criminal conduct on victims and survivors, and their families,
 - the experiences of victims and survivors, and their families, in the criminal justice system,
 - the compatibility of the recommendations with the Human Rights Act 2019 (including balancing the rights of victims and accused persons), and
 - any other matter that the Commission considers relevant having regard to the issues arising in the review.
5. Our review is limited to the matters in the terms of reference. It does not include the age of criminal responsibility in section 29 or the rule against double jeopardy in section 17 of the Criminal Code.⁵

Our guiding principles

6. The Commission has identified the following principles to guide our consideration of the issues in the review and help us develop our recommendations for reform. The defences in the review and the penalty for murder should:
 - promote just outcomes and protect fundamental human rights including rights in criminal proceedings
 - reflect contemporary community standards and be fit for purpose
 - be clear and easy to understand
 - better reflect circumstances involving domestic and family violence, including coercive control
 - be informed by evidence including expert knowledge and lived experience.
7. The principles are informed by our terms of reference; Queensland's human rights, criminal justice and sentencing frameworks; and previous reviews including the work of the Women's Safety and Justice Taskforce.⁶
8. The principles are also informed by the significant disproportionate impact of criminal laws and sentencing on Aboriginal and Torres Strait Islander peoples, their families and communities. Aboriginal peoples and Torres Strait Islander peoples are over-represented in the prison system and as victims of violence. The Commission's examination of the defences in the review, and the penalty for murder, should consider the unique lived experiences of Aboriginal peoples and Torres Strait Islander peoples, including the effect of systemic inequity and intergenerational trauma.
9. The guiding principles will be reflected in the issues, questions and options for reform outlined in our consultation paper later this year.
10. The Commission's general approach in the review is to go back to basics. We intend to consider the general framework of criminal responsibility and sentencing, and the underlying bases for recognising complete or partial defences. We will look at the history and reasoning behind the current provisions, how they operate and interact, and whether they still have a valid basis and role. In light of our guiding principles, we will consider how the Criminal Code and related practice and procedure should best deal with the matters in our terms of reference: self-defence, provocation, preservation in an abusive domestic relationship, domestic discipline and the penalty for murder.

Principle 1: justice

The defences and penalty for murder should promote just outcomes and protect fundamental human rights including rights in criminal proceedings.

11. All legislation, including criminal laws, must have sufficient regard to individuals' rights and liberties, and any reforms should be compatible with human rights: see further the discussion beginning at [50] below.⁷
12. The Human Rights Act 2019 reflects the obligation to respect, protect and promote fundamental rights. As shown in table 1 below, these rights include:⁸
 - the right to life,
 - protection from torture and cruel, inhuman or degrading treatment,
 - the right to liberty and security of person,
 - the right to equal treatment and non-discrimination before the law,
 - the right of children to the protection they need in their best interests, and
 - the right to a fair trial and other rights in criminal proceedings.
13. The criminal law is an essential part of the legal framework that upholds these rights. Effective criminal sanctions for homicide and other forms of violence protect the right to life and individuals' safety, security and dignity. Appropriate defences, sentencing laws and procedural safeguards recognise the equal rights of others to safety, liberty and due process. Special measures may also be needed to protect particularly vulnerable people, including children and victim-survivors of domestic and family violence.⁹
14. To ensure just outcomes, the criminal law and justice system must reconcile and balance many complex considerations, including the interests of victims and their families, defendants and the community.¹⁰ It has been explained that:¹¹

The purpose of the criminal law is to permit everyone to go about their daily lives without fear of harm to person or property. And it is in the interests of everyone that serious crime should be effectively investigated and prosecuted. There must be fairness to all sides. In a criminal case this requires the court to consider a triangulation of interests. It involves taking into account the position of the accused, the victim and his or her family, and the public.
15. In prosecuting criminal offences, '[t]he community's interest is that the guilty be brought to justice and that the innocent not be wrongly convicted'¹² or arbitrarily punished.
16. The aims of the criminal law are also reflected in the purposes of sentencing: to protect the community, denounce criminal behaviour, deter crimes in general and reoffending, punish offenders and help offenders rehabilitate.¹³
17. The criminal law has an interest in consistency and equal treatment of like cases. It also has an interest in individualised justice which takes account of all the circumstances of a case. The defences in the review should aim for substantive equality.¹⁴ The right to equality before the law and to equal and effective protection from discrimination¹⁵ recognises that 'uniformity of treatment between different persons may not be appropriate or adequate', and that 'disadvantaged or vulnerable persons may need to be treated differently to ensure they are treated equally'.¹⁶ For example, the Commission has previously observed that:¹⁷

Under formal gender equality, the same laws are applied to men and women – but they may punish or work against women in areas ‘where consensus and commonality between men and women do not exist’. Substantive equality requires that the laws themselves treat individuals as substantive equals. (notes omitted)

18. An important principle of criminal law is that criminal responsibility for an offence will usually arise only if the defendant has acted in a wrongful or blameworthy way.¹⁸ The criminal law presumes that a person ‘had the capacity to understand what was happening, to distinguish between right and wrong, and to choose to act differently’.¹⁹ This is reflected in the capacity-based defences in the Criminal Code such as insanity and diminished responsibility.²⁰
19. There may also be differing degrees of wrongdoing or blame. Not all offences or offenders are the same. While the crime of murder is generally regarded as the most serious of offences, it is not limited to intentional killing. It covers a range of offending which may occur in many contexts, including killing with reckless indifference to human life.²¹ Assault, wounding and grievous bodily harm offences can also occur in a variety of situations.²² A person who acts to defend themselves or someone else from the threat of harm may be considered less blameworthy than a person who acts out of vengeance, jealousy or greed. In some cases, a co-offender might be considered more or less blameworthy depending on how involved they were and whether they were coerced.²³
20. Contextual factors may be relevant to criminal responsibility or punishment or both. A person’s motive for acting is not usually relevant in deciding if they are guilty of an offence.²⁴ But the Criminal Code includes some ‘rationale-based’ defences that relate to the particular circumstances of the offending and the reasons for the person’s actions. This includes the defences of compulsion and self-defence.²⁵ Relevant circumstances are also usually taken into account when an offender is sentenced, including any ‘mitigating or aggravating factor’ that is present. This includes the extent to which the offender is to blame for the offence, the nature or extent of the violence used in the offence and the effect of domestic and family violence on the offender. It also includes the effect of systemic disadvantage and intergenerational trauma on an offender who is an Aboriginal person or Torres Strait Islander person.²⁶
21. An important general principle of criminal justice is that each case is decided on its own facts.
22. Central to the criminal justice system are:
 - the right to a fair trial according to law,²⁷
 - the presumption of innocence and the prosecution’s burden of proof,²⁸
 - the defendant’s right to silence,²⁹
 - the role of the jury in criminal trials for indictable offences, including murder and manslaughter,³⁰
 - the prosecution’s obligation to disclose all evidence, including material that may help the defendant,³¹ and
 - the rights and interests of victims and their families, and witnesses.³²
23. An important part of the criminal justice system is to protect the dignity and rights of victims. The physical, financial, emotional and psychological impacts of violence ‘are often compounded by the need for victims to engage with an unfamiliar criminal justice system’.³³ People from culturally and linguistically diverse backgrounds and other vulnerable people can experience added barriers, including barriers to effective communication. Where trials are necessary, there is public interest in minimising the trauma, and re-trauma, that can be caused to victims and witnesses when giving evidence and participating in criminal proceedings.

24. Victims and their families are entitled to be informed about proceedings and are given the opportunity to give statements to the sentencing court. In some circumstances, they are given the opportunity to give statements to the parole board.³⁴ The criminal justice system also extends rights and protections to witnesses in criminal trials, including child witnesses, victims of domestic violence and other vulnerable witnesses.³⁵ The importance of upholding the dignity, rights and wellbeing of victims is further supported by the establishment of the Victims' Commissioner.³⁶
25. It is also critical to take into account the impact of Queensland's criminal laws, sentencing and justice framework on Aboriginal peoples and Torres Strait Islander peoples, their families and communities. Queensland has the second largest number of Aboriginal and Torres Strait Islander residents in Australia, after New South Wales. Aboriginal peoples and Torres Strait Islander peoples include diverse language groups and communities, and are dispersed across the State. An estimated 40.8% live in major cities, 43.8% live in regional areas and 15.4% live in remote and very remote areas of the State.³⁷
26. Aboriginal peoples and Torres Strait Islander peoples continue to experience high rates of homicide and domestic and family violence,³⁸ and are overrepresented in the prison system.³⁹ Aboriginal children and Torres Strait Islander children also have higher rates of contact with the child protection system.⁴⁰ This reflects complex social, economic and cultural inequity and intergenerational trauma faced by many Aboriginal peoples and Torres Strait Islander peoples.⁴¹ As a result, many Aboriginal peoples and Torres Strait Islander peoples face structural inequality and barriers to their access to justice as victims and accused persons. The National Agreement on Closing the Gap commits to overcoming entrenched inequality and improving outcomes for Aboriginal peoples and Torres Strait Islander peoples, including outcomes in the criminal justice system.⁴²

**Box 1: The criminal justice system and
Aboriginal peoples and Torres Strait Islander peoples⁴³**

It is estimated that Aboriginal peoples and Torres Strait Islander peoples represent 3.8% of the total Australian population, and 5.2% of the total population of Queensland. However, they account for:

- 33% of all prisoners in Australia, and 37% of all prisoners in Queensland, and
- 10% of homicide victims in Australia.

In 2020–21, the homicide victimisation rate was 2.24 per 100,000 for Indigenous Australians, compared to 0.81 per 100,000 for non-Indigenous Australians.

In 2022, most Aboriginal and Torres Strait Islander assault victims in Australia were recorded as victims of domestic and family violence (65–80%).

In 2016–17, Indigenous people were 32 times as likely to be hospitalised for family violence, compared with non-Indigenous people.

Principle 2: fitness for purpose

The defences in the review and the penalty for murder should reflect contemporary community standards and be fit for purpose.

27. The criminal law must keep pace with social change.⁴⁴ Many of the defences in our review have stayed much the same since the Criminal Code first came into force in 1901. Many were based on early English common law, reflecting the social values and circumstances of the time.
28. For example, the law of provocation and self-defence in the 18th and 19th centuries was mainly focused on regulating ‘violence in the public sphere at a time when men commonly wore weapons’. The law was particularly concerned with ‘the conduct of people involved in drunken brawls and the responses of men who were quick to anger, especially in matters of honour’, such as adultery.⁴⁵ During this time the law also reflected different degrees of criminal responsibility for domestic killings. The crime of murder applied to men who killed their wives, but the more serious crime of petit (petty) treason applied to women who killed their husbands and servants who killed their masters.⁴⁶
29. The drafters of the Criminal Code did not intend that it would stay fixed in time or would provide for ‘every possible legal question’ which could arise.⁴⁷ The common law will sometimes be used by judges to fill gaps or interpret uncertain or technical words.⁴⁸ Many defences also require the judge or jury to decide if the person’s actions or beliefs were reasonable or their use of force was proportionate (no more than necessary) in the circumstances.⁴⁹ In this way, it is possible for defences to adjust to changing community standards and reflect contemporary social values.
30. The jury plays a significant role in our criminal justice system, allowing ‘for the ordinary experiences of ordinary people to be brought to bear in the determination of factual matters’.⁵⁰ Jury verdicts are not always perfect. But the jury system allows verdicts to reflect the conscience of the community.⁵¹ Challenges remain, such as ensuring that randomly selected juries are broadly representative. Aboriginal peoples and Torres Strait Islander peoples are more likely than non-Indigenous Australians to be under-represented on juries, including in trials of Aboriginal and Torres Strait Islander defendants.⁵²
31. The criminal defences in the review and penalty for murder must be fit for purpose. Reforms should aim to overcome historic ‘biases and flaws’ and reflect contemporary community standards.⁵³ Reforms should also aim for laws that reflect the actual contexts in which homicide and other offences of violence typically happen. For example, domestic homicides account for more than a third of all homicides in Australia.⁵⁴ And it is recognised that men and women who kill or use violence tend to do so in different circumstances and for different reasons.⁵⁵ At present, the circumstances of people’s offending may not fit easily into existing defences.⁵⁶
32. To help inform our review, we plan to carry out research on contemporary community attitudes. Surveys and focus groups based on hypothetical scenarios will be used to identify and understand attitudes on the defences in the review and the penalty for murder. One of the research aims is to identify any variation in community attitudes across different demographic groups, including people from different geographic areas, age groups and cultural backgrounds.
33. Reforms should aim for robust laws that will be effective, are able to adapt to future challenges and will avoid unintended consequences that could lead to unjust outcomes.

Principle 3: clarity

The defences should be clear and easy to understand.

34. A criticism of the current defences is that they are complex, difficult to understand and difficult for judges to direct juries on. Some of the ways they operate may be unclear or open to different interpretations, creating uncertainty.⁵⁷
35. Complex law contributes to more complicated jury directions, making the jury's task more difficult.⁵⁸ An important consideration is to ensure the law can be understood and applied.
36. The community is 'the ultimate user of a law'.⁵⁹ Legislation should be 'unambiguous and drafted in a sufficiently clear and precise way'.⁶⁰ This is an 'essential feature of the rule of law' and important for ensuring access to justice.⁶¹ It enables people to know and understand the law that applies to them. This is essential in the criminal law, where the consequences are so significant.

Box 2: roles of the judge and jury⁶²

Summary trials of criminal offences are heard by a Magistrates Court.

Other criminal trials take place in the District Court or the Supreme Court. Some trials are heard by a judge alone. Criminal trials for indictable offences like murder and manslaughter are usually heard by a judge and jury.

Questions of law are decided by the judge. Questions of fact are decided by the jury, or by the judge if there is no jury. (In a summary trial, the magistrate decides both.)

The judge's role is to ensure a fair trial according to law. The jury's role is to consider the evidence and reach a verdict of guilty or not guilty. Jury deliberations are confidential.

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. Empanelled jurors take an oath or make an affirmation that they will 'conscientiously try the charges' against the defendant and 'decide them according to the evidence'. Usually a jury verdict must be unanimous, with all members of the jury agreeing. But in some cases (not murder) a majority verdict may be given if the jury cannot reach a unanimous verdict after a set time.

If the defendant is convicted, sentencing is a matter for the judge.

37. A key concern in this review is whether the defences can be made simpler and clearer so it is easier for police, prosecutors, defence lawyers, judges, juries, defendants, victims and the wider community to understand them – and to produce fairer outcomes.
38. There is also public interest in reducing costs associated with the impact of unduly complex or unclear law on trials, appeals and retrials.

Principle 4: domestic and family violence

The defences should better reflect circumstances involving domestic and family violence, including coercive control.

39. Another criticism of the current defences is that they continue to operate in a gendered way, and may be difficult to rely on for victim-survivors of domestic and family violence who use force against their abusers.⁶³
40. Domestic and family violence is a complex social, health and legal issue. It includes physical and other forms of violence and abuse in intimate personal, family and informal care relationships.⁶⁴ Although it affects people from all backgrounds, it mainly affects women. Aboriginal and Torres Strait Islander women and children are also at much higher risk.⁶⁵

Box 3: prevalence of domestic and family violence⁶⁶

It is estimated that 3.8 million Australian adults (20%) have experienced physical or sexual violence by an intimate partner or family member since the age of 15, including:

- 27% of women (2.7 million), and
- 12% of men (1.1 million).

In 2022–23, Australian state and territory police recorded 232 homicide incidents. More than a third of these (34% n=79) were domestic homicides, where the victim was an intimate partner or family member of the offender.

In Queensland, 123 domestic and family violence-related deaths occurred in an intimate partner or family relationship between 1 July 2017 and 30 June 2023. Of those deceased persons, 25% identified as Aboriginal or Torres Strait Islander, and 10% were from culturally and linguistically diverse backgrounds.

41. The Women’s Safety and Justice Taskforce noted concerns that current criminal laws do not protect the rights of ‘desperate victims forced to defend themselves from perpetrators of serious domestic abuse’ and that there is a ‘lack of clarity’ about defences available to ‘victims who offend in the context of a controlling, abusive relationship’. It also expressed concern about the use of defences like provocation by perpetrators who kill their partners ‘in a jealous rage’.⁶⁷
42. Drawing on the findings of the taskforce, reforms should ensure that the defences:⁶⁸
 - ‘evolve beyond outdated, gendered understandings about the types of behaviour that cause fear and create an imminent threat to safety’,
 - ‘reflect the impact of domestic violence on victims’, and
 - do ‘not reinforce stereotypes that inappropriately reduce the culpability of perpetrators’.
43. It is also critical to ensure the criminal law and justice system responds adequately to cultural diversity and issues affecting people from marginalised communities.

Principle 5: evidence-informed

The defences and recommended reforms should be informed by evidence including expert knowledge and lived experience.

44. Changes to the defences in the review and the penalty for murder should be informed by the best available evidence, including understandings about the experience of domestic and family violence.⁶⁹
45. The Women's Safety and Justice Taskforce urged review of the defences to ensure they 'meet our current knowledge about the effects of domestic and family violence – including coercive control over time'.⁷⁰ Understandings of domestic and family violence are continually evolving, and laws and procedures must keep pace.⁷¹
46. There is also a growing body of research on child maltreatment and the use and effects of physical punishment on children, which is relevant to our consideration of the defence of domestic discipline.⁷²
47. It is critical to ensure the review is informed by the voices of those most affected. Reforms should be informed by the knowledge of support workers and the lived experience of victims, defendants, victim-survivors of domestic and family violence and their families. The particular experiences of Aboriginal and Torres Strait Islander victims and defendants, and impacts on their families and communities, must be taken into account.
48. Our work will also be informed by research the Commission intends to carry out as part of the review. We plan to undertake survey and focus group research to identify and understand Queensland community attitudes on the defences in the review and the penalty for murder. We will also be looking closely at the outcomes of previous Queensland cases where the defences have been raised, or the mandatory penalty for murder has been imposed. This will include analysis of some trial transcripts.
49. The Commission will also consider experiences in other jurisdictions, including places where defences have been abolished or simplified and where the mandatory penalty for murder has been changed. Although Queensland has its own local conditions and considerations, looking at the outcomes of reforms in other jurisdictions is a useful guide.

Compatibility with human rights

50. The Commission is required to consider the compatibility of its recommendations with the Human Rights Act 2019.⁷³ This obligation is reflected in our guiding principles, particularly principle 1.
51. The Human Rights Act 2019 protects and promotes human rights. All individuals in Queensland have the human rights in the Act, as well as rights and freedoms under other laws, such as anti-discrimination laws and relevant international human rights instruments. The rights in the Act are not absolute and may be limited.⁷⁴ Under the Act, human rights must be considered by Government when developing policies, by parliament when making new laws, and by courts and tribunals when interpreting laws or acting in their administrative capacity.⁷⁵
52. Laws, actions and decisions are compatible with human rights under the Act if they:⁷⁶
 - do not limit a human right; or
 - limit a human right 'only to the extent that is reasonable and demonstrably justifiable' in a 'free and democratic society based on human dignity, equality and freedom'.
53. A limit is reasonable and justifiable under the Act depending on several factors. These include the nature and importance of preserving the human right that is limited, the nature and importance of the limit's purpose, and whether there are 'less restrictive and reasonably available ways' to achieve that purpose.⁷⁷

Table 1: The rights in the Human Rights Act 2019 and the defences in the review and the penalty for murder

Human Rights Act	International treaties	Context or issues
recognition and equality before the law (s 15)	ICCPR arts 16, 26 See also: ICESCR art 2(2) ICERD art 5 CEDAW arts 2, 6 CRC arts 2, 34 CRPD especially arts 5, 12, 13	<ul style="list-style-type: none"> • everyone should have equal access to justice and be protected from discrimination, including women, Aboriginal peoples and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds, people with disability, children, and parents and carers responsible for the care and protection of children • access to justice includes having the protection of criminal laws and defences, as well as access to legal advice, participation in court proceedings and other aspects of criminal law practice and procedure • Aboriginal peoples and Torres Strait Islander peoples are over-represented in prison and experience high levels of violence, including domestic and family violence • victim-survivors who have experienced trauma may encounter barriers to reporting crimes of violence against them or relating a relevant history of serious abuse
right to life (s 16)	ICCPR art 6(1)	<ul style="list-style-type: none"> • everyone is entitled to feel safe and be protected from harm, including physical violence that threatens their life

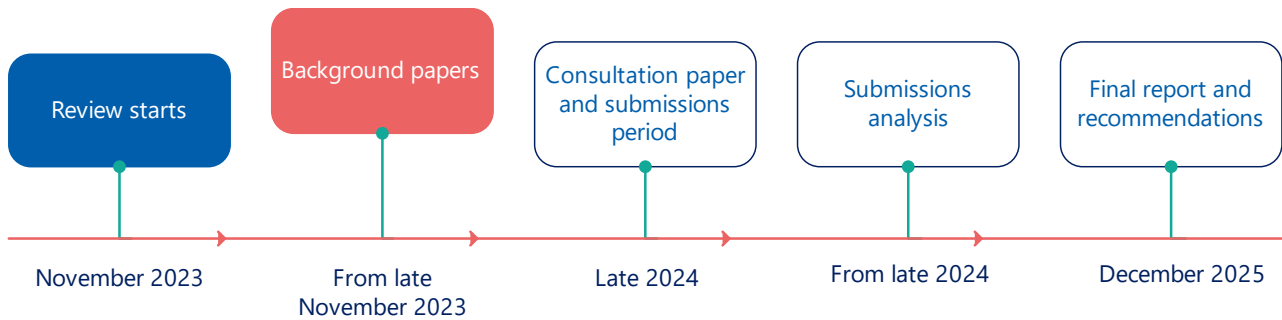
Human Rights Act	International treaties	Context or issues
		<ul style="list-style-type: none"> women and Aboriginal peoples and Torres Strait Islander peoples experience high levels of violence, including intimate partner homicide criminal laws, including the investigation and prosecution of offences, play an essential role in protecting the lives of individuals from arbitrary deprivation homicide is recognised as one of the most serious crimes against the person as an extreme form of gender-based violence, femicide is recognised as a particularly serious infringement of the right to life criminal defences should be consistent with the right to life and the need to hold perpetrators of violence accountable for their actions the use of lethal force may be justified and not arbitrary in some circumstances, such as necessary self-defence
protection from torture and cruel, inhuman or degrading treatment (s 17)	ICCPR art 7 See also: CRC art 37(a) CRPD art 15 Torture Convention	<ul style="list-style-type: none"> everyone is entitled to feel safe and be protected from harm, including from cruel, inhuman or degrading treatment women and Aboriginal peoples and Torres Strait Islander peoples experience high levels of violence and homicide children should be protected from discipline or punishment that is cruel, inhuman or degrading participating in criminal trials, appeals and retrials can be traumatising for victims and witnesses; the dignity of victims and witnesses in the criminal justice system should be respected a life sentence with no hope of release, or a grossly disproportionate sentence, may infringe this right
freedom from forced work (s 18)	ICCPR art 8 See also: ICESCR arts 6, 7	<ul style="list-style-type: none"> victim-survivors of domestic and family violence may experience coercive control that impacts on this right
freedom of movement (s 19)	ICCPR art 12	<ul style="list-style-type: none"> victim-survivors of domestic and family violence may experience coercive control that impacts on this right criminal law recognises that people should be free to go about their daily lives without fear of harm to person or property
freedom of thought, conscience, religion and belief (s 20)	ICCPR art 18 See also: CRC art 14	<ul style="list-style-type: none"> everyone has a right to think and believe what they choose, and people may have different views and attitudes about when the use of force is reasonable or acceptable, including domestic discipline of a child a person's freedom to act on their beliefs may need to be limited to protect public safety or other fundamental rights

Human Rights Act	International treaties	Context or issues
freedom of expression (s 21)	ICCPR art 19	<ul style="list-style-type: none"> everyone has a right to hold and express an opinion or idea people are entitled to protect themselves from the threat of serious harm, but it would be difficult to show that words alone justify a violent response some words or insults may be highly offensive within particular cultural communities
peaceful assembly and freedom of association (s 22)	ICCPR arts 21, 22 See also: ICESCR art 8	<ul style="list-style-type: none"> criminal law recognises that people should be free to go about their daily lives without fear of harm to person or property
taking part in public life (s 23)	ICCPR art 25 See also: CRPD arts 7(3), 29 CRC art 12	<ul style="list-style-type: none"> all people should be able to participate in the conduct of public affairs, including on issues affecting them reforms to criminal law, practice and procedure should be informed by people with lived experience as victims of crime or domestic violence, and those disproportionately affected including Aboriginal peoples and Torres Strait Islander peoples
property rights (s 24)	UDHR art 17	<ul style="list-style-type: none"> criminal law recognises that people should be free to go about their daily lives without fear of harm to person or property people may feel compelled to act with force to protect their property from serious harm or trespass
privacy and reputation (s 25)	ICCPR art 17	<ul style="list-style-type: none"> people may feel compelled to act with force to protect their home or family from serious harm criminal laws that prevent parents and carers from using reasonable measures to manage children in their care could impact their privacy
protection of families and children (s 26)	ICCPR arts 23, 24 See also: CRC arts 2, 3, 19, 37	<ul style="list-style-type: none"> children should be protected from violence and cruel, inhuman or degrading treatment children are recognised as more vulnerable than adults, or in need of greater protection, because of their age the dignity of child victims and witnesses in the criminal justice system should be respected children who have experienced or witnessed domestic or family violence, or whose parents have been killed or imprisoned, need support and protection
cultural rights, including cultural rights of Aboriginal peoples and Torres Strait Islander peoples (ss 27–28)	ICCPR art 27 UNDRIP arts 8, 25, 29, 31	<ul style="list-style-type: none"> reforms to criminal law, practice and procedure should recognise the culture, language and unique lived experience of individuals and their families and communities, including victims, witnesses and defendants from other cultural backgrounds Aboriginal peoples and Torres Strait Islander peoples are over-represented in the prison population and experience high levels of violence, including domestic and family violence

Human Rights Act	International treaties	Context or issues
right to liberty and security of person (s 29)	ICCPR art 9	<ul style="list-style-type: none"> women and Aboriginal peoples and Torres Strait Islander peoples experience high levels of violence, including domestic and family violence and intimate partner homicide domestic discipline that unreasonably restricts a child's movement or puts their safety at risk may interfere with the child's right to liberty and security no one should be subjected to arbitrary detention or imprisonment a mandatory sentence of imprisonment that results in a disproportionate sentence may infringe this right
humane treatment when deprived of liberty (s 30)	ICCPR art 10	<ul style="list-style-type: none"> a life sentence with no hope of release, or a grossly disproportionate sentence, may infringe this right
fair hearing (s 31)	ICCPR art 14	<ul style="list-style-type: none"> all people have a right to due process and fairness when arrested, detained or charged with a criminal offence, including the right to a fair trial
rights relevant to criminal charges, offences and proceedings (ss 32-35)	ICCPR arts 10, 14, 15	<ul style="list-style-type: none"> all people have a right to due process and fairness when arrested, detained or charged with a criminal offence, including the right to the presumption of innocence
right to education (s 36)	ICESCR art 13 See also: CRC art 28	<ul style="list-style-type: none"> children are entitled to access education appropriate to their needs, and should be protected from violence at school people should have access to appropriate information and education aimed at reducing violence, promoting respectful relationships and supporting victims rehabilitation of offenders may require access to education and training
right to health services (s 37)	ICESCR art 12 (which protects the right to the highest attainable standard of physical and mental health)	<ul style="list-style-type: none"> violent crime can have significant health consequences for victims and their families physical punishment of children can be detrimental to their wellbeing prisoners serving a life sentence may experience significant health impacts and should have access to appropriate health care
<p>CEDAW=Convention on the Elimination of all Forms of Discrimination Against Women. CRC=Convention on the Rights of the Child. CRPD=Convention on the Rights of Persons with Disabilities. ICCPR=International Covenant on Civil and Political Rights. ICERD=International Convention on the Elimination of All Forms of Racial Discrimination. ICESCR=International Covenant on Economic, Social and Cultural Rights. Torture Convention=Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. UDHR=Universal Declaration of Human Rights. UNDRIP=United Nations Declaration on the Rights of Indigenous Peoples.</p>		
<p>The rights in the Human Rights Act 2019 are drawn from the ICCPR, with 2 from the ICESCR (right to education and right to health services) and one from the UDHR (property rights): see Explanatory Notes, Human Rights Bill 2018 (Qld) 3-5.</p>		

Our next steps

Figure 1: Review timeline



54. Our review started on 15 November 2023.
55. The Commission has not formed any views or decided on options for reform at this stage.
56. This is the second of a series of background papers we plan to release. These papers and accompanying supporting resources aim to provide helpful background information to the law and issues, including approaches in other jurisdictions.
57. We encourage you to get involved in our review. There will be several opportunities to participate during the review, including consultation, public events and making formal submissions. We propose to release a consultation paper later this year calling for formal submissions. It will include questions for consultation and allow time for submissions to be made.
58. To help inform our review, we plan to carry out research on community attitudes and the outcomes of Queensland cases where the defences have been raised or the mandatory penalty for murder has been imposed.
59. We will give our final report with recommendations and any draft legislation to the Attorney-General by 1 December 2025.
60. You can send us your feedback or register your interest in the review by emailing qlrc-criminaldefence@justice.qld.gov.au. We will put our publications, updates and event information on our [website](#).

We collect personal information in submissions or other material only for the purposes of conducting our law reform reviews. Our [Submissions policy](#) explains how the Commission treats and may use submissions and other material we receive in the course of a law reform review. Our [Right to Information policy](#) explains how information held by the Commission may be accessed under right to information and privacy laws. These policies can be viewed on our [website](#).

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- 3 See our terms of reference paras 3, 5.
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