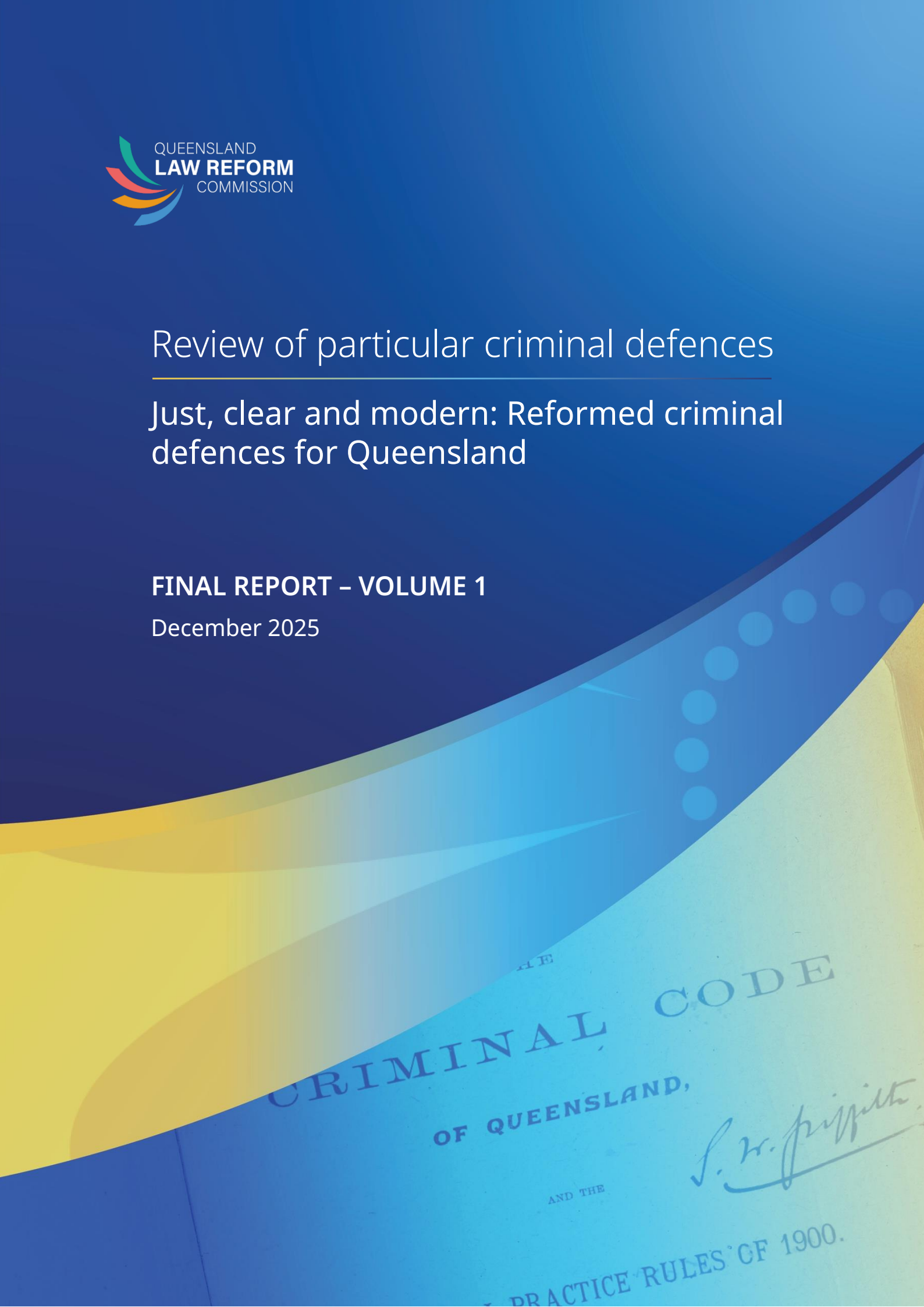
QUEENSLAND LAW REFORM COMMISSION

Review of particular criminal defences

Just, clear and modern: Reformed criminal defences for Queensland

FINAL REPORT – VOLUME 1

December 2025



Published by:

Queensland Law Reform Commission ('QLRC')

Postal address: PO Box 13312, George Street Post Shop, Brisbane, QLD 4003

Telephone: (07) 3564 7777

Email: LawReform.Commission@justice.qld.gov.au

Website: www.qlrc.qld.gov.au

ISBN: 978-1-923274-02-0

Publications in this reference:

Consultation paper:

QLRC, Equality and integrity: Reforming criminal defences in Queensland (Consultation Paper, February 2025)

Background papers:

QLRC, Review of particular criminal defences: Our terms of reference (Background Paper 1, November 2023)

QLRC, Review of particular criminal defences: Our guiding principles for reform (Background Paper 2, July 2024)

QLRC, Review of particular criminal defences: Understanding the role of domestic and family violence in criminal defences (Background Paper 3, February 2025)

QLRC, Review of particular criminal defences: What we heard (Background Paper 4, July 2025)

Research reports:

QLRC, Community attitudes to defences and sentences in cases of homicide in Queensland (Research Report 1, November 2024)

QLRC, Mandatory penalty for murder: Key research insights (Research Report 2, June 2025)

QLRC, Domestic discipline defence: Key insights into police practices (Research Report 3, June 2025)

Other publications:

QLRC, Review of particular criminal defences: Collated information sheets (November 2023)

QLRC, Review of particular criminal defences: Comparative table (November 2023)

QLRC, Review of particular criminal defences: Guide to legislative changes (November 2023)

Reference to legislation:

All references to legislation are to Queensland legislation, unless otherwise stated.

All references in recommendations to legislation are to provisions of the Criminal Code, unless otherwise stated.

This report reflects the law and information available to us at 1 November 2025.

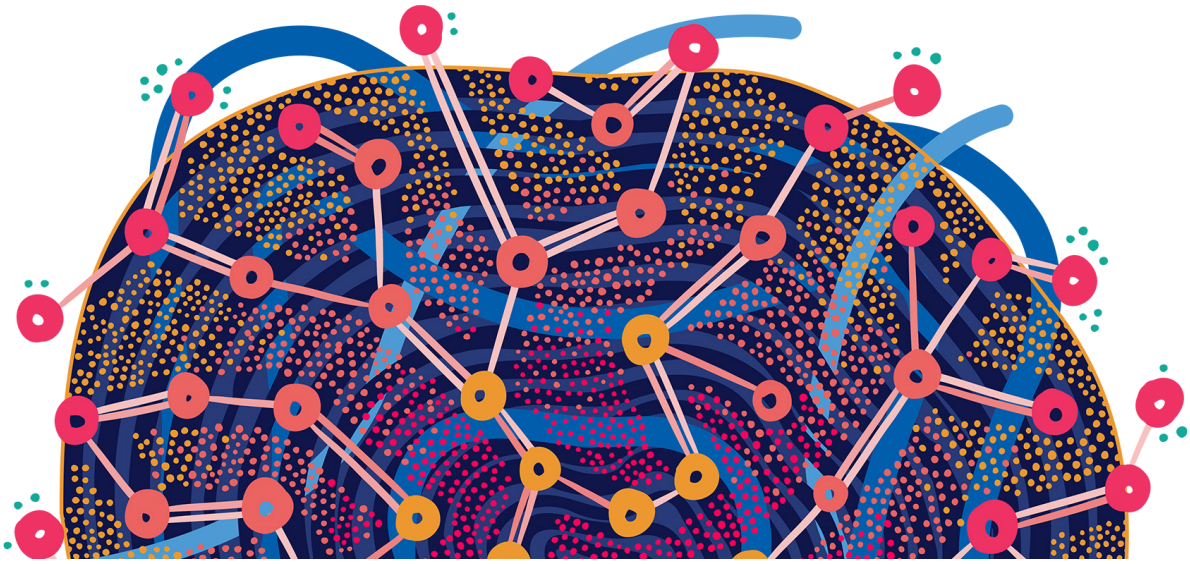
Commission

Chair:	Fleur Kingham
Deputy Chair:	Judge Anthony Rafter SC
Members:	Glen Cranny
	Mark Hinson KC
	Ruth O'Gorman KC
	Avelina Tarrago
	Dr Alice Taylor

Secretariat

Executive Director:	Matthew Corrigan
Director:	Dr Emma Phillips
Principal Legal Officers:	Steve Baso
	Dr Nia Emmanouil
	Jodie O'Leary
Senior Legal Officers:	Hannah Chantrill
	Rachna Nagesh
	Sophie Wiggans
Legal Officers:	Jack Cuming
	Steph Payne
Research Analyst:	Helen Punter
Principal Communications & Publications Officer:	Julia Starkey
Business Manager:	Natalie Collins
Executive Officer:	Bob Wallace
Senior Communications & Engagement Officer:	Tony Dempsey
Administrative Officer:	Natasha Relf
Research & Communications Officer:	Dominic Kendall-Frost

Acknowledgements



Acknowledgement of Country

The Queensland Law Reform Commission acknowledges and pays respects to Aboriginal peoples and Torres Strait Islander peoples and their Elders past and present. Particularly, we acknowledge the Jagera people and Turrbal people as the Traditional Custodians of Meanjin, the land on which our Brisbane office is located. We recognise the extraordinary knowledges and perspectives of Aboriginal peoples and Torres Strait Islander peoples throughout Queensland and would like to thank all those who have welcomed us on Country and connected with us in this review.

Expert reviewer

We thank the Honourable Patrick Keane AC KC for his expert review of the draft legislative provisions. His Honour's intellect, skill and expertise were instrumental to the development of the draft legislative provisions, enriching the content of, and our confidence in, the recommended reforms.

Legislative drafters

We thank the Office of the Queensland Parliamentary Counsel for preparing the Criminal Code (Defences and Excuses) Amendment Bill 2025. We particularly thank Michelle Freeney, Assistant Parliamentary Counsel, for her skill and commitment to reflecting our policy intent.

Collaborators

We thank all who have collaborated with us. We particularly thank:

- the Queensland Sentencing Advisory Council for updating its Sentencing Spotlight on Murder, which we have drawn on in our analysis
- the Queensland Family and Child Commission for collaborating with us to convene and facilitate the focus group with youth advocates and young people
- Dr Hayley Boxall, Prof Lorana Bartels, Prof Kate Fitz-Gibbon, Rebekah Ruddy and Australian National University's Centre for Social Policy Research and Social Research Centre for conducting the community attitudes research.

Review participants

We thank all who have generously given their time to share views and stories with us, write submissions or otherwise engage with us during this review. Your insights were critical in helping us to understand strengths and weaknesses of the current framework and develop practical, innovative and just recommendations for reform.

We particularly acknowledge the:

- victim-survivors of domestic and family violence who shared their insights and experiences with us
- leaders of various organisations in the criminal justice system for their valuable contribution to our understanding of the system and the potential implications of our reforms
- people who attended our meetings, roundtables, forums and events
- legal professionals and members of the judiciary we interviewed
- young people who participated in our focus group on domestic discipline
- people and organisations who made submissions.

We particularly thank:

- Queensland Corrective Services and the Queensland Courts Performance and Reporting Unit for providing access to data that formed the basis for our research into sentencing for murder
- Queensland Police Service for providing access to data about incident reports and case reports involving domestic discipline as a defence to parents using force against their child
- Queensland Police Service's Child Protection Investigation Unit officers for sharing their time and insights about the use of the defence of domestic discipline in police decision-making
- Parole Board Queensland for providing information about the movements of persons on parole and reasons for any returns to custody.

Other contributors

We acknowledge and thank Secretariat staff who contributed to this review, including Cathy Green, Paula Rogers, Anita Galeazzi, Kellie Jones, Edward Fleetwood, Dr Suzanne O'Toole, Lani Olafsson, Claire Foran, Libby Bourke and Carley Ruiz. We acknowledge and thank Judge Rafter's Associate, Lillian Tanna, for her contribution.

We also acknowledge and thank the other people and organisations who assisted us during this review, including students from Bond University, Griffith University and the University of Queensland's Pro Bono Centre.

Content warning

This report contains material that may be confronting and may cause sadness or distress, or trigger traumatic memories for people, particularly those who have experienced violence and abuse. For some people, this can feel overwhelming. If you need to talk to someone, please reach out to your own support network or contact any of the following support services:

13YARN: 13 92 76

Lifeline: 13 11 14

Kids Helpline: 1800 55 1800

Beyond Blue: 1300 224 636

1800RESPECT: 1800 737 732

Rainbow SDFV Helpline: 1800 497 212

QLife: 1800 184 527

No to Violence: 1300 766 491

DV Connect:

- **Women's line:** 1800 811 811
- **Men's line:** 1300 789 978

Language used in this report

We understand the importance of language and acknowledge that what is the 'right language' will sometimes be contested. We use the following language in this report with the utmost respect:

We use the phrase **Aboriginal peoples and Torres Strait Islander peoples** to refer to Aboriginal peoples and Torres Strait Islander peoples of Australia or Queensland, individually or collectively. We recognise the diversity of cultures, languages and communities throughout Queensland and Australia. We also recognise and respect the distinct cultural identities of Aboriginal peoples and Torres Strait Islander peoples, and Australian South Sea Islanders. We recognise **Australian South Sea Islanders** as a distinct community.

We use the phrase **culturally and linguistically diverse communities** to refer to people from diverse cultural backgrounds including cultural and ethnic identity, language, country of birth, national origin, heritage/ancestry, race and religion.

We use the term **victim-survivor** when referring to a person who has experienced domestic and family violence ('DFV'). In the criminal justice system, a victim-survivor may be a complainant or defendant. They may be charged with criminal offences resulting from their experience of abuse, including in circumstances where they experience coercive control and become involved in the criminal offending of their abuser. We use this term:

- because our review is looking at the issue of DFV holistically from a social policy perspective, rather than solely from a legal standpoint
- because a person who has experienced DFV may be the primary victim of DFV in a relationship and person most in need of protection as well as the person charged with a DFV offence
- for consistency, given different language may be used to describe a person who has experienced DFV at different points in the justice process (for example, a person alleged to have experienced violence, a person alleged to have used violence, complainant, defendant, victim, applicant or respondent)
- because we adopt the language used in the Government's Domestic and Family Violence: Common Risk and Safety Framework and acknowledge that a person is not defined by their experiences of violence and may identify as a victim, a survivor or both.

Not all people who have experienced DFV identify as victims and/or survivors. We chose this language because it acknowledges the harm DFV causes and victim-survivors' efforts to protect themselves.

We use the terms **culturally responsive** and **trauma-informed** together to represent two important and compatible approaches that have informed our review.

'Culturally responsive' refers to the actions taken to create and promote processes, services and environments that Aboriginal peoples, Torres Strait Islander peoples, Australian South Sea Islanders and people from culturally and linguistically diverse backgrounds experience as culturally safe. Cultural safety encompasses spiritual, social, emotional and physical safety and depends upon acceptance of a person's identity, respect and dignity.

'Trauma-informed' approaches are strengths-based and do not re-traumatise or blame victim-survivors for how they respond to and manage their reactions to trauma.

Culturally responsive, trauma-informed approaches promote safety, trust, choice, collaboration and empowerment and recognise culture, historical and gender issues.

Where we quote or refer to **individuals** who have engaged in the review, we use their surname only. We have valued their contributions and intend no disrespect by referring to them in this way.

Glossary

Term	What it means
aggravating factor	Increases the offender's culpability and may result in a higher penalty.
assault	Application of force to another person without their consent. An assault can include touching, pushing, hitting or a threat.
assault occasioning bodily harm	An assault that causes an interference with health or comfort, but not as serious as grievous bodily harm.
bail	An undertaking to return to court after being released from custody while waiting for criminal charges to be finalised. People on bail must follow bail conditions or rules, and not break the law, otherwise they can be arrested and may be remanded in custody.
bar to prosecution	Used by the Queensland Police Service to report the exercise of police discretion where no charge was laid.
child or children	A person under 18 years of age.
circumstance of aggravation	Any circumstance where an offender is liable to a higher maximum penalty than if the offence were committed without the existence of that circumstance.
committed (an offence)	The act of carrying out an offence.
committed (for trial or sentence)	Transferring an indictable offence to a Supreme Court or District Court by a Magistrates Court.
common assault	An assault that does not result in bodily harm.
Criminal Code	Schedule 1 of the Criminal Code Act 1899 (Qld).
criminal responsibility	Whether a person is guilty, or not guilty, of a particular offence.
culpability	Whether a person's behaviour is morally wrong and the extent to which they are blameworthy.

Director's Guidelines	A set of written instructions issued by the Director of Public Prosecutions about the conduct of prosecutions.
District Court	The District Court, including the Childrens Court of Queensland unless otherwise stated.
filicide	The killing of a child by a parent.
grievous bodily harm	Harm that results in the loss of a distinct part or organ of the body, or serious disfigurement or any bodily injury that could endanger or be likely to endanger life or cause permanent injury to health if it was left untreated. This is the case whether or not treatment is or could have been available.
homicide	Unlawful killing of another.
indict	Presenting the charge in the Supreme Court or District Court for the prosecution of an offence.
indictment	The document presented by the prosecution in the Supreme Court or District Court for the prosecution of an offence.
intimate partner violence	A pattern of behaviour in an intimate relationship that causes physical, sexual or psychological harm from one partner to another.
Magistrates Court	The Magistrates Court, including the Childrens Court (Magistrates) unless otherwise stated.
mitigating factor	Reduces an offender's culpability and may result in a lower penalty.
Model Criminal Code	A comprehensive set of criminal laws developed to standardise and modernise the criminal law across Australia.
Operational Procedures Manual	A handbook issued by the Queensland Police Commissioner providing guidance and instruction for the conduct of the Queensland Police Service.
remand (held on remand/remanded in custody)	An order to be kept in custody while waiting for criminal charges to be finalised.
Taskforce	Women's Safety and Justice Taskforce.

Abbreviations

AOBH	assault occasioning bodily harm
AOD	alcohol and other drugs
DFV	domestic and family violence
CPIU	Child Protection and Investigation Unit
GBH	grievous bodily harm
LGBTQIA+	People who identify as lesbian, gay, bisexual, transgender, queer or questioning, intersex, or asexual
ODPP	Office of the Director of Public Prosecutions
OPM	Operational Procedures Manual (Queensland Police Service)
QPS	Queensland Police Service
QPRIME	Queensland Police Records and Information Management Exchange

Contents

Chair's preface

Fleur Kingham

In 1897, Sir Samuel Griffith drafted the Queensland Criminal Code to reflect the societal mores and respond to the challenges of the day. One hundred and twenty-five years later, the Attorney-General asked the Commission whether some aspects of that Code are fit for purpose given the circumstances of domestic and family violence and current community attitudes about violent offending.

The Commission was asked to consider whether:

- the defences of self-defence, killing for preservation in an abusive domestic relationship and domestic discipline of children should be reformed
- the provocation defences which apply to both assault and to murder should be repealed or reformed
- the mandatory penalty of life imprisonment for murder should be removed
- relevant practices and procedures need reform.

The goal of a fair, modern and simple legal framework guides the Commission in its work. Our reforms promote a just, clear and modern approach to prosecuting, defending and sentencing violent offending by:

- clarifying, simplifying and modernising the defence of self-defence by:
  - prescribing core requirements of necessity and reasonableness
  - specifying how intoxication operates for the defence
  - facilitating informed consideration of the full circumstances in which victim-survivors of DFV respond to their abusers
- reframing the defence of killing for preservation in an abusive domestic relationship as an extension of self-defence (conditional upon the self-defence reforms)
- repealing the provocation defences and recasting this as a sentencing consideration
- providing guided discretion for judges to decide the date a person convicted of murder will be able to apply for parole
- in a carefully staged process, reforming the defence of domestic discipline to confine:
  - the categories of people who can rely on the defence
  - the extent of force that can be used against a child
  - the purpose for which that force can be used
- practice and procedure recommendations to support effective implementation.

We took a holistic approach to this reference. We considered problems and solutions for discrete provisions. To avoid unintended consequences, we explored how the provisions and proposed reforms interact. We have taken great care to identify those recommendations that must be implemented together, or in a staged way. Our Bill is drafted to achieve that outcome.

The scale and scope of the work detailed in this report and other review publications is remarkable given the review timeframe of two years. Our recommendations have a compelling foundation. They rest upon a rigorous evidence base. They are informed by extensive and thorough consultations.

I acknowledge the excellence of our Secretariat staff and leaders in legal research and scholarship, consultations and communications. I sincerely thank those who shared their insights and experiences with us during consultations.

I acknowledge and thank our Deputy Chair, Judge Tony Rafter, for his intellectual leadership during this review. His significant contribution would not have been possible without the support of Chief Judge Devereaux, who facilitated Judge Rafter's close involvement. This review coincided with two other substantial reviews, placing a heavy load on our part-time Commissioners, as well as the Secretariat. Without exception, they diligently and enthusiastically brought their combined scholarship and pragmatism to our deliberations.

On behalf of the Commissioners, I am proud to commend this robust report to the Attorney-General.

Summary

In this report, we recommend reforms to key defences in the Criminal Code to make them simple, clear and modern and to support just outcomes. We recognise the public interest in increasing community safety, protecting victims of violent offending and ensuring that people who offend face appropriate consequences. Many of the laws we are recommending be reformed have been part of the Criminal Code, drafted by Sir Samuel Griffith in 1897, since it was enacted in 1901. Many of the provisions are largely in their original form, although their interpretation by courts has developed over time.

We have sought to frame our reforms to reflect contemporary attitudes. We have sought to understand attitudes across Queensland through rigorous survey and focus group research, broad consultation and from public submissions. Many of the defences in our Criminal Code align with Queenslanders' innate sense of what is just and right. Other defences, particularly those that privilege violent responses borne of anger and jealousy, are not consistent with community attitudes. The community believes that appropriate responses, even violent responses, in fear and self-preservation are acceptable. The community does, however, expect people to walk away when provoked to anger rather than respond with violence. The community does not tolerate domestic and family violence or accept historical notions of private violence or family business.

So that the defences are consistent with community attitudes, we have centred our reforms around the concept of reasonableness. Generally, people accused of crimes should have access to appropriate defences based on whether their actions are reasonable in the circumstances. This should allow juries to assess a defendant's response, supported by appropriate direction and guidance, without the need for elaborate jury directions. It should also enable those working in the criminal justice system to consider any available defences simply and coherently having regard to the alleged criminal offending understood holistically.

We make **36** recommendations to:

- **reform** the law of self-defence, compulsion, duress and domestic discipline to make the defences modern, simple and clear and to support just outcomes, including in the DFV context
- **reframe** provocation by repealing the defences and providing for its consideration as a factor in sentencing consistent with contemporary values and standards
- **enable** judges to decide eligibility for parole for persons convicted of murder, to reflect contextual factors relevant to the offence and offender
- **educate** the community about the law reforms and support people and communities to comply with the laws
- **improve** practice and procedure to facilitate the effective and efficient administration of justice
- **increase** safeguards for DFV victim-survivors and other people who may face additional barriers to engaging in the criminal justice system or accessing justice
- **ensure** accountability through monitoring and review of reforms.

Our review commenced on 15 November 2023. Our terms of reference require us to have particular regard to homicides occurring within the context of DFV and to consider:

- existing legal principles of criminal responsibility
- the need for Queensland's criminal law to reflect contemporary community standards

- recent developments, legislative reform and research in other Australian and international jurisdictions.

We have also been asked to make recommendations about any other matters we consider relevant to the issues in the review.

We took a mixed methods approach to our review that included:

- conducting six original research projects to strengthen the evidence base for our reforms
- consulting with key stakeholders in meetings, forums, events and roundtables
- analysing submissions
- researching and analysing legislation and case law in Queensland and comparative jurisdictions and secondary source materials (academic publications and research reports).

We used information obtained to identify key issues in the review and to formulate proposals (in the Consultation Paper) and recommendations (in this report) for reform. Key contextual factors underpinning the issues considered in this review include:

- the DFV context and the need for reform
- the over-representation of Aboriginal peoples and Torres Strait Islander peoples and people with disability at all stages of the criminal justice system
- broader systemic issues with the criminal justice system.

Our recommendations for reform have also been informed by:

- our guiding principles, which require that our reforms promote just outcomes, are fit for purpose, promote clarity, reflect the DFV context and are evidence-informed
- consideration of their compatibility with the Human Rights Act.

During the review, we released a number of publications, including four background papers, three research reports and a consultation paper. We also published information sheets, fact sheets and multi-media resources. All are published on our website.

In accordance with our terms of reference, to assist implementation of our recommendations we have developed the Criminal Code (Defences and Excuses) Amendment Bill 2025 ('QLRC Draft Bill'). The QLRC Draft Bill includes the substantive legal reforms we recommend. We have also developed a Guide that explains the QLRC Draft Bill. We have not drafted the legislation necessary to implement our procedural reforms given their complex interaction with other laws, policies and practices.

List of recommendations

Where the **Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill)** gives effect to the recommendation, it is referenced in the recommendation.

References to current legislative provisions are to the Criminal Code, unless otherwise stated.

Defensive conduct

Reforms to simplify and clarify self-defence

R1 Self-defence (sections 271–273) should be amended so that it is available to a person:

(a) who acts in the belief that they need to defend themselves or another person, or to free themselves or another person from being unlawfully deprived of their liberty ('necessity element'), and

(b) whose actions are reasonable in the circumstances as they believe them to be ('reasonableness element').

R2 Self-defence should not be available to a person who uses force in response to a lawful act where there is no reasonable basis for believing the act is not lawful.

R3 The Criminal Code should be amended to make explicit how self-defence applies when a person is intoxicated:

(a) If a person voluntarily consumes intoxicating substances, their intoxication is only relevant to the necessity element.

(b) If a person involuntarily consumes intoxicating substances, their intoxication is relevant to the elements of necessity and reasonableness.

R4 The interaction between self-defence and DFV should be made explicit in the Criminal Code. If a person uses force in the context of a domestic relationship involving DFV, the necessity and reasonableness elements may be met even if the person:

(a) is responding to non-imminent harm, or

(b) uses force greater than the force or threat of force responded to.

Lethal defensive force

R5 Self-defence should not be available as a defence to murder unless a person believes that the use of lethal force is necessary to prevent death or 'serious harm' to themselves or another person. 'Serious harm' should encompass harm, including its cumulative effect, that does or is likely to:

(a) endanger a person's life, or

(b) be significant and longstanding, including psychological harm or harm arising from a cause such as sexual assault.

R6 The partial defence to murder of killing for preservation in an abusive domestic relationship (section 304B) should be integrated within self-defence as a partial defence which will apply if the defendant believes their actions are necessary in self-defence but their actions are not reasonable.

(QLRC Draft Bill cl 11, 15)

A new defence of duress and consequential changes

R7 The defence of compulsion (section 31(1)(c)) should be repealed.

R8 The defence of duress (section 31(1)(d)) should be expanded and modernised to apply where a person:

(a) reasonably believes that a threat of harm will be carried out unless they commit the relevant criminal offence ('threat element')

(b) reasonably believes that they need to commit the relevant criminal offence to avoid the threat being carried out ('necessity element'), and

(c) their conduct is a reasonable response to the threat ('proportionality element').

R9 The defence of duress should be available as a defence to murder where the relevant threat (referred to in Recommendation 8) is death or 'serious harm'. 'Serious harm' should encompass harm, including its cumulative effect, that does or is likely to:

(a) endanger a person's life, or

(b) be significant and longstanding, including psychological harm or harm arising from a cause such as sexual assault.

R10 A person who voluntarily engages in an unlawful association should not be able to rely on the defence of duress.

R11 The Criminal Code should be amended to make explicit how the defence of duress applies when a defendant is intoxicated:

(a) If a person voluntarily consumes intoxicating substances, their intoxication is relevant to their belief for the threat element and their belief for the necessity element.

(b) If a person involuntarily consumes intoxicating substances, their intoxication is relevant to the elements of threat, necessity and proportionality.

(QLRC Draft Bill cl 5, 6)

Reframing provocation

R12 The defences of provocation to assault (section 269), killing on provocation (section 304) and prevention of repetition of insult (section 270) should be repealed.

R13 The Penalties and Sentences Act 1992 should be amended to require that provocation of an offender by their victim must be considered by the court in sentencing.

R14 To promote awareness and effective and just implementation of the reforms:

(a) The Government should develop and implement an education campaign that includes material that is culturally sensitive and suitable for persons with impaired capacity.

(b) The Queensland Police Commissioner should amend the Queensland Police Service Operational Procedures Manual and the Director of Public Prosecutions should update the Director's Guidelines to require police and prosecutors to consider the extent, if any, to which an incident was the result of provocation when determining if a charge or prosecution is in the public interest.

(QLRC Draft Bill cl 11, 14)

Sentencing for murder

Legislative reforms to support just, evidence-based sentencing outcomes

R15 The court should have some discretion to set a non-parole period for murder to reflect contextual factors and to impose a just, evidence-informed sentence. To give effect to this:

(a) the minimum non-parole periods for murder (section 305; Corrective Services Act 2006 section 181) should be repealed and replaced with standard non-parole periods of equivalent lengths that represent the objective seriousness of the offence in the middle range, and

(b) the court should have discretion to set the length of the non-parole period based on the circumstances of the offence and offender.

Based on these reforms, the mandatory sentence of life imprisonment for murder should not be removed.

(QLRC Draft Bill cl 16, 21–30)

The protection and management of children

Legislative reforms

R16 The defence of domestic discipline (section 280) should be renamed 'protection and management of a child' and reformed in two steps:

(a) Reform the defence to limit the lawful degree of force to common assault and to limit the persons who may rely on the defence to a parent or person exercising parental responsibilities.

(b) Three years later, further reform the defence to limit the lawful purpose to using force that is reasonable in the circumstances for the protection or management of a child.

R17 In consultation with stakeholders, the Government should design and legislate a court-based diversion scheme.

Initiatives to protect children and support families

R18 The following measures should be implemented to support compliance with legislative reforms:

(a) The Government should provide State-wide evidence-based parenting and family support programs that are culturally responsive and trauma-informed and which are preventative, interventionist and treatment-based.

(b) The Queensland Human Rights Commission should promote community awareness and understanding of the reformed defence.

(c) Legal Aid Queensland should develop and publish guidelines and fact sheets about the reformed defence and court-based diversion scheme.

(d) The Queensland Police Commissioner should amend the Child Harm chapter of the Operational Procedures Manual to provide guidance to police on the operation of the reformed defence. This guidance should include factors that may be relevant to assessing whether a person's application of force, or attempt or threat to apply force, to a child was reasonable in the circumstances.

(e) The Queensland Police Service should revise practices, procedures and training related to child harm and alternatives to prosecution.

(f) The judiciary should develop guidelines to support effective consideration and application of the reformed defence and court-based diversion scheme.

(g) The Government should, in collaboration with the relevant professional bodies, develop guidance and training for legal practitioners, education professionals, care workers, child safety officers, health professionals and social service workers in relation to the reformed defence.

Monitoring and review

R19 The Government should require the Queensland Police Service and the Office of the Director of Public Prosecutions to collect and report data in relation to the reformed defence.

R20 The Attorney-General should review the operation of the reformed defence.

(QLRC Draft Bill cl 12, 18–20)

Improving the criminal justice system response

Investigation and charging reforms

R21 The Queensland Police Commissioner should amend the Domestic Violence chapter of the Operational Procedures Manual to provide guidance to police in determining the person most in need of support and protection in a relationship where DFV is occurring.

R22 The Police Powers and Responsibilities Act 2000 should be amended to expand the nature and scope of protections available for people questioned for indictable offences. Safeguards should be available to all people who may experience additional barriers to justice, including:

(a) DFV victim-survivors

(b) Aboriginal peoples and Torres Strait Islander peoples

(c) people with disability and mental illness

(d) people from culturally and linguistically diverse backgrounds.

R23 The Director of Public Prosecutions should update the Director's Guidelines to include new chapters on prosecuting and obtaining evidence from DFV victim-survivors and Aboriginal persons and Torres Strait Islander persons. The chapters should be developed in consultation with DFV victim-survivors and experts, the First Nations Justice Office, Aboriginal peoples and Torres Strait Islander peoples and their communities and representative organisations.

R24 The Queensland Police Commissioner should revise and supplement existing training programs for police regarding available defences.

Pre-Trial reforms

R25 The Office of the Director of Public Prosecutions should have carriage of all murder and manslaughter cases after the defendant's initial appearance before a Magistrate. The Government should ensure that the Office of the Director of Public Prosecutions and the Queensland Police Service are adequately resourced for this purpose. Legal Aid Queensland should also be adequately resourced to provide aid to facilitate early and appropriate defence involvement.

R26 The disclosure provisions in the Criminal Code should be amended to allow a defendant:

(a) charged with a domestic violence offence, to request access to the complainant's domestic violence history

(b) in a criminal proceeding, to request other relevant domestic violence evidence.

The Government should provide adequate resources to the Office of the Director of Public Prosecutions and the Queensland Police Service to respond to disclosure requests.

Trial reforms

R27 The special witness protections in the Evidence Act 1977 should be amended to:

(a) allow a court to deem a defendant who is a DFV victim-survivor a special witness where they give evidence about their experience of DFV in connection with the offence, and

(b) make explicit that a court can declare a person who identifies as an Aboriginal person and/or Torres Strait Islander person or a person from a culturally and linguistically diverse background a special witness where the court considers they may be disadvantaged as a witness.

R28 The Queensland Intermediary Scheme should apply to witnesses to homicide and domestic violence offences. To support this, Court Services should promote awareness of the Intermediary Scheme to relevant stakeholders and develop and implement a cultural safety framework in consultation with DFV victim-survivors and experts.

R29 The Government should establish a Domestic and Family Violence Expert Evidence Panel, modelled on the Sexual Offence Expert Evidence Panel.

R30 The Evidence Act 1977 should be amended to allow courts to receive evidence of traditional laws and customs of Aboriginal peoples and Torres Strait Islander peoples, except where its admission would be unfair to the person charged. Where such evidence is admitted, the judge must direct the jury about how to treat the evidence.

R31 The Evidence Act 1977 should be amended to require the judge to direct the jury:

(a) about domestic violence generally, if the proceeding involves evidence of domestic violence

(b) about self-defence in response to domestic violence if that is an issue in the proceeding

(c) about duress in circumstances of domestic violence if that is an issue in the proceeding.

R32 There should be a legislative requirement that, for jury trials:

(a) Counsel for the parties must, at the close of the evidence, inform the judge of all matters they believe are in issue, including any defences upon which they rely and any specific directions they request the judge give the jury.

(b) If the accused person is not legally represented, the judge must direct themselves as if the accused person informed the judge of all matters in issue and requested every direction be given to the jury that was open to the accused to request.

(c) The judge must:

i. give the jury all requested directions unless, after hearing from the parties, there are good reasons for not doing so

ii. not give the jury a direction not requested by a party unless, after hearing from the parties, there are substantial and compelling reasons for doing so.

Training and resourcing reforms

R33 There should be a comprehensive training framework about DFV, cultural capability and barriers to accessing justice faced by people from disadvantaged communities. The Government should:

(a) improve training for the Queensland Police Service, the Office of the Director of Public Prosecutions and related criminal justice personnel

(b) partner with the Queensland Law Society and the Bar Association of Queensland to improve training for legal practitioners

(c) facilitate heads of jurisdiction of the Queensland courts to review and implement training opportunities for judicial officers.

R34 The Government should increase funding for legal and advocacy services providing support to people who are parties to criminal justice proceedings. This should include specialist services for DFV victim-survivors and for people from disadvantaged communities who may experience barriers to accessing justice, including Aboriginal peoples and Torres Strait Islander peoples, people with disability, people from culturally and linguistically diverse backgrounds and people from the LGBTQIA+ community.

R35 The Government should fund Community Justice Groups to provide submissions and court support services to Aboriginal peoples and Torres Strait Islander peoples in the Supreme and Courts.

Future reviews

Review of implemented recommendations, the partial defence of diminished responsibility and intoxication in the Criminal Code

R36 The Government should, no earlier than five years and no later than 10 years from the commencement of any reform recommended in this report, refer to the Queensland Law Reform Commission:

(a) a review of the operation of reforms

(b) a review of the partial defence of diminished responsibility and a review to clarify the role of intoxication in the Criminal Code.

Just, clear and modern: Reformed criminal defences for Queensland

PART 1

Building a cohesive and effective framework

CHAPTER 1

Introduction

Contents

About our review

1.1. On 15 November 2023, we received terms of reference from the Queensland Attorney-General asking us to examine the following defences and excuses in the Criminal Code:

- the defence of self-defence (sections 271 and 272), specifically:
  - whether it should be clarified and simplified or expanded to cover circumstances when a victim of DFV, including of coercive control, acts reasonably to protect themselves from a perpetrator
  - whether the defence should distinguish between provoked and unprovoked assaults and whether it should be limited to circumstances of assault against a person
- the excuse of provocation for an offence involving an assault (sections 268 and 269) and the partial defence to murder of provocation (section 304), and specifically whether either or both should be repealed or amended
- the partial defence of killing for preservation in an abusive domestic relationship (section 304B)
- the defence of domestic discipline (section 280).

1.2. **Appendix A** contains the terms of reference for our review.

1.3. We were also asked to consider:

- the mandatory penalty of life imprisonment for the offence of murder, its impact on the operation of those defences and excuses and whether it should be removed
- whether there is a need for reform of the law, practices or procedures relating to those defence or excuses
- any other matters we consider relevant having regard to the issues relating to the referral.

1.4. Our terms of reference ask us to consider how the defences are operating in the context of DFV, including with regard to the:

- findings of the independent Women's Safety and Justice Taskforce ('Taskforce')
- nature and impacts of DFV and criminal conduct on victims and survivors and their families
- need for laws to consider and protect the rights and interests of victims and accused persons
- experience of victims and survivors and their families in the criminal justice system.

1.5. The terms of reference also ask us to prepare draft legislative provisions based on our recommendations for reform. Background Paper 1 discusses our terms of reference in detail.[1]

1.6. Our review follows an inquiry and reports by the Taskforce which examined a range of defences and excuses in the context of coercive control and DFV in Queensland. As the Criminal Code defences and excuses apply to a broad range of offending and offenders, the Taskforce recommended that the Attorney-General refer the defences and excuses in the Criminal Code for independent review.[2]

1.7. Given our review's specific focus on the DFV context, we have focused on reforms to ensure the criminal law reflects contemporary knowledge of DFV, including ensuring the defences:

- do not excuse DFV or eliminate criminal responsibility where primary perpetrators of DFV commit violent offences
- are available for DFV victim-survivors who commit criminal offences, including offences that arise where they use force against their abuser or where, as a result of coercive control, they become enmeshed in the criminal offending of their abuser.

1.8. Background Paper 3 considers how the defences we are reviewing may operate in cases involving DFV.[3]

1.9. The policy objectives to be achieved come from the terms of reference for our review, the Taskforce findings and recommendations, Queensland's developing human rights framework, contemporary criminal justice and sentencing frameworks and findings of other recent reviews and inquiries, including by the Queensland Sentencing Advisory Council. They are informed by evidence of current community attitudes towards violence relevant to the criminal defences we are reviewing.

1.10. They are also informed by the disproportionate adverse effects of criminal laws on Aboriginal peoples and Torres Strait Islander peoples who are over-represented in the criminal justice system and as victims of violence.

Our scope

1.11. The scope of our review is set by the terms of reference. Where our reforms have direct implications for other defences or for criminal practice and procedure, we have examined these matters. For example, recognising that our reforms to self-defence would affect compulsion and duress, we have included these defences in the scope of our review. Recognising its connection to provocation as a defence to assault, we have included review of prevention of repetition of insult (section 270) in our review.

1.12. The terms of reference specifically exclude some matters from our review's scope. Our review does not include the age of criminal responsibility in section 29 or the rule against double jeopardy in section 17 of the Criminal Code. We have not considered these matters.

1.13. There have been significant changes to youth justice laws since our review commenced. In particular, the mandatory penalty of life imprisonment for the offence of murder was extended to apply to youth offenders. Our terms of reference were not expanded to reflect this change. We have confined our consideration of the mandatory penalty of life imprisonment for the offence of murder to its application for adult offenders. We have not considered the human rights implications for children in developing our proposed reforms on this basis.

Our approach

Aims of our reforms

1.14. Criminal defences in Queensland are outdated, unnecessarily complex and have, in a number of cases, led to significant injustice. We recommend thorough reform to Queensland's criminal defences.

1.15. We aim to create a modern, simple and fair legal framework in which the defences are clear, effective, accessible and support just outcomes. Queensland's criminal laws must reflect contemporary attitudes and values. They must clearly define when violence is acceptable and

when it is not. Criminal laws must achieve just outcomes and appropriately reflect culpability, recognising the harm violence causes the community and the seriousness of DFV.

1.16. Our recommendations are intended to meet this benchmark when considered separately, but some recommendations are linked and should not proceed in isolation. We have also taken a holistic approach, aiming to improve and clarify the interaction between the different defences and between the defences to homicide and just sentencing outcomes for murder.

1.17. We recognise the public interest in increasing community safety, protecting victims of violent offending and ensuring that people who offend face appropriate consequences. We recognise that victims, including DFV victim-survivors , and their families have diverse justice needs.

1.18. Our approach is informed by doctrinal research, grounded in pragmatic advice and analysis of the strengths and limitations of current laws. We have considered how our reforms would work in the DFV context to ensure they appropriately consider, protect and promote the rights and interests of victims and accused persons and foster public trust and confidence in the justice system. As the defences and excuses apply to offending and offenders beyond the DFV context, they must work effectively in this broader context.

1.19. Our reforms are contemporary. Our recommendations to reform defences reflect current community attitudes, including about when and how force should be lawful and how just outcomes that reflect contextual factors can be achieved. Our reforms respect the jury's role and would support jury deliberations by clarifying and simplifying tests and ensuring juries have necessary direction and guidance. In this way, we ensure that our reforms respond to and reflect community values directly through the views of the jury, aligning outcomes with community standards of behaviour. Our practice and procedure reforms enhance best practice approaches to giving and taking evidence, protecting witnesses and supporting people working in and alongside the criminal justice system. They are informed by contemporary knowledge of human nature, biology and psychology.

1.20. We approach the task of increasing access to the justice system, and improving community safety, with an equality lens. We recognise that some communities face additional and unique barriers that can act as a bar to initial reporting or engagement with the justice system or preclude just outcomes. Improving access to justice, including in the DFV context, requires a culturally responsive, trauma-informed justice system that fosters appropriate engagement, including with people who may be experiencing heightened vulnerability and trauma.

1.21. Where our reforms form one part of a larger framework, our aim is twofold. We seek to:

- improve the operation of the laws within our scope
- offer a model that may inform future broader reforms.

1.22. Our reforms do not exist in a vacuum and many of the laws we are reforming have been part of the Criminal Code since it commenced operation in 1901.[4] Many of the provisions are largely in their original form, although their interpretation by courts has developed over time. Some are unique to Queensland.[5] One consideration is the value of consistency across jurisdictions. We have engaged in broad and deep comparative research to understand the similarities and differences between legal frameworks and the implications of different tests and approaches. We have also explored practical considerations associated with different reform options, such as the applicability of case law from other jurisdictions.

1.23. There is inherent tension between reforming a subset of laws (as defined by the scope of our review) and maintaining consistency and coherency throughout the Criminal Code. In developing the Criminal Code (Defences and Excuses) Amendment Bill 2025 ('QLRC Draft Bill') that gives effect to our recommendations for substantive legal reforms, we have sought to

embed contemporary relevance and best practice while maintaining integrity with the overarching framework, approach and narrative of the Criminal Code.

Guiding principles

1.24. We identified five guiding principles to help us develop recommendations for reform. We discuss these guiding principles in detail in Background Paper 2.[6] They are:

- **Justice**: the defences and penalty for murder should promote just outcomes and protect fundamental human rights, including rights in criminal proceedings
- **Fitness for purpose:** the defences and the penalty for murder should reflect contemporary community standards and be fit for purpose
- **Clarity:** the defences should be clear and easy to understand
- **Domestic and family violence:** the defences should better reflect circumstances involving DFV, including coercive control
- **Evidence-informed**: the defences and recommended reforms should be informed by evidence, including expert knowledge and lived experience.

1.25. We included the guiding principles in our Consultation Paper to reflect our approach to the issues in this inquiry and their relevance in developing our options for reform.[7]

1.26. They have continued to inform our approach to the review. For example, we have conducted a significant body of empirical research to target gaps in existing knowledge and engaged broadly and extensively with a wide range of stakeholders to develop a strong evidence basis for our recommended reforms.

1.27. The guiding principles have informed our decision-making about the appropriate reform settings. For example, we have developed key recommendations to support just outcomes and to ensure the defences better reflect circumstances involving DFV.

Human rights

1.28. Human rights are fundamental rights and freedoms that apply to all human beings. The criminal law plays a crucial role in protecting human rights by safeguarding individual rights, ensuring fair trials, setting limits on law enforcement and promoting accountability, community safety and individual security and liberty.

1.29. As a 'public entity' under the Human Rights Act we must:

- properly consider relevant human rights when making decisions ('procedural obligation')
- act and make decisions that are compatible with human rights ('substantive obligation').[8]

1.30. In developing our recommendations, we sought to maximise protection and promotion of human rights. **Appendix G** identifies the human rights relevant to each recommendation and briefly outlines the nature and content of those rights. Where a recommendation promotes or limits one or more human rights, we include an analysis of its compatibility with human rights in the chapter dealing with that recommendation.

1.31. Considered as a package, the proposed legislative reforms protect and promote human rights. Our reforms do not impose any limitations that are not reasonable or proportionate or that are inconsistent with a free and democratic society based on human dignity, equality and freedom.

A culturally responsive and trauma-informed approach

1.32. The context of the review requires a culturally responsive and trauma-informed approach to implementing our reforms.

1.33. Many people involved with the criminal justice system have experienced trauma, including as victim-survivors or perpetrators of DFV. This trauma may be from a single event, or multiple and repeated traumatic events, and may lead to complex trauma and post-traumatic stress disorder. Aboriginal peoples, Torres Strait Islander peoples and people from culturally and linguistically diverse backgrounds who experience post-traumatic stress disorder may also experience intergenerational trauma, cultural dislocation and barriers to accessing culturally safe services.

1.34. A trauma-informed criminal justice system understands how trauma affects people who interact with the system and its response is designed to prevent or reduce re-traumatisation. Safety and culture are core principles underpinning a trauma-informed approach. Other principles include trustworthiness, choice, collaboration, empowerment and recognition of historical and gender issues. A trauma-informed approach that is culturally responsive creates and promotes processes, services and environments that Aboriginal peoples and Torres Strait Islander peoples experience as culturally safe.

1.35. We used a trauma-informed lens to develop our recommendations for reform to ensure they recognise, appropriately respond to and reduce the effects of trauma on people involved in criminal justice processes.

Original research

1.36. It is important that our reforms are evidence-based and reflect the current operation of the laws in practice. Our terms of reference also require us to ensure the law reflects contemporary community standards.[9]

1.37. Our initial research identified six key areas where there was a lack of existing research. We conducted six original research projects to address these gaps:

Figure 1.1: Our Research Projects

1.38. We refer to our research projects in this report. Where we have published the findings of a research project, we refer to that report. **Appendix F** provides details of the research methodology we used to conduct the research projects.

Stakeholder feedback

Our approach to seeking feedback

1.39. Our approach to obtaining feedback is detailed in Background Paper 4.[10]

1.40. In summary, our approach included four key research methods (in addition to legal research): consultations, submissions, interviews and a focus group.

1.41. We invited feedback broadly and specifically sought feedback from the following stakeholder groups:

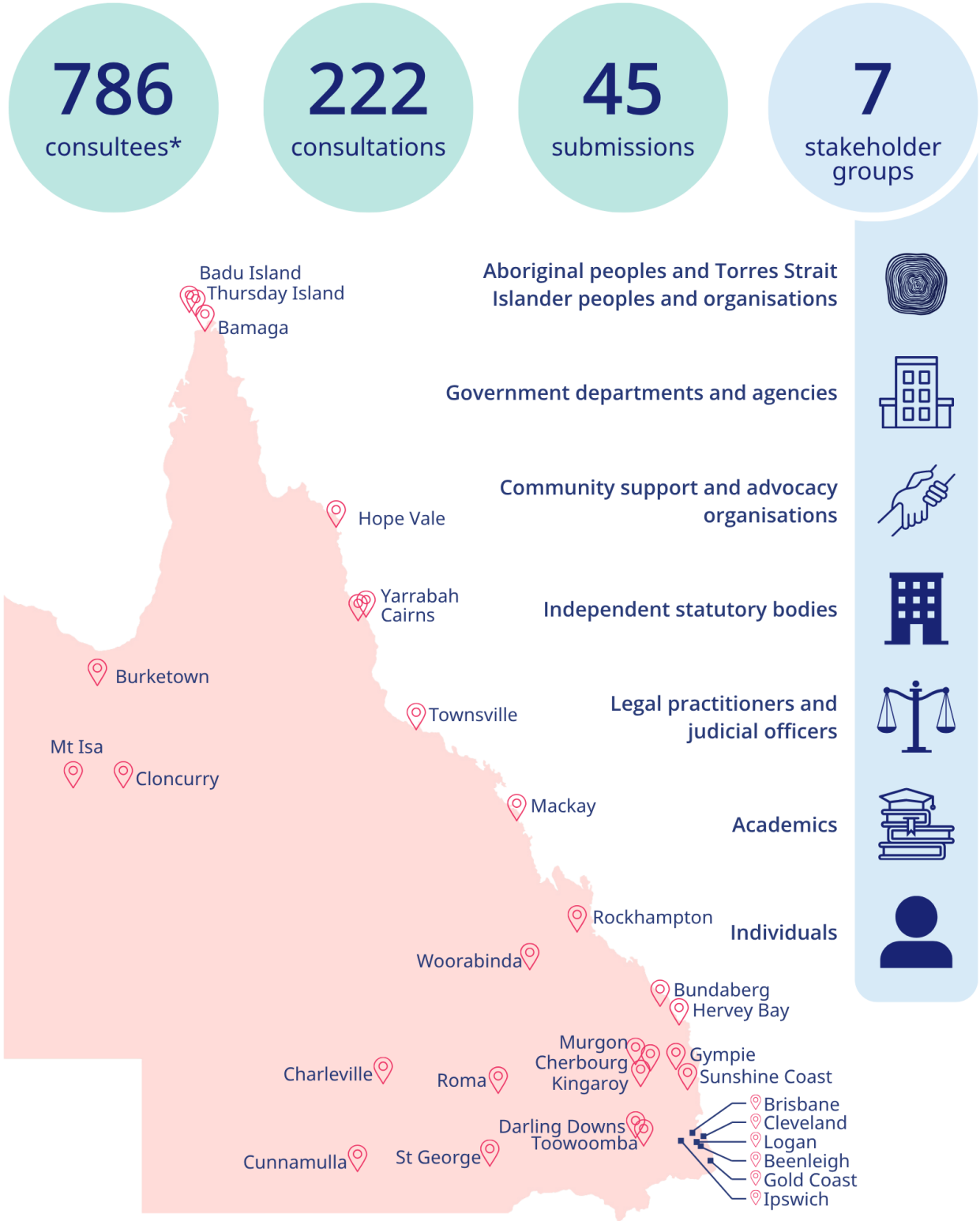
- individuals, including those with lived experience of the criminal justice system
- community support and advocacy organisations, including DFV support services
- Aboriginal peoples and Torres Strait Islander peoples and organisations
- legal practitioners and judicial officers
- academics
- Government departments and agencies
- independent statutory bodies.[11]

1.42. We also used a survey and focus groups run by academics to understand community attitudes to defences and sentences in cases of homicide and assault. We discuss the findings of this independent research in Research Report 1.[12]

Consultations

1.43. We consulted with 786 stakeholders in meetings, forums, events and roundtables throughout metropolitan, regional and remote areas of Queensland. **Figure 1.2** shows the locations of our stakeholder consultations.

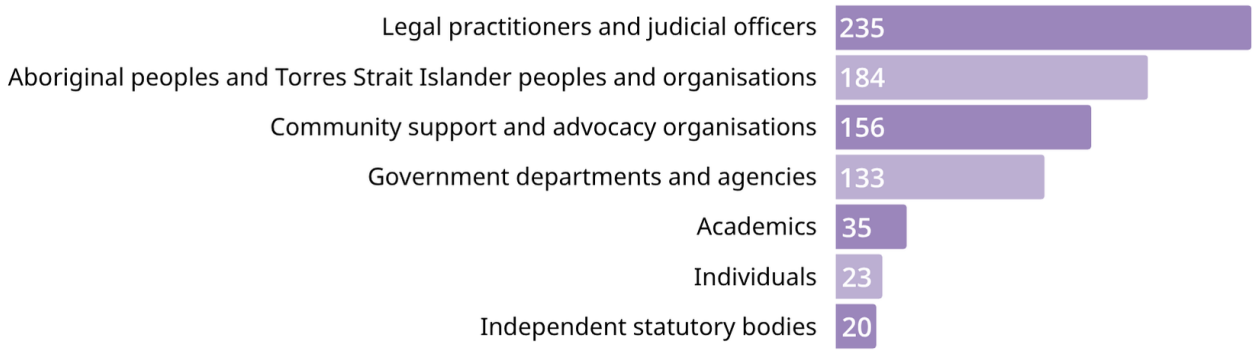
Figure 1.2: Map of stakeholder consultations



* Where we consulted with a stakeholder on more than one occasion, we reflect each consultation in this figure.

1.44. **Figure 1.3** shows our consultations grouped by stakeholder type. **Appendix D** lists our consultations.

Figure 1.3: Stakeholder consultations by type



1.45. We ran consultations under Chatham House Rules to encourage free and open exchange of ideas. We are not attributing specific statements to individual consultees for this reason.[13]

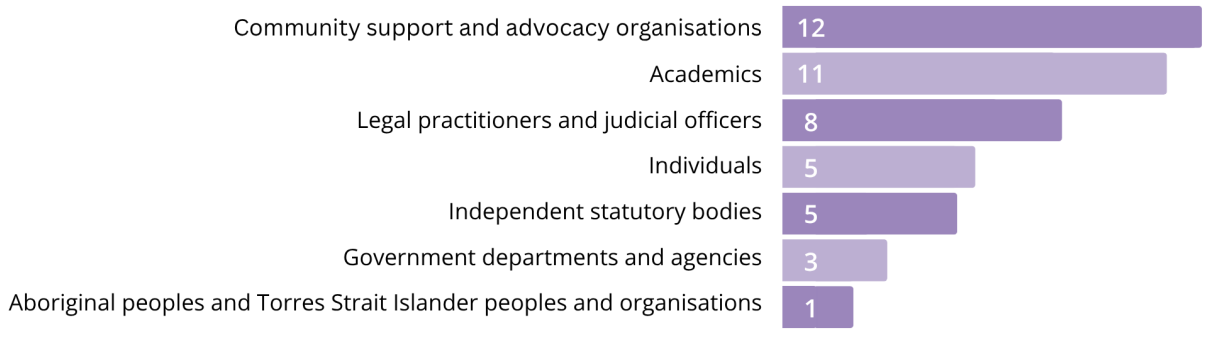
1.46. We consulted with relevant government departments and statutory authorities. These consultations enhanced our understanding of relevant operational factors and gave us insight into key issues, including implementation considerations. Because these consultations focused on operational matters, we have not reflected the content of these discussions in this report.

Submissions

1.47. We received 45 submissions from the stakeholder groups listed below. **Appendix E** lists the submissions we received. Submissions can be accessed on our website.

1.48. **Figure 1.4** shows submissions grouped by stakeholder type. For organisations, these categories reflect how they describe themselves and their stated mission and values by reference to the categories of stakeholders identified in the terms of reference for our review. We recognise that many organisations perform multiple functions and represent multiple interests.

Figure 1.4: Stakeholder submissions by type



Interviews

1.49. We conducted 32 semi-structured interviews with legal professionals to gain insight into their perspectives and experiences.

1.50. We interviewed:

- Supreme Court Judges
- District Court Judges
- Magistrates (including a Coroner)
- defence counsel
- Crown prosecutors.

32

interviews with members of the Queensland legal profession

1.51. **Appendix D** lists the interviews we conducted with Queensland legal professionals.

Focus group

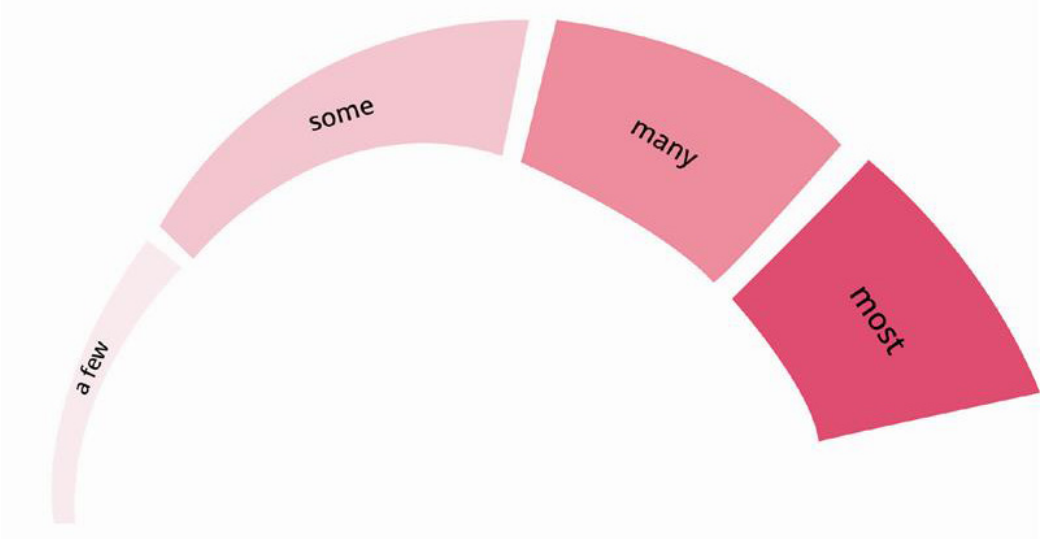
1.52. In collaboration with the Queensland Family and Child Commission, we held a focus group with nine youth advocates and young people aged 14 to 18 years to hear their experiences, perspectives and opinions about the defence of domestic discipline.

Our approach to presenting feedback

1.53. We analysed stakeholders' feedback in response to the proposals and questions in our Consultation Paper and published our findings in Background Paper 4.[14] That paper contains detailed information about the methodology we used to obtain feedback and to analyse submissions and consultation notes. **Appendix C** contains our consultation proposals and questions.

1.54. In this report, we present stakeholder feedback using the same approach taken in Background Paper 4.[15] We describe stakeholder sentiment by looking at stakeholders' perspectives in the context of all the feedback received about the relevant topic. Not all submissions or consultations addressed each topic. Our use of quantifying terms only reflects the views of stakeholders who engaged with the issue (see **Figure 1.5**, below). This may not reflect the views of the whole community or certain stakeholders on a particular issue.

Figure 1.5: Stakeholder sentiment



Overview of feedback

The law of self-defence should be clear, simple and just:

- The current test is complex and difficult to apply. The test should include objective and subjective elements (some people support more objectivity).
- It should protect DFV victim-survivors using defensive force against their primary abuser. Reforms should recognise cumulative harm and social entrapment and ensure the courts can consider evidence of DFV.
- Self-defence should not be limited where a person's belief that their actions were reasonable and necessary was substantially affected by self-induced intoxication.

Judges should have discretion when sentencing for murder:

- Sentencing should reflect contextual factors relevant to culpability, including the gravity of the crime, the offender's background, circumstances and relationship with the victim and the offender's response to the charge.
- Reforms to the minimum non-parole period could support just outcomes.
- Homicide victims' families generally did not support judicial discretion.

Partial defences to murder are critical given the mandatory penalty and non-parole periods:

- They are an important safeguard for DFV victim-survivors who are charged with offending. They can play a beneficial role in plea negotiations, although they can increase pleas of guilty to manslaughter where a person could be acquitted by a complete defence.
- Killing for preservation in an abusive domestic relationship would be redundant with the proposed reforms to self-defence. It should only be repealed as part of a package of reforms that introduce sentencing discretion.
- Killing on provocation is not consistent with contemporary attitudes and beliefs. It can be abused by DFV perpetrators, condones gender-based violence and provides limited protection for retaliatory violence by the person most in need of protection.
- A new trauma-based partial defence may support a victim-centred approach but could pose challenges in correctly identifying the person most in need of protection. A trauma-informed criminal legal system is preferable to a bespoke defence.
- Excessive self-defence could complement an expanded defence of self-defence.

Provocation as a defence to assault is not consistent with contemporary attitudes, though it can be relevant for violent responses to racial harassment or vilification.

The defence of domestic discipline should be limited or repealed:

- It does not reflect children's rights or the connection between childhood experiences of violence and adult perpetration of violence.
- Repeal or reform may affect teachers and vulnerable communities.

Practice and procedure reforms are needed: to improve access to defences and access to justice for DFV victim-survivors and Aboriginal peoples and Torres Strait Islander peoples.

Broader issues with the criminal justice system affect operation of the defences, including:

- over-representation of Aboriginal peoples and Torres Strait Islander peoples
- access to justice issues, particularly for disadvantaged communities
- delay in the criminal justice system.

Navigating the reports

1.55. This report is in eight parts. Each part is summarised below.

1.56. **Part One** introduces our review and provides an overview of our recommended reforms. It has two chapters. Chapter 1 discusses how our review is framed and explains our approach and guiding principles for reform. We discuss the relevance of the DFV context for our review and how it forms the foundation of recommendations for reform that apply across the broader criminal justice context. Chapter 2 provides an overview of our reforms and maps a pathway for their effective implementation.

1.57. **Part Two** sets the scene for our review. It has one chapter. Chapter 3 explores key issues that have informed our approach to this review and our recommendations for reform. It discusses the DFV context and the origins of our review. It explores the over-representation of certain communities within Queensland's criminal justice system, focusing on two communities disproportionately over-represented: Aboriginal peoples and Torres Strait Islander peoples and people with intellectual and cognitive disability. It considers broader systemic issues with the criminal justice system, focusing on the barriers to justice faced by certain communities and delay in the criminal justice system. It recognises the parameters of our review and considers the relevance of these systemic issues to the review and the extent to which they can be alleviated by our reforms.

1.58. **Part Three** discusses our recommended reforms to laws that deal with defensive conduct, a term we use to refer to when a person does or omits to do something to protect themselves or another. It has three chapters. Chapter 4 discusses reforms to simplify and clarify self-defence. Chapter 5 discusses reforms to ensure the effective operation of self-defence, and a reformed partial defence designed to achieve justice for DFV victim-survivors, in circumstances where lethal force is used. Chapter 6 outlines our reforms to expand and modernise duress. Collectively, the reformed defences of self-defence and duress provide a comprehensive response to defensive force in circumstances that align with contemporary community standards.

1.59. **Part Four** discusses our recommended reforms to laws that deal with provoked conduct. It has one chapter. Chapter 7 outlines our reforms to reframe the existing provisions on provocation, which provide a partial defence to murder and a complete defence to assault. It explains our recommendations to repeal these defences and recast provocation as a sentencing consideration. It also discusses the related repeal of the defence of prevention of repetition of insult.

1.60. **Part Five** discusses our recommended sentencing for murder reforms. It has one chapter. Chapter 8 considers the mandatory penalty of life imprisonment for murder, exploring its effect on the operation of the defences. It outlines our reforms to the minimum non-parole periods for murder that give the court discretion to consider the circumstances of the offence

and the offender, including circumstances that increase or decrease the offender's culpability. It explains why we do not recommend repealing the mandatory sentence of life imprisonment for murder.

1.61. **Part Six** discusses our reforms to the defence of domestic discipline aimed at enhancing the protection and management of children. It has one chapter. Chapter 9 outlines our two-staged approach to reform, designed to provide children with equal protection from assault and other offences that involve the application of force by adults. It discusses our recommendations for legislative reform, supportive measures and monitoring and review.

1.62. **Part Seven** discusses our practice and procedure reforms relating to the defences we have reviewed, designed to improve the criminal justice system response. This Part is in five chapters. Chapter 10 outlines our approach to practice and procedure reforms. Chapters 11, 12 and 13 consider practice and procedure reforms sequentially, reflecting an accused person's pathway through the Queensland criminal justice system. Chapter 14 concludes this Part by discussing our training and resourcing recommendations.

1.63. **Part Eight** concludes the report by discussing our recommended approach to realising our reform agenda. It has one chapter. Chapter 15 recommends future review of the operation of our implemented reforms to ensure they are operating effectively and remain relevant to the community. It also explores review of intoxication and review of the partial defence of diminished responsibility.

1.64. There are seven **Appendices** to the report. They contain:

- our terms of reference (**Appendix A**)
- an extract of current laws (**Appendix B**)
- our consultation proposals and questions (**Appendix C**)
- a list of our consultations and interviews (**Appendix D**)
- a list of the submissions we received (**Appendix E**)
- a description of the methods we used for our research projects (**Appendix F**)
- a discussion of the human rights relevant to our review (**Appendix G**).

1.65. **Report 2** contains:

- Criminal Code (Defences and Excuses) Amendment Bill 2025
- Guide to the QLRC Draft Bill.

References

1 QLRC, Review of Particular Criminal Defences: Our Terms of Reference (Background Paper No 1, November 2023).

2 Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 1, xxii.

3 QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025).

4 Criminal Code Act 1899 (Qld) s 2 established the Criminal Code as the criminal law of Queensland on and from 1 January 1901.

5 Criminal Code (Qld) s 304B (killing for preservation in an abusive domestic relationship) is unique to Queensland. Only Western Australia and Queensland have provocation to assault and prevention of repetition of insult: Criminal Code (WA) ss 245–247 and Criminal Code (Qld) ss 268–270. The defence of killing on provocation (Criminal Code (Qld) s 304) only remains in a small number of jurisdictions. Queensland's self-defence laws are unique in their formulation: Criminal Code (Qld) ss 271–273.

6 QLRC, Review of Particular Criminal Defences: Our Guiding Principles for Reform (Background Paper No 2, July 2024).

7 QLRC, Review of Particular Criminal Defences: Equality and Integrity — Reforming Criminal Defences in Queensland (Consultation Paper, February 2025).

8 Human Rights Act 2019 (Qld) s 58(1).

9 Terms of reference, para 7(d).

10 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025).

11 The key stakeholder groups were identified having regard to the focus of our review and the non-exhaustive list of stakeholders in our terms of reference.

12 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024).

13 'Chatham House Rule', Chatham House (Web Page, 23 October 2024) <https://www.chathamhouse.org/about-us/chatham-house-rule>.

14 QLRC, Review of Particular Criminal Defences: Equality and Integrity — Reforming Criminal Defences in Queensland (Consultation Paper, February 2025).

15 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025).

CHAPTER 2

The path to reform

Contents

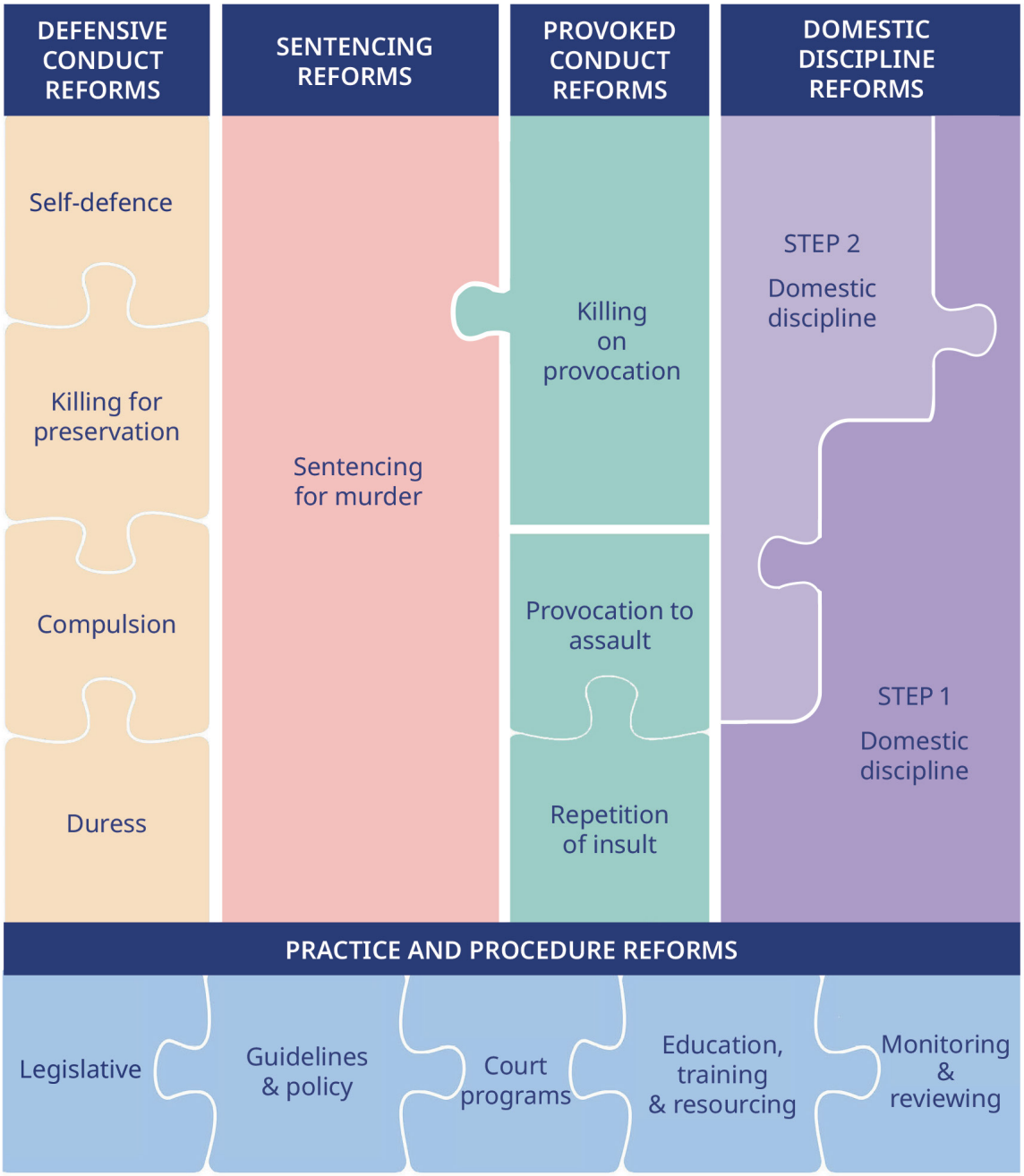
Introduction

2.1. This chapter provides an overview of our recommended reforms and maps a path to their effective implementation.

2.2. There is an inevitable interaction between particular reforms. It is vital to implement a subset of our reforms as a package to realise a clear, effective and just legal framework, achieve the policy intent of our reforms and avoid unintended consequences. **Figure 2.1** shows the connections between our recommended reforms.

A package of reforms

Figure 2.1: Piecing the reforms together



Reforms to the defences

2.3. We have considered the current and potential connections between the different defences in developing our recommendations. This section discusses the relevance of, and relationships between, the defences in a reformed framework.

Defensive conduct reforms

2.4. The defensive conduct defences are critical to the administration of justice and promoting respect for the law. To achieve this, they must allow people to defend themselves without sanctioning vengeance. Our reforms in **Recommendations 1–6** preserve this distinction. They permit the use of violence only where it is reasonable and necessary to ensure a person's safety.

2.5. The current defences are highly complex and there is significant overlap between them in practice. We recommend a package of reforms that simplify and streamline the defences and remove this overlap. Focused on the core elements of reasonableness and necessity, our reforms simplify the defences and align them with community values.

2.6. Our reforms to the defensive conduct defences are inter-reliant. In this section, we explain:

- how clarifying and reframing the defences of self-defence[1] and duress[2] make the defence of compulsion[3] redundant
- the direct connection between our reforms to self-defence and to the partial defence of killing for preservation in an abusive domestic relationship.[4]

2.7. We recommend a single test for self-defence that consolidates and simplifies the defence and clarifies its scope to support its just operation in the DFV context.

2.8. Our reforms remove the assault threshold from self-defence.[5] The new legislative test for self-defence would maintain the necessity requirement but would not require an imminent threat or a threat of immediate and unavoidable harm. This would support its effective operation in the DFV context where a victim-survivor may act to protect themselves or another in circumstances where the threat is not imminent but arises in the context of the abusive domestic relationship. By requiring that any force used in defence of self or another is necessary, our new test does not condone retributive justice.

2.9. By reframing the test for self-defence in this way, the defence of compulsion is no longer required and we recommend its repeal (**Recommendation 7**). The role of compulsion is to excuse violent responses to threats that do not amount to assault. This is not covered by self-defence in its current form.[6] Our reforms would make compulsion redundant. To retain it would be duplicative, inconsistent with a clear and simple legal framework for the defences and may increase the complexity of jury directions, resulting in appeals. Its repeal is justified on this basis. However, its repeal is contingent on reform of self-defence. Repeal of compulsion alone would create an unjustifiable gap in the available defences.

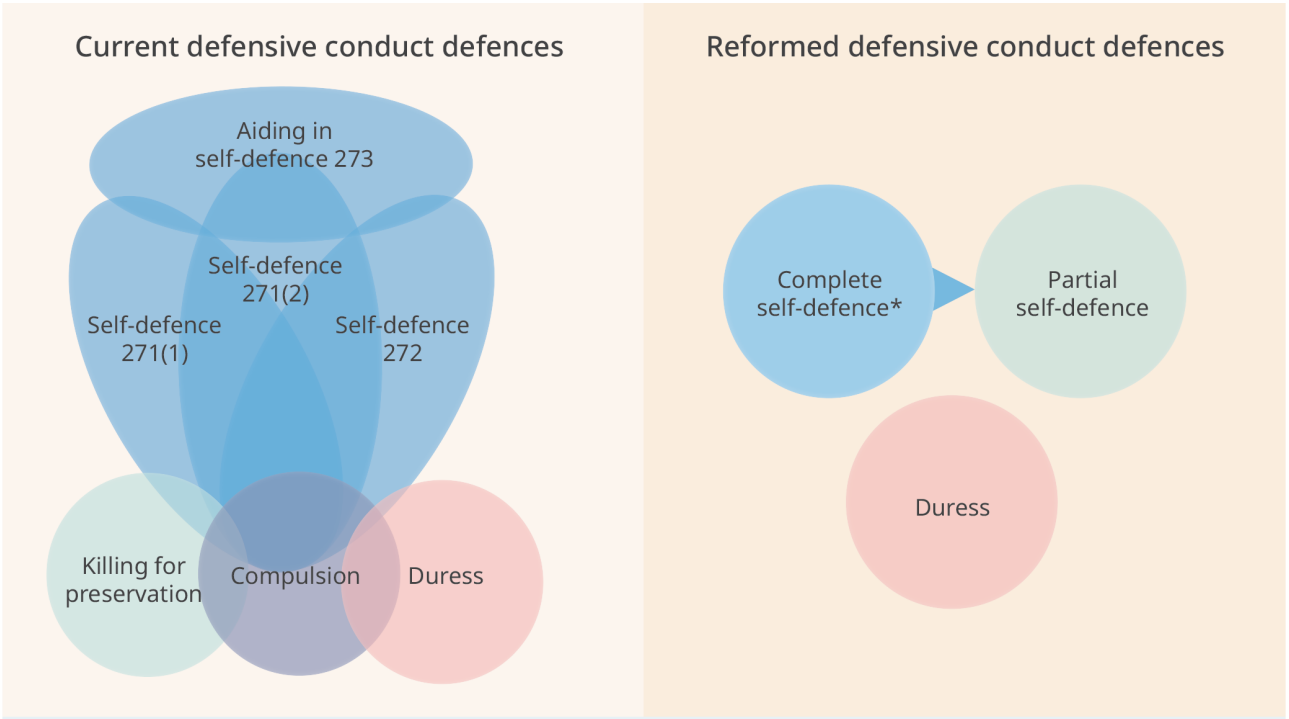
2.10. Our reforms to duress change the scope of conduct it covers (**Recommendations 8–11**). Duress presently requires a threat of 'serious harm or detriment'.[7] Our reforms alter the threshold so that duress would apply to threats of 'harm or detriment', except where duress is raised as a defence to murder, when a threat of 'serious harm' would be required. These reforms also make compulsion redundant, as it covers threats that do not meet the 'serious' harm or detriment threshold for duress.[8]

2.11. In a DFV context, where lethal defensive force is used by a victim-survivor, our reforms clarify how self-defence applies, both as a complete and partial defence to murder, using a simple, three-step test.

2.12. As we discuss in Chapter 5, this test requires consideration of the complete defence of self-defence as the first step. It is only where the complete defence is not available that the partial defence becomes relevant. This addresses concerns that the current provisions give primary consideration to the bespoke partial defence of killing for preservation,[9] rather than the complete defence of self-defence. We recommend these defences are in the same Division of the Criminal Code, drafted sequentially, to reinforce this new approach to their interpretation and application.

2.13. In this way, our reforms to self-defence are directly connected to reform of the partial defence of killing for preservation. These recommendations should not be approached separately but should be considered as two parts of the same reform. **Figure 2.2**, below, shows the relationship between the current defensive conduct defences and the relationship that would exist between the reformed defences.

Figure 2.2: Current and reformed defensive conduct defences



Section 271(1): self-defence to an unprovoked assault where not intended or likely to cause grievous bodily harm
Section 271(2): self-defence to an unprovoked assault where apprehension of death or grievous bodily harm
Section 272: self-defence to a provoked assault where apprehension of death or grievous bodily harm
Section 273: aiding in self-defence
Section 304: killing on provocation
Section 304B: killing for preservation in an abusive domestic relationship
Section 31(1)(c): compulsion
Section 31(1)(d): duress

*A single test would apply to all cases of self-defence and defence of another

The connection between defensive and provoked conduct reforms

2.14. The connection between self-defence, provocation and the partial defence of killing for preservation arises from their operation in practice rather than their intended scope or elements.

2.15. The provocation and defensive conduct defences all recognise that a person is acting in response to an external stimulus. However, they are directed at responses grounded in different motivations:

- self-defence and the partial defence of killing for preservation protect defensive actions motivated by fear, with the partial defence extending to protect fear of future harm based on a history of domestic abuse
- duress also protects defensive action, taken in response to threatened harm if certain actions are not undertaken
- the provocation defences protect actions resulting from loss of control due to the actions of another, excusing acts responding to, or to prevent a reoccurrence of, the provoking conduct. The loss of self-control element for provocation has led to the conflation of responses based on panic and responses borne of anger.

2.16. In practice, the line between the provocation and defensive conduct defences can also be ambiguous. Human emotions and relationships are complex and the defendant's response to the triggering conduct of the deceased can be based on mixed emotions, multifaceted or difficult to discern. Our women who kill research (Research Project 4) shows that a person can be simultaneously enraged in a way that makes them lose control and also acting defensively in fear of death or serious harm.

2.17. In cases involving complex relationship dynamics and vulnerable witnesses, evidence may be limited and conflicting. The resulting challenge in eliciting a clear, evidence-based explanation of the trigger for the defendant's conduct can conflate concepts of self-defence and provocation.[10] This is particularly so where lethal force has been used, as there can be no account of events from the deceased victim. A defendant's testimony may also be affected by factors such as intoxication, impaired capacity or trauma, including trauma experienced from DFV perpetrated against the defendant by the deceased.[11]

2.18. Our overarching intent of modernising, simplifying and clarifying the legal framework and supporting its just operation in the DFV context would be best achieved by reforming provocation and self-defence together. However, we acknowledge there is a more tenuous connection between them, with potential for the provoked conduct reforms and the defensive conduct reforms to proceed separately.

Provoked conduct reforms

2.19. We recognise the shared foundation of provocation as a partial defence to murder and provocation as a complete defence to assault. We also recognise that many concerns about provocation apply to both defences. These concerns include that the provocation defences are not consistent with contemporary community attitudes, 'reward' violent responses borne of anger and jealousy and can be misused by male DFV perpetrators.[12]

2.20. The same rationale underpins our recommendation to repeal the provocation defences and instead require consideration of provocation at sentencing (**Recommendations 12–13**). As we discuss in Chapter 7, the justification for our reforms rests on the lack of a principled basis for these defences, their lack of alignment with contemporary community standards and their gendered operation in practice.

2.21. We recommend repeal of provocation as a complete defence to assault and as a partial defence to murder (**Recommendation 12**). We do not suggest that the provocation defences share the same symbiotic relationship as the reforms to self-defence, compulsion and duress, or the reforms to provocation as a partial defence to murder and sentencing. However, there is a compelling case for a consistent approach to their reform.

Defences and sentencing discretion

2.22. A key reform consideration is the role of defences in a legal framework without sentencing discretion for murder. This is an issue that the Commission has grappled with in developing recommendations for reform.

2.23. We recommend legislative reforms to give the court some discretion to decide the non-parole period for murder (**Recommendation 15**). We recognise that many stakeholders hold concerns about the repeal of any of the current defences unless sentencing discretion is enhanced. For other stakeholders, the problematic nature of particular partial defences means that, irrespective of any changes to sentencing, those partial defences should be repealed.[13]

2.24. Partial defences can be particularly important, as they can address the vulnerabilities and disadvantages that may reduce a person's culpability for murder. In this way, they are seen as a safety net.[14]

The connection between the partial defences and sentencing discretion

2.25. The partial defences to murder reduce a defendant's culpability for the offence by recognising that there are contexts in which intentional killing may be less blameworthy. The Criminal Code contains three partial defences to murder:

- provocation[15]
- diminished responsibility[16]
- killing for preservation in an abusive domestic relationship.[17]

2.26. Where a partial defence is successfully relied on, the defendant is convicted of manslaughter, rather than murder.[18] In sentencing for manslaughter, courts can exercise discretion in deciding the appropriate sentence and can consider key contextual factors relevant to the offending.[19] In this way, the partial defences can support just sentencing outcomes in a framework where judges lack discretion to reflect contextual factors relevant to a defendant's culpability for murder. This is particularly important in the DFV context, where lethal defensive force can be used by victim-survivors in ways that are directly connected to their experience of DFV.

2.27. In recommending this review, the Taskforce recommended that the partial defence of provocation be reviewed in conjunction with the mandatory penalty of life imprisonment for murder, as the mandatory penalty is consistently used to justify retaining the partial defence, notwithstanding its recognised problems.[20]

2.28. The partial defences were developed when the mandatory penalty for murder was the death penalty. Although the penalty is now life imprisonment, it remains a mandatory penalty. The partial defences apply only to murder. For other offences, including manslaughter, courts have discretion when sentencing a defendant to reflect different levels of culpability. This discretion allows the judge to consider various matters including the maximum penalty, the nature of the offending, the defendant's circumstances, including cognitive or mental impairment, any history of DFV and the victim's contribution to the offending.[21]

2.29. Some stakeholders considered repeal or reform of the partial defences as dependent on other criminal law reforms, notably reforms to the mandatory penalty for murder and self-defence provisions.[22] For example, the Queensland Human Rights Commission supported repeal of the partial defences of killing on provocation and killing for preservation 'as part of the overall package of reforms' that included amendments to expand self-defence and the removal of mandatory sentencing.[23]

2.30. Stakeholders provided feedback about the continuing need for partial defences to murder in a framework that does not include sentencing discretion for murder. Dioso-Villa and Nash submitted that:

> If [mandatory sentencing for murder] is not removed, then complementary reforms—such as the retention of partial defences like provocation and excessive self-defence—are essential to ensure that women are not unjustly penalised for actions taken in the context of prolonged abuse.[24]

2.31. The Bar Association of Queensland submitted that the partial defence of killing for preservation in an abusive domestic relationship, although needed while there is mandatory sentencing for murder, would not be necessary if sentencing discretion is introduced.[25]

2.32. Judicial officers we interviewed also drew strong connections between mandatory sentencing for murder and the need for partial defences:

> [M]andatory life imprisonment does send that message that human life is important, and there's no more serious a crime than [murder]. To the people that are in extenuating circumstances, there's … provisions, like provocation and killing in an abusive domestic relationship, that reduce … what would otherwise be murder to manslaughter so that they're not exposed to mandatory life. They can then get a much shorter sentence. … And so that tempers what some people might think would be harsh if someone … got life imprisonment.
>
> [Supreme Court Judge]
>
> If we got rid of mandatory life for murder, the rationale for provocation as a defence to murder … would pretty much vanish.
>
> [District Court Judge]
>
> [S]imply get rid of partial defences and go with discretionary sentencing for murder … where you do not have discretionary sentencing for murder, then having partial defences is the next best thing.
>
> [Magistrate]

2.33. Other law reform commissions have noted the connection between partial defences and the mandatory penalty for murder.[26] Their reports identify the limitations and deficiencies of partial defences like provocation and diminished responsibility but acknowledge the protective role partial defences play in the context of the mandatory penalty. The Law Commission of England and Wales observed that throughout consultation:

> [T]here was a single, prominent and endless refrain: the partial defences of provocation and diminished responsibility have as their origin and main purpose the protection of the defendant from the mandatory death/life sentence for murder.[27]

2.34. These reports routinely noted that jurisdictions with partial defences had mandatory sentences.

2.35. In our Consultation Paper, we explored an additional partial defence based on the defendant's past experience of trauma.[28] For the reasons set out in Chapter 15, we do not recommend this additional defence.

Practice and procedure reforms

2.36. We recommend a range of practice and procedure reforms (**Recommendations 21–35**). Part 7 explores these reforms in detail, including pragmatic considerations for their implementation.

2.37. In mapping the path to reform, we emphasise the importance of aligning relevant practice and procedure reforms with our reforms to the defences. The law plays a vital role in setting social norms. However, legislative changes alone are not sufficient and may be ineffective or even have unintended consequences, without accompanying supportive measures. Training, guidance, education, awareness-raising and resourcing are critical in ensuring that changes to the law are positive and impactful.

2.38. Our practice and procedure reforms are categorised as follows:

- legislative reforms
- guideline and policy development and reform
- court programs
- education, training and resourcing reforms
- monitoring and review.

2.39. Our legislative reforms include reforms to the Criminal Code, Evidence Act and Police Powers and Responsibilities Act. Report 2 includes our Draft Bill, the Criminal Code (Defences and Excuses) Amendment Bill 2025, to amend the defences and excuses in the Criminal Code. Our draft Bill could be supplemented by the inclusion of these reforms, or they could be achieved through a separate criminal law practice and procedure reform bill.

2.40. Our guideline and policy reforms include additions and amendments to judicial guidelines, the Operational Procedures Manual and the Director's Guidelines. We recognise the importance of appropriate consultation and engagement to develop appropriate content.

2.41. Some of our practice and procedure reforms align with or build on current programs or initiatives. These include our recommendations to:

- expand and enhance the Queensland Intermediary Scheme (**Recommendation 28**)
- establish a Domestic and Family Violence Expert Evidence Panel (**Recommendation 29**)
- expand the scope of Community Justice Groups to include Supreme and District Courts (**Recommendation 35**)
- give the ODPP carriage of all murder and manslaughter cases following a defendant's initial appearance before a Magistrate (**Recommendation 25**).

2.42. They could be undertaken as new court programs or by expanding existing initiatives. All would require appropriate planning and some, such as the Expert Evidence Panel, should be informed by the evaluation of the existing Sexual Offence Expert Evidence Panel.

2.43. Our education and training reforms should complement our legislative, practice and procedure reforms. To be effective and efficient, existing training should be reviewed and evaluated to ensure further education and training builds on rather than duplicates current opportunities.

Discrete reforms

Domestic discipline reforms

2.44. The defence of domestic discipline justifies the use of reasonable physical violence against a child for the purpose of 'correction, discipline, management or control'.[29] The defence is available to a parent, person in place of a parent, schoolteacher or 'master'.[30]

2.45. The Taskforce's recommendation that the Attorney-General refer this review to us outlined the other matters in our scope but did not include the defence of domestic discipline. The Taskforce's focus was on the defences directly relevant to offending in the DFV context.[31]

2.46. The defence of domestic discipline relates to our review because of its DFV context. Physical discipline of children can amount to abuse.[32] There is also an established correlation between a person's childhood experience of violence and their likelihood of experiencing adult violence, as victim or abuser.[33] The National Plan to End Violence against Women and Children 2022-2032 notes that children can be adversely impacted by exposure to DFV in the home and can also directly experience DFV.[34]

2.47. While we recognise this important nexus, we also recognise that this defence is distinct from the other defences in our review in key ways:

- It is relevant to conduct by an adult to a child in their care.
- It sets limits on socially sanctioned conduct, being the discipline, correction, management or control by an adult to a child in their care. It does not justify or excuse behaviour that, without the relevant defence, is not lawful regardless of the degree of force used.
- It is not intended to apply to reactive violence.

2.48. Unlike the other defences we are reviewing, the implications of its reform are not connected to, or contingent on, our other reforms. On this basis, we consider reform of the defence of domestic discipline as a discrete matter. However, we emphasise the importance of implementing the recommended supportive measures for this defence in conjunction with the legislative reforms, to protect against unintended consequences.

A staged approach

2.49. We recommend a two-staged approach to reform of this defence:

- Initial legislative reform, accompanied by supportive measures to minimise unintended or disproportionate effects of reform for certain communities (**Recommendations 16(a), 17, 18**).
- Further legislative reform (**Recommendation 16(b)**).

2.50. The Stage 1 reforms, which we discuss in Chapter 9, are an important first step in the progressive abolition of lawful physical punishment of Queensland children. They align with the Government's focus on developing measures to protect vulnerable children from abuse and neglect and keeping children and communities safer. This focus underpins the Government's establishment of the Commission of Inquiry into Queensland's child safety system. The Stage 1 reforms also align with the policy intent of addressing DFV in Queensland and reducing violence in Queensland.

2.51. The Stage 2 reforms complete the reform of this defence.

Future reviews

2.52. We recommend review of the operation of our implemented reforms to ensure they are effective and remain relevant to the community (**Recommendation 36(a)**).

2.53. We also recommend review of the role of intoxication in the Criminal Code as well as review of the partial defence of diminished responsibility (**Recommendation 36(b)**). Our recommendations address the role of intoxication for the defences within our scope, but the role of intoxication generally requires consideration. A future review could consider the role of intoxication across the Criminal Code and how it affects individuals and the community.

2.54. These reviews could be undertaken simultaneously or separately.

References

1 Criminal Code (Qld) ss 271–272.

2 Criminal Code (Qld) s 31(1)(d).

3 Criminal Code (Qld) s 31(1)(c).

4 Criminal Code (Qld) s 304B.

5 Criminal Code (Qld), as enacted ss 271(1), 272(1).

6 Criminal Code (Qld), as enacted ss 31(1)(c), 271(1), 272(1).

7 Criminal Code (Qld), as enacted s 31(1)(d)(i).

8 Criminal Code (Qld), as enacted s 31(1)(c).

9 Criminal Code (Qld), as enacted s 304B.

10 For example, our women who kill research identified multiple matters in which female defendants who killed their current or former partner in defensive circumstances where their conduct could also be considered to have been provoked by the actions of the deceased. We also identified two matters where jury verdicts for a woman and a girl who killed their abusive intimate partners could have been on the basis of either provocation or s 304B, for one of whom self-defence should be available under our lethal defensive force reforms: Transcript of proceedings, Michelle Loretta Cooktown (Supreme Court of Queensland at Cairns, 98/2019, Henry J, 25 February 2020); Transcript of proceedings, Roxanne Eka Peters (Supreme Court of Queensland at Brisbane, 1235/2018, Boddice J, 29 October 2018).

11 Our women who kill research identified multiple matters in which female defendants who killed their current or former intimate partner or another person they feared would harm themselves or their children who were intoxicated, had mental impairment or complex trauma histories.

12 See Chapter 7, ‘Recasting provocation’.

13 See Chapter 8, ‘Sentencing for murder’.

14 For example, the discussion of the continued need for partial defences for women who kill an abusive intimate partner in defensive circumstances in Caitlin Nash and Rachel Dioso-Villa, ‘Australia’s Divergent Legal Responses to Women Who Kill Their Abusive Partners’ (2024) 30(9) Violence Against Women 2275, 2292–3.

15 Criminal Code (Qld) s 304.

16 Criminal Code (Qld) s 304A.

17 Criminal Code (Qld) s 304B.

18 Criminal Code (Qld) ss 304(1), 304A(1), 304B(1).

19 Criminal Code (Qld) ss 300, 303, 310; Penalties and Sentences Act 1992 (Qld) sch 1C.

20 Women’s Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, December 2021) vol 1, 322–323.

21 See Chapter 8, ‘Sentencing for murder’.

22 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 22.

23 Queensland Human Rights Commission, Submission 41. See also: Joseph Lelliott and Rebecca Wallis, Submission 22.

24 Rachel Dioso-Villa and Caitlin Nash, Submission 38.

25 Bar Association of Queensland, Submission 42.

26 Model Criminal Code Officers Committee, Model Criminal Code Chapter 5 — Non Fatal Offences Against the Person (Report, September 1998) 141; Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 182, 216–17; NSW Law Reform Commission, Partial Defences to Murder: Diminished Responsibility (Report No 82, 1997) [2.11]–[2.13]; NSW Law Reform Commission, Partial Defences to Murder: Provocation and Infanticide (Report No 83, 1997) [2.29]–[2.33]; South Australian Law Reform Institute, The Provoking Operation of Provocation: Stage 2 (Report No 11, April 2018) [11.2.5]–[1.2.18]; Victorian Law Reform Commission, Defences to Homicide (Final Report, October 2004) [1.18], [1.26], [2.3], [2.31], [2.52]; Law Commission of England and Wales, Partial Defences to Murder (Final Report, 6 August 2004) [2.59]–[2.74]; New Zealand Law Commission, The Partial Defence of Provocation (Report No 98, September 2007) 9, 11–13, 59, 61–4.

[27] Law Commission of England and Wales, Partial Defences to Murder (Final Report, 6 August 2004) [2.59].

[28] QLRC, Review of Particular Criminal Defences: Equality and Integrity — Reforming Criminal Defences in Queensland (Consultation Paper, February 2025) 43–6.

[29] Criminal Code (Qld) s 280.

[30] Criminal Code (Qld), as enacted s 280.

[31] Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 1, lxxii–lxxiii.

[32] Divna Haslam et al, 'The Prevalence of Corporal Punishment in Australia: Findings from A Nationally Representative Survey' (2023) 59(3) Australian Journal of Social Issues 580; Sophie Havighurst et al, 'Corporal Punishment of Children in Australia: The Evidence-Based Case for Legislative Reform' (2023) 47(3) Australian and New Zealand Journal of Public Health 1; Australian Child Maltreatment Study, The Prevalence and Impact of Child Maltreatment in Australia: Findings from the Australian Child Maltreatment Study (Brief Report, 2023); Angelika Poulsen, 'Corporal Punishment of Children in the Home in Australia: A Review of the Research Reveals the Need for Data and Knowledge' (2019) 44(3) Children Australia 110; Elizabeth Gershoff, 'Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review' (2002) 128(4) Psychological Bulletin 539.

[33] Angelika Poulsen et al, 'Childhood Experiences of Corporal Punishment and Associated Intimate Partner Violence Perpetration and Victimization in Adulthood: Results from a Longitudinal Twin Study' (2025) Journal of Family Violence; Sophie S Havighurst et al, 'Corporal Punishment of Children in Australia: The Evidence-Based Case for Legislative Reform' (2023) 47(3) Australian and New Zealand Journal of Public Health 1.

[34] Australian Government, National Plan to End Violence Against Women and Children 2022–2023: Ending Gender-Based Violence in One Generation (Plan, 2022) 36, 44–5.

PART 2

Setting the scene

CHAPTER 3

Context for our review

Contents

Introduction

3.1. This chapter explores key issues with the legal and criminal justice systems that have informed our approach to this review and the recommendations for reform we have developed. Addressing many of these systemic issues is beyond this review's scope. However, by recognising the connections between our recommendations and wider systemic concerns, we seek to fulfil our responsibility to promote modern, fair and effective justice for all Queenslanders.

3.2. In consultations, many stakeholders shared their views about reforms needed to address these broader issues. Our review findings reinforce the connection between these systemic issues and the heightened risk of adverse outcomes for the most disadvantaged individuals engaged in the criminal justice system. These insights, and our research findings, build on a strong body of existing work which reinforces the need to address these systemic issues. This has informed the development of recommendations that are within the scope of our review, ensuring that our reforms are practical and reflect the relevant context.

3.3. This chapter has four sections. It begins by providing an overview of murder statistics in Queensland and examines the relationship between murder charges and DFV offending. It compares outcomes for women and men charged with murder.

3.4. The second section considers the DFV context, acknowledging its centrality to our review. We consider the significant body of recent research enhancing our understanding of DFV, commencing with the Taskforce's work. We highlight recent, relevant Queensland reviews and reforms. This contextual understanding is critical to ensuring our reforms contain sufficient safeguards to appropriately respond to circumstances where a DFV victim-survivor uses defensive force against an abusive partner or where a primary perpetrator of DFV commits a violent offence against their current or former partner. It also ensures that the law responds to contemporary understandings of patterns of abusive behaviour and to hidden and non-physical forms of DFV.

3.5. The third section discusses the over-representation of certain communities within the Queensland criminal justice system, focusing on Aboriginal peoples and Torres Strait Islander peoples and people with cognitive disability. We recognise the over-representation of other communities, as well as people with intersectional identities, that can create unique experiences of disadvantage. We explain how we sought to hear and respond to the systemic factors driving their over-representation. We consider its effect on individuals from these communities engaged in the criminal justice system as well as systemic implications of over-representation.

3.6. The final section explores the additional barriers to justice faced by certain communities and the heightened risk that these barriers limit engagement with the justice system or prevent a just outcome. While we maintain our focus on the experience of Aboriginal peoples and Torres Strait Islander peoples and people with cognitive disability, we also consider barriers faced by other marginalised groups in the criminal justice system, including people from culturally and linguistically diverse backgrounds and people from the LGBTQIA+ community. We conclude this chapter by considering the effect of delay in the criminal justice system. We consider how it shapes individual decision-making, including plea decisions, and its effects on evidence, such as witness recollection. We examine how delay in the criminal justice system is relevant to our recommendations for reform and how our reforms would address this.

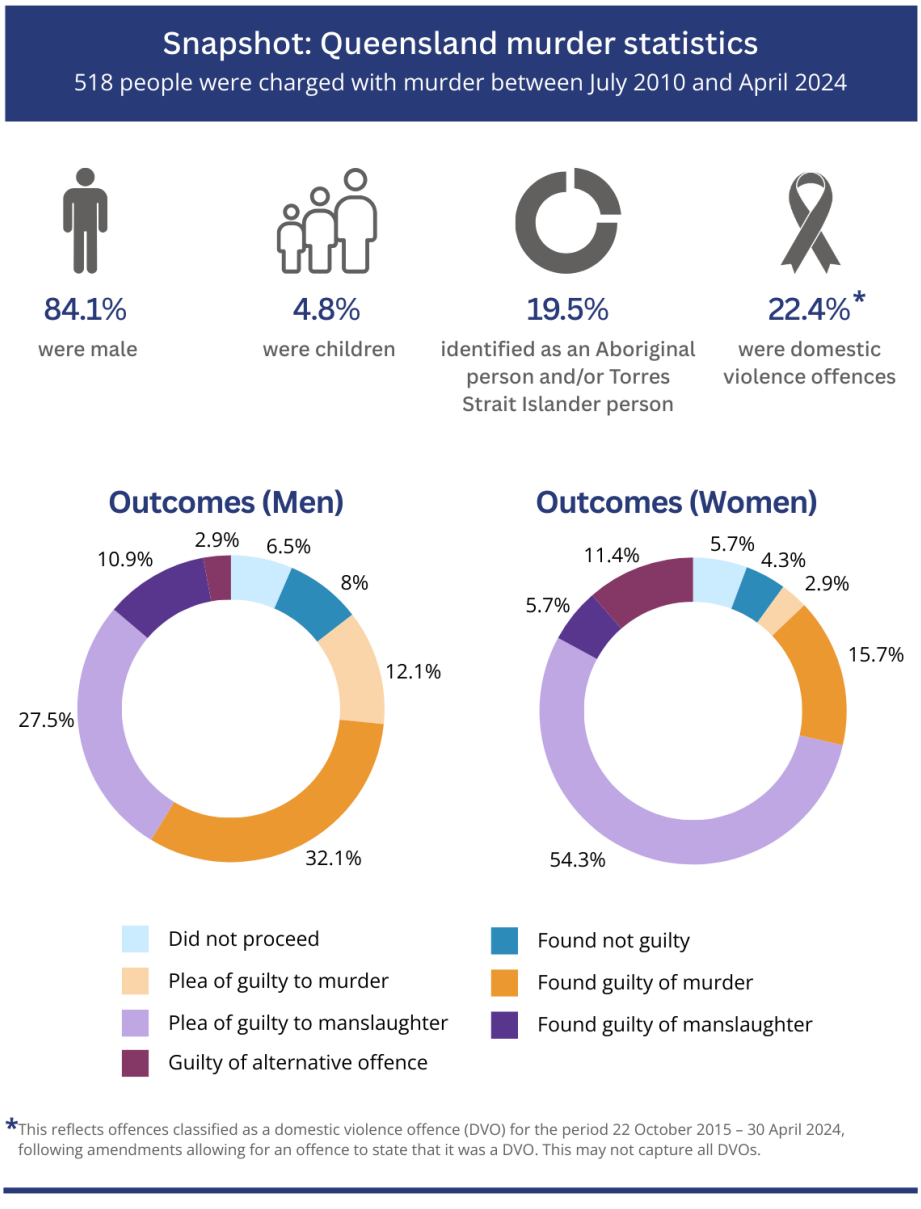
Homicide in Queensland

3.7. This section provides an overview of murder statistics in Queensland.[1] It examines the relationship between murder charges and DFV offending and the different outcomes for women, compared with men, who are charged with murder. This informs our recommendations for reform.

3.8. Between July 2010 and April 2024, 518 people were charged with murder in Queensland. During the period from 22 October 2015 to 30 April 2024, over 22% of Queensland homicides were recorded as domestic violence offences.

3.9. Most of the people charged with murder were men (84.1%) and less than 5% were children. Over 19% of people charged with murder identified as an Aboriginal person and/or Torres Strait Islander person. Women charged with murder were much more likely to plead guilty to manslaughter or murder (55.8%) compared with men (39.6%). **Figure 3.1** provides an overview of Queensland murder statistics.

Figure 3.1: Snapshot of Queensland murder statistics



The DFV context

3.10. This section provides a brief overview of what we know about DFV and recent law and policy responses. This is important context for understanding our recommendations for reform. We consider how DFV affects individuals engaged in the criminal justice system and the criminal justice response.

3.11. DFV is recognised as an insidious form of violence and a significant safety and human rights issue in Queensland. The past decade has seen increasing concern and awareness of DFV and a commitment to eliminating DFV in Queensland.

3.12. Recent statistics clearly illustrate the gravity of the problem:[2]

- one in four Australian women and one in 14 Australian men report experiencing intimate partner violence since the age of 15[3]
- from 2024–25, Queensland courts made 50,254 domestic violence orders[4]
- in 2024−25, 72.2% of applications for protection orders were for intimate personal relationships, 27.4% were for family relationships and 0.4% were for informal care relationships[5]
- in the first half of 2024−25, 83% of domestic violence orders made in Queensland were to protect a female[6]
- in 2024–25, 41,523 charges were lodged in Queensland Magistrates Courts for breach of a domestic violence order[7]
- from 2006−21, 76.5% of DFV homicide offenders (intimate partner, family and collateral DFV homicides) were male[8]
- from 2006−21, 75.8% of intimate partner homicide victims were female.[9]

3.13. The February 2015 'Not now, not ever: Putting an end to domestic and family violence in Queensland' report by the Special Taskforce on Domestic and Family Violence in Queensland marked a significant milestone in hearing and documenting individual experiences of DFV in Queensland.

3.14. The Government has implemented a 10-year reform program to eliminate DFV in Queensland, including:

- establishing the Special Taskforce on Domestic and Family Violence in 2014
- adopting the Domestic and Family Violence Prevention Strategy 2016–2026 and its four action plans
- establishing the Taskforce in March 2021.

The Taskforce's work and findings

3.15. Across two reports, the Taskforce recommended criminalisation of coercive control, accompanied by system-wide reform, as well as reforms to improve women and girls' experiences of the criminal justice system.[10]

3.16. In recommending our review, the Taskforce expressed concern that criminal defences can operate to reduce or remove criminal responsibility for male defendants who kill their female partner in anger or jealousy.[11] The Taskforce also found that criminal defences do not operate effectively for female defendants who are DFV victim-survivors, including female defendants who kill in the context of a controlling and abusive relationship.[12] The Taskforce stated:

> The existing defences and excuses in the Criminal Code are urgently in need of review to ensure they meet our current knowledge about the effects of domestic and family violence — including coercive control over time. They must evolve beyond outdated, gendered understandings about the types of behaviour that cause fear and create an imminent threat to safety. These provisions require review not only to ensure that they reflect the impact of domestic violence on victims but also to ensure that they do not reinforce stereotypes that inappropriately reduce the culpability of perpetrators.[13]

3.17. The Taskforce's work informed our terms of reference,[14] which ask us to consider how the defences operate in the context of DFV, including with regard to:

- the findings of the Taskforce
- the nature and impacts of DFV on victims and survivors and their families
- the need for laws to balance the interests of victims and accused persons
- the experience of victims and survivors and their families in the criminal justice system.[15]

A changing legal landscape

3.18. Our review takes place in a rapidly evolving legal and regulatory context. The Taskforce found that the patterned and cumulative nature of coercive control is not well understood, particularly the emotional and psychological harm it causes.[16] Recent changes in legal conceptions of DFV and growing awareness and understanding, including of its non-physical forms, such as coercive control, have driven legislative reforms. Key reforms include:

- amendments to the Domestic and Family Violence Protection Act:
  - to include reference to a 'pattern of behaviour' in the definitions of domestic violence, emotional or psychological abuse and economic abuse, to better reflect the cumulative nature of abusive behaviour and the need to consider it in the context of a relationship as a whole[17]
  - to guide police, practitioners and courts to identify the primary perpetrator of DFV and the person most in need of protection[18]
- amendments to the Evidence Act:
  - to better facilitate the admission of relevant evidence of the history of domestic relationships and a non-exhaustive list of what may constitute evidence of domestic violence[19]
  - to recognise the relevance of social entrapment framing and facilitate the admission of contextual DFV evidence in proceedings where DFV has been a factor and to facilitate the admission of expert evidence in criminal proceedings about the nature and effects of domestic violence[20]
  - to provide judicial discretion to give jury directions addressing misconceptions and stereotypes about domestic violence, including a direction about self-defence in response to domestic violence and factors that may influence how a person addresses, responds to or avoids domestic violence[21]
  - to allow preliminary complaint evidence[22] to be admitted in proceedings related to domestic violence[23]
- the criminalisation of coercive control and abuse of victim-survivors by people helping perpetrators[24]

- the introduction of police protection notices designed to provide immediate protection for DFV victim-survivors[25]
- reforms to disclosure provisions for DFV offences.[26]

3.19. This legislative and policy reform has coincided with common law developments. For example, the High Court recently upheld a Victorian Supreme Court decision which recognised that evidence of a 'continuing or ever present threat' of DFV, including serious sexual violence, may form an evidential basis for a threat sufficient to raise a criminal defence.[27]

3.20. In developing our recommendations, we have considered the need for the defences to reflect the context in which they operate as well as to accommodate future developments in our understanding and response to DFV. We are also mindful of:

- the Government's ongoing response to the:
  - recommendations of the Taskforce[28]
  - recommendations of the Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence[29]
  - proposed modernisation of Magistrates Court criminal procedures[30]
- the Government's commitments to:
  - create a Victim's Advocate Service[31]
  - increase legal assistance services funding[32]
  - the Making Queensland Safer initiatives.[33]

3.21. We recognise that ongoing and new research will continue to inform our understanding of relevant issues. Current areas of research focus include the drivers and effects of DFV, its manifestation in specific cultural contexts and communities, the effects of criminalisation of coercive control, the motives, factors and systems relevant to sexual harassment and effective measures to address violence at societal and system levels.

What we know about DFV

3.22. DFV is often hidden and abusive behaviours may be subtle and hard to recognise. The circumstances of offending are often complex. Due to this, DFV victim-survivors may be misidentified as perpetrators, the families of victims and victim-survivors may be unaware of abuse and criminal justice responses to DFV may increase the effect of DFV on victim-survivors.

3.23. Background Paper 3 discusses the nature and effects of DFV and coercive control and its relevance to the criminal defences. Key insights from recent research include that DFV:

- is complex, multifaceted and gendered
- shapes behaviour in specific ways
- has a significant lethality risk
- uniquely affects children.

3.24. We discuss each of these key insights below.

DFV is complex, multifaceted and gendered

3.25. Criminal justice responses to DFV have traditionally focused on individual incidents of physical violence. Non-physical forms of DFV are often neglected.[34] This means the full context of the relationship and history of abuse may not be properly understood or considered by the criminal justice system.

Understanding coercive control

Coercive control:

- is a pattern of abusive behaviour
- is designed to:
  - create a climate of fear, isolation, intimidation, and humiliation
  - punish, hurt or control the victim-survivor
- may involve physical or non-physical forms of violence or abuse that may vary in frequency and intensity
- restricts the victim-survivor's freedom and autonomy over time, essentially trapping them

is associated with an increased lethality risk for DFV victim-survivors following separation.[1]

3.26. While DFV can be a single incident, it has been more recently recognised that incidents of DFV generally occur within a broader context of coercive control.[35] Despite this recognition, the Taskforce observed that legal, agency and service systems continue to deal with DFV as isolated incidents. When viewed in isolation, these incidents may seem small and insignificant,[36] which can:[37]

- significantly affect police investigations and subsequent criminal proceedings, including the availability of defences
- lead to misidentification of the primary victim as the perpetrator
- limit assessment of the real level of risk to the primary victim, which can result in inadequate system responses and DFV victim-survivors' distrust of and disengagement from the criminal justice system.

3.27. Understanding DFV through the lens of coercive control helps us understand that DFV can be hidden, complex and patterned and its effect cumulative and significant.[38]

3.28. DFV is also highly gendered.[39] While perpetrators and victims can be any gender, and abuse can be perpetrated by more than one person within an intimate partner or broader family relationship, DFV is most often used by men against their female intimate partners.[40] There are significant gender differences between the way men and women use violence within intimate partner relationships. These differences relate to the:[41]

- severity of violence
- presence of coercive control
- motives for using violence
- effects of being victimised.

3.29. Women are almost exclusively the victims of coercive control.[42] The perpetrator is usually their current or former intimate partner.[43] Men can also be victims of DFV but are more likely to experience violence from a male stranger.[44]

DFV shapes behaviour in specific ways

3.30. Appropriate criminal justice responses to DFV depend upon an understanding of the different ways lived experience of DFV can affect a victim-survivor's behaviour.

3.31. The Domestic and Family Violence Death Review and Advisory Board has recognised that victim-survivors often resist the violence and abuse they experience and can use resistive violence in self-defence or to protect their dignity and self-respect.[45]

Understanding resistive violence

Resistive violence is the use of physical violence for self-defence or self-protection. It is often overlooked or misunderstood. DFV victim-survivors are often stereotyped as passive and submissive. However, research shows that:[1]

- individuals resist violence and abuse
- their resistance may not stop the abuse, but is an important expression of dignity and self-respect and part of their efforts to protect themselves and others, particularly children
- how a person resists DFV depends on their individual circumstances and perceived level of risk.

To effectively respond, services need to understand the gendered nature of DFV and consider women's use of physical violence in context. This includes by identifying any underlying patterns of coercive control. This is particularly important to avoid the misidentification of female victims as perpetrators of DFV when they have tried to resist their abusers overtly.

3.32. In 2017, the Domestic and Family Violence Death Review and Advisory Board found that, in almost half of the cases of DFV-related female deaths, the woman had been wrongly identified as the respondent on a domestic violence order.[46] The Taskforce recognised that DFV victim-survivors generally, and Aboriginal women and Torres Strait Islander women in particular, are at significant risk of being misidentified as a perpetrator of DFV. This misidentification leads to the criminalisation of behaviours women use in response or retaliation to DFV.[47] Factors contributing to the misidentification include assumptions and stereotypes about the behaviour of victims of abuse and women generally.[48]

The 'ideal victim'

The 'ideal victim' is a stereotype of a victim who is more deserving of sympathy and support.

Assumptions about the ideal victim are grounded in discriminatory stereotypes about gender, race and socio-economic status and informed by value judgments about behaviour.

Research shows that:

- women are more likely to be blamed for their experiences of violence if they are seen to be challenging or not conforming with societal gender norms[49]
- women are more likely to be recognised as 'deserving victims' if they have certain characteristics, as depicted below.[50]

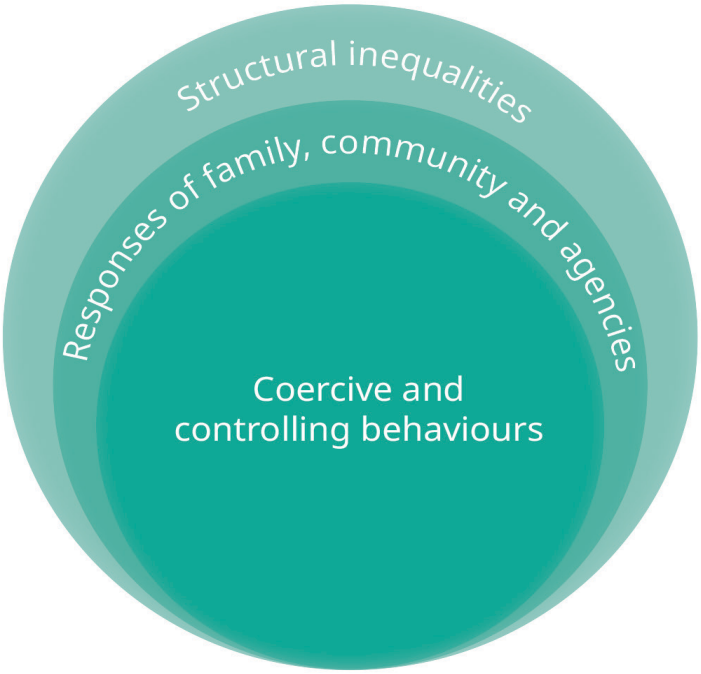
Figure 3.2: The 'ideal' victim

3.33. DFV service providers told us repeatedly that women who were primary victims continued to face significant risk of prosecution for DFV offences and were being named as the respondent to domestic violence orders. We heard that, in some cases, recent practice and procedure reforms have made it more difficult to establish that a client is the primary victim.

3.34. The effect of DFV on victim-survivors and perpetrators can be increased by the responses of family, community, organisations and broader systems, including police and the courts.[51] Inadequate responses to intersectional inequality can limit a victim-survivor's safety options and lead to a victim-survivor being trapped in an abusive relationship. This is referred to as social entrapment (see **Figure 3.3**).

3.35. Community understanding of the social and systemic risks that contribute to social entrapment in abusive relationships continues to be low.[52]

Figure 3.3: What is social entrapment?



DFV has a significant lethality risk

3.36. DFV victim-survivors can face significant risk of being killed by their abuser, which we refer to as the 'lethality risk'.

3.37. The Domestic and Family Violence Death Review and Advisory Board reviewed 92 intimate partner homicides in Queensland from 2011 to 2018 where a prior history of DFV was established, reporting that known lethality risk indicators include:

- history of DFV in the current relationship (most common at 83.6%)
- perpetrator's excessive alcohol and/or drug use (57.6%)
- victim's intuitive sense of fear of the perpetrator (53.2%)
- actual or pending separation (52.2%)
- perpetrator's sexual jealousy (49%)
- perpetrator's unemployment (47.8%)
- perpetrator's history of violence outside the family (41.3%)
- perpetrator's failure to comply with authority (41.3%)
- perpetrator's prior threats to kill the victim (35.9%)
- coercive and controlling behaviour, including perpetrator's prior attempts to isolate the victim (42.4%), control of most or all of the victim's daily activities (40.2%), obsessive behaviour (38%) and prior threats to suicide (25%).[53]

3.38. Physical violence is not always present in coercive and controlling relationships. As highlighted by this list, many non-physical forms of abuse are also high lethality risk indicators.[54] This highlights that a person can be at risk of death, and respond reasonably to that threat, even if they have never been physically assaulted.

3.39. There is a direct connection between the DFV lethality risk and killings by female DFV victim-survivors of their intimate partners. Research has found that women who kill their abusers:

- are part of the same cohort as women who are killed by their abusers or are victim-survivors of serious DFV[55]
- are most often motivated by 'fear and self-preservation in response to prolonged domestic abuse'.[56]

DFV affects children uniquely

3.40. Recent research findings show the effects of DFV on children, relevance of DFV to child death and maltreatment and particular barriers to justice faced by children who experience DFV.

3.41. In its 2023−24 annual report, the Child Death Review Board reported the following:

- Exposure to DFV appears widespread in cases of reportable child deaths.[57]
- A history of DFV is present in most cases where parents are charged with killing their own children.[58]
- Children may face additional barriers to disclosing abuse. The Board noted that in some child death cases they considered, 'children had tried to tell the adults around them they were being hurt or feeling unsafe and scared' but many were not believed, particularly where their disclosure was contradicted by others.[59] Children may also try to cover for abusive parents and caregivers.[60]

3.42. The Australian Child Maltreatment Study found that exposure to DFV is the most common type of child maltreatment.[61]

3.43. The National Plan to End Violence against Women and Children 2022–2032 recognises that children can be adversely affected by exposure to DFV in the home and can also directly experience and be victims of DFV.[62]

3.44. There is also a strong correlation between the experience of childhood abuse and violence and adult incarceration. The Taskforce reported that 87% of women in custody have been victims of childhood sexual abuse, physical violence or domestic violence.[63]

DFV can affect people from diverse and disadvantaged communities uniquely

3.45. People from diverse and disadvantaged communities are at greater risk of experiencing DFV[64] and can experience DFV uniquely. They include Aboriginal peoples, Torres Strait Islander peoples, people with disability, people from culturally and linguistically diverse backgrounds and people from the LGBTQIA+ community. Previous experiences of sexism, racism, homophobia and ableism can affect a person's ability to escape violence and employ strategies to reduce the effect of abuse.

3.46. Effective responses to DFV require understanding of how DFV presents in diverse and disadvantaged communities. For example:

- Victim-survivors from **Aboriginal communities and Torres Strait Islander communities** may be more likely to use 'resistive violence' and may be less likely to report violence due to mistrust of police, fear of child removal and child safety intervention and deaths in custody and lack of cultural safety.[65] They may also engage in physical conflict with intimate partners. We discuss this in Background Paper 3.[66]
- Victim-survivors **with disability** may have their disability-related needs, including medication, targeted and controlled by a perpetrator.[67]

- Victim-survivors from **culturally and linguistically diverse backgrounds** may be less likely to report DFV due to expectations that women 'submit' to their husbands and a desire to avoid bringing shame to themselves and their family.[68]
- Victim-survivors from the **LGBTQIA+ community** can experience unique forms of coercive control, such as having their fear of being 'outed' to family and friends exploited by their abuser.[69]

3.47. People can belong to more than one of these communities, meaning they have intersecting identities which can compound and increase their risk of exposure to violence.[70]

3.48. People from disadvantaged communities face multiple barriers to justice in the criminal justice system. For example, Aboriginal peoples and Torres Strait Islander peoples can experience language and communication barriers when interacting with law enforcement agencies and courts.[71] Legal information and court processes can be inaccessible to people with disability.[72]

Community and professional understandings of DFV

3.49. Despite growing government, social and media attention towards DFV, it is apparent that the community and legal profession may require further education and direction about contemporary understandings of DFV. This includes how people from diverse and disadvantaged communities experience DFV and how these contemporary understandings explain a DFV victim-survivor's offending.

3.50. Our community attitudes research (Research Report 1) highlighted three key findings about the Queensland community's views on DFV:

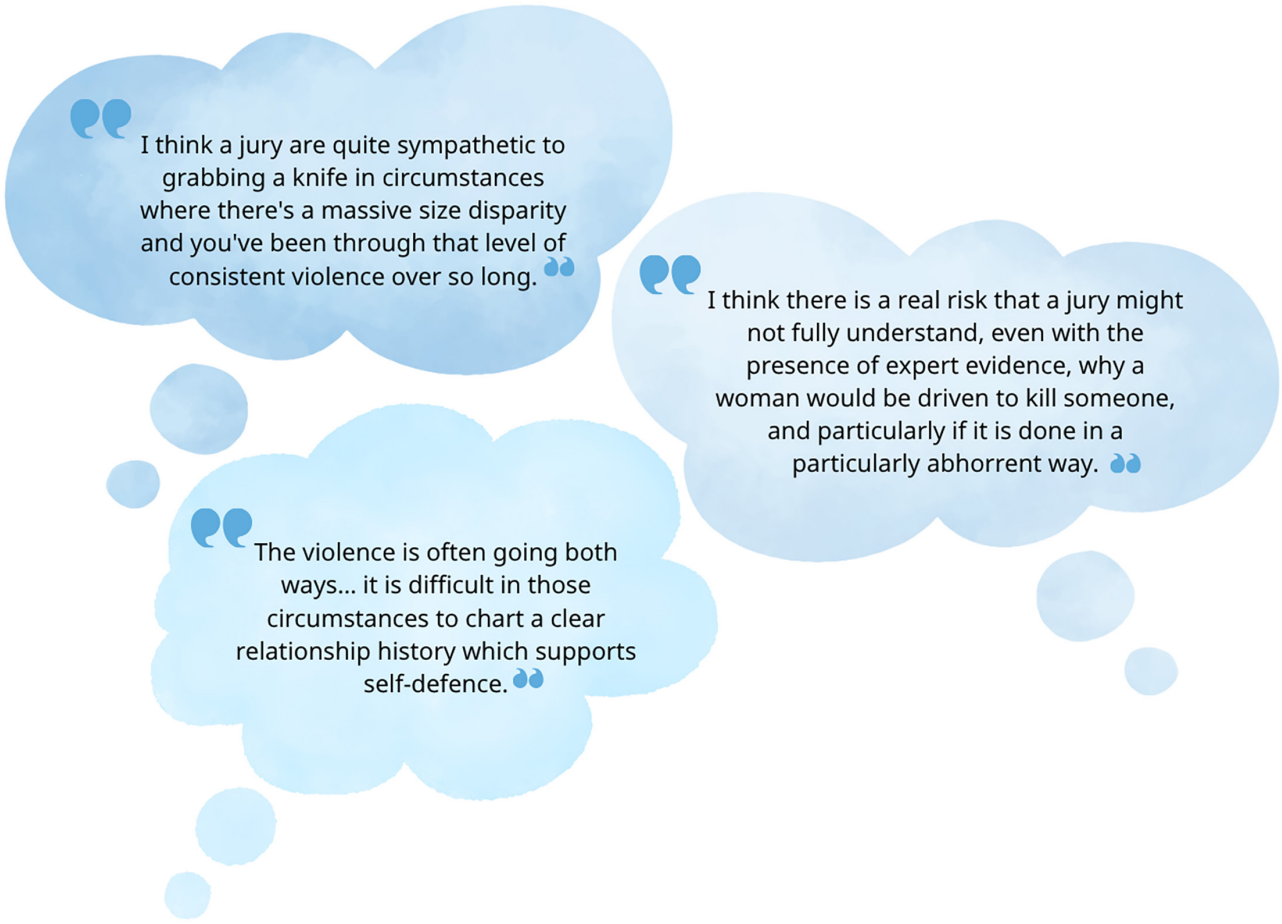
- There were very low levels of victim-blaming and minimising attitudes towards DFV among survey participants. The notable exception to this was an inaccurate understanding of the gendered effects of DFV and of non-physical forms of DFV.
- Individual attitudes and knowledge about DFV influenced whether people thought people using resistive violence should have access to a defence.
- Female participants displayed lower victim-blaming and minimising attitudes compared to male participants. Participants born in countries where English is not the primary language also displayed higher victim-blaming and minimising attitudes.[73]

3.51. Our semi-structured interviews with community members indicated that juries may be:

- unlikely to minimise the effects of DFV
- more understanding of traditional examples of DFV involving physical abuse by a larger perpetrator towards a smaller woman
- less understanding of non-physical DFV or where the DFV victim-survivor is not an 'ideal victim' with an unblemished record.[74]

3.52. Legal professionals that we interviewed (Research Project 5) also shared their views about how a jury might approach a case where a DFV victim-survivor uses resistive violence against her abuser (see **Figure 3.4**).[75]

Figure 3.4: Legal professional perceptions of jury understandings of DFV



Responding to the DFV context

3.53. Our recommendations for reform respond to this context, appropriately protecting and promoting individual rights, including the rights of DFV victim-survivors, family members and persons accused of criminal offending, informed by understandings of the nature and effect of DFV, including coercive control. Our recommendations:

- Promote the effective and just operation of defences in the DFV context, particularly through our reforms to self-defence and the partial defence of killing for preservation (**Recommendations 1–6**) and duress (**Recommendations 8–11**).
- Remove the ability for the defence of provocation to be used by jealous and angry men to seek lower culpability for DFV murders (**Recommendations 12–14**).
- Expand judicial discretion in setting the minimum non-parole period in sentencing for murder, to support just outcomes for homicides in the DFV context. This would allow judges to recognise increased culpability for intimate partner homicide where the defendant has a history of perpetrating DFV and to reflect reduced culpability for DFV victim-survivors who use lethal defensive force (**Recommendation 15**).
- Improve the criminal justice system response to DFV victim-survivors, including:
  - reforms to assist police to identify the person most in need of support and protection in a relationship where DFV is occurring (**Recommendation 21**)
  - increasing the safeguards for people questioned for indictable offences (**Recommendation 22**)

- improving ODPP practices on prosecuting and obtaining evidence (**Recommendation 23**)
- ensuring appropriate evidence of DFV is available to support just outcomes (**Recommendations 26 and 29**)
- allowing courts to deem DFV victim-survivors special witnesses in appropriate circumstances (**Recommendation 27(a)**)
- expanding the Queensland Intermediary Scheme to support witnesses giving evidence in proceedings for homicide and domestic violence offences (**Recommendation 28**)
- ensuring juries are appropriately directed about DFV, including in relation to defensive conduct (**Recommendation 31**)
- improving training about DFV across the criminal justice system (**Recommendation 33**)
- increasing funding to support specialist legal representation (**Recommendation 34**).

Over-representation in the criminal justice system

3.54. This section discusses factors underpinning the over-representation in the Queensland criminal justice system of Aboriginal peoples, Torres Strait Islander peoples, people with cognitive disability and people with intersectional identities. We provide an overview of data on over-representation to contextualise our recommendations for reform. We explain how our approach to this review has sought to hear and respond to the systemic barriers driving over-representation. We consider its impact for individuals from these communities engaged in the criminal justice system as well as systemic implications of over-representation.

3.55. Over-representation in the criminal justice system means that a specific community may make up a small percentage of the overall population but form a much larger percentage of the population of offenders, victims or victim-survivors.

3.56. Over-representation in criminal justice settings is the result of intersecting systemic issues, rather than the innate qualities of a community.

3.57. Systemic drivers for the over-representation of Aboriginal peoples and Torres Strait Islander peoples include the historical and ongoing impacts of colonisation, social and economic marginalisation, institutional and systemic bias and racism and inter-generational trauma.[76] As recognised in the Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024–2031, over-representation in the criminal justice system 'does not reflect the true strengths and values of First Nations peoples and communities'.[77]

3.58. For people with cognitive disability, ableism, experiences of multiple forms of disadvantage and lack of access to appropriate support services contribute to over-representation.[78] As highlighted by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability ('Disability Royal Commission'), this disproportionate disadvantage 'is not the result of any inherent relationship between disability and crime'.[79]

3.59. Aboriginal peoples and Torres Strait Islander peoples with cognitive impairment are at significantly higher risk of interacting with the criminal justice system. The Disability Royal

Commission characterised the over-representation of Aboriginal peoples and Torres Strait Islander peoples with cognitive impairment in the criminal justice system as 'a national crisis'.[80]

Aboriginal peoples and Torres Strait Islander peoples

Drivers of over-representation

3.60. Aboriginal peoples and Torres Strait Islander peoples are over-represented as offenders, victims and victim-survivors in the criminal justice system.[81]

3.61. Issues underlying over-representation are well known and were the focus of over a third of the recommendations made by the 1991 Royal Commission into Aboriginal Deaths in Custody. Almost a further third of the Commission's recommendations were for reforms to the criminal justice system to address over-representation.[82]

3.62. Cunneen and Tauri describe high rates of victimisation and high levels of over-representation in the criminal justice system as 'features of Indigenous peoples' experience of settler colonialism'.[83] They recognise that their over-representation in crime and victimisation statistics must be contextualised within the broader understanding of the effects of colonisation.[84] Acknowledging historical and ongoing impacts of colonisation as drivers of over-representation and victimisation is critical, including in law reform, to avoid assumptions about individual offending and pathologizing and problematising Aboriginal peoples and Torres Strait Islander peoples and their cultures.[85]

3.63. Government policies, beginning with the Aboriginal Protection and Restriction of the Sale of Opium Act, facilitated the removal of Aboriginal children and Torres Strait Islander children from their families and communities. It introduced forced labour, including child labour and stolen wages.[86] These policies also resulted in the maltreatment and exploitation of children in institutions.[87] This history of systematic oppression and exploitation has undermined the rights, self-determination and cultural identity of Aboriginal peoples and Torres Strait Islander peoples.[88] Inter-generational trauma and socio-economic disadvantage resulting from these policies, along with systemic racism and bias, underpin the over-representation of Aboriginal peoples and Torres Strait Islander peoples as victims, victim-survivors and offenders.[89] Aboriginal peoples and Torres Strait Islander peoples continue to experience interrelated forms of discrimination and marginalisation, including on the basis of gender, health, geographic location, education, religion, sexual identity and disability.[90]

3.64. The Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence found that criminal justice responses to DFV tend not to address factors underlying over-representation.[91] These responses can, instead, result in further over-representation of Aboriginal peoples and Torres Strait Islander peoples in the criminal justice system. For example, misidentification as a perpetrator contributes to the criminalisation of Aboriginal women and Torres Strait Islander women who are DFV victim-survivors.[92] This includes in circumstances where resistive violence is used.[93]

3.65. Increased rates of incarceration are not always tied to increased rates of offending. In its Inquiry into imprisonment and recidivism, the Queensland Productivity Commission recognised that, while rates of offending were decreasing, incarceration had increased due to policy and other changes to the criminal justice system.[94] The Better Justice Together Strategy recognises that this trend:

> can be linked to various changes within the criminal justice system, including more reporting of crime, more policing, more willingness of courts to impose

custodial sentences, tighter bail laws and higher recidivism rates. These changes have contributed to incarceration rates for Aboriginal and Torres Strait Islander peoples to accelerate more quickly, including incarceration rates which reflect geographical concentrations of offending in highly socio-economic disadvantaged areas.[95]

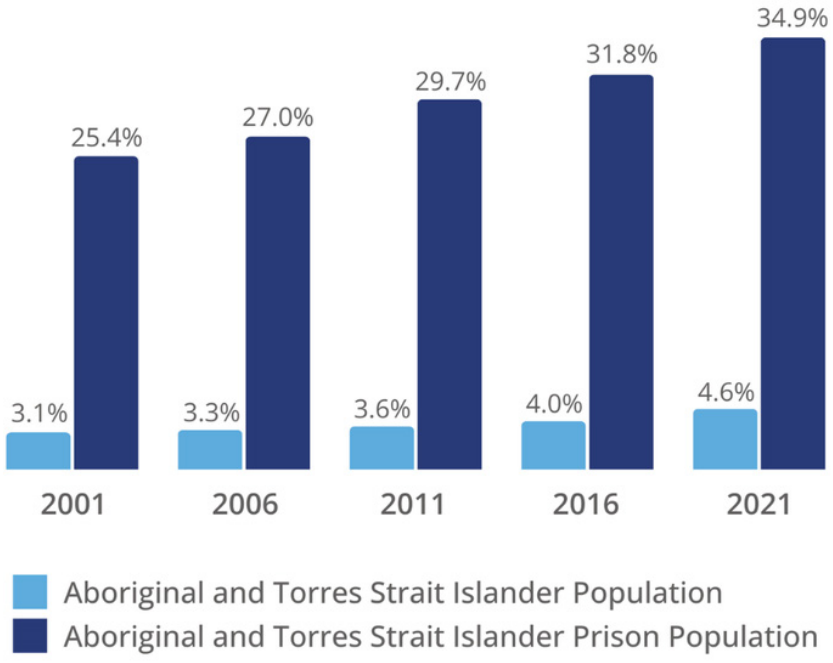
3.66. The Better Justice Together strategy recognises that, in addition to women and girls, other cohorts of Aboriginal peoples and Torres Strait Islander peoples are at an increased risk of interacting with the criminal justice system. This includes people with lived experience of institutional care, LGBTQIA+ people, Sistergirls, Brotherboys and people with cognitive disability.[96]

3.67. In its 2023 final report, the Disability Royal Commission found high rates of disability among Aboriginal peoples and Torres Strait Islander peoples who are incarcerated.[97] They often experience multiple forms of discrimination when interacting with the criminal justice system, including racism and ableism.[98]

3.68. In 2019, the Queensland Productivity Commission reported that the scale of over-representation for Aboriginal peoples and Torres Strait Islander peoples 'is perpetuating a cycle of disengagement, disadvantage and imprisonment'.[99] Social and economic inequalities experienced by Aboriginal peoples and Torres Strait Islander peoples are exacerbated by imprisonment. This inequality can be felt across generations.[100] Imprisonment is also associated with poor mental health outcomes for Aboriginal peoples and Torres Strait Islander peoples.[101]

3.69. Data from 2021 estimated that Aboriginal peoples and Torres Strait Islander peoples represent 4.6% of the Queensland population.[102] **Figure 3.5** highlights the trend of increasing over-representation of Aboriginal peoples and Torres Strait Islander peoples, as compared with the broader population, within the criminal justice system over the 20-year period from 2001–2021.

Figure 3.5: Increase in over-representation of Aboriginal peoples and/or Torres Strait Islander peoples in Queensland prisons (2001–2021)



3.70. Trends in data indicate that over-representation is worsening, despite four decades of inquiries and reviews relevant to the over-representation of Aboriginal peoples and Torres Strait Islander peoples in the criminal justice system and the National Agreement on Closing the Gap targets to reduce incarceration rates of Aboriginal and Torres Strait Islander adults and young people.[103]

3.71. We know that over-representation is exacerbated by systemic racism and disadvantage. The statistics presented in **Figure 3.6** are sourced from the Australian Bureau of Statistics and the Queensland Productivity Commission.[104] They reflect the stories we heard from stakeholders during the review about Aboriginal peoples' and Torres Strait Islander peoples' experiences with the criminal justice system.

Figure 3.6: Over-representation of Aboriginal peoples and Torres Strait Islander peoples in the criminal justice system

In Queensland, Aboriginal peoples and Torres Strait Islander peoples are over-represented as offenders and victims of crime. Over-representation is compounded where there is systemic disadvantage because of gender or location. These quantitative insights mirror insights and stories we heard from stakeholders.

ABS data from 2021 shows that Aboriginal people and Torres Strait Islander peoples are:

4.6%

of the population.

36.3%

of sentenced female offenders.

34.4%

of sentenced male offenders.

The Queensland Productivity Commission reported in 2019 a

40%

higher rate of imprisonment for Aboriginal people and Torres Strait Islander people living in a remote area compared to those not living in a remote area.

3.72. More recent data published in 2024 indicates that the gap in imprisonment rates between Aboriginal peoples and Torres Strait Islander peoples and other adults in Queensland is widening.[105] This gap is even more pronounced in relation to women, with 'Aboriginal and Torres Strait Islander women 21.7 times more likely to be imprisoned than other females'.[106]

3.73. Aboriginal women and Torres Strait Islander women are also disproportionately impacted by homicide. Data collected over a 34-year period from 1989–90 to 2022–2023 shows that in

Queensland, Aboriginal women and Torres Strait Islander women constituted 5.8% of homicide victims and 'over half of homicides of Indigenous women … took place in an outer regional area'.[107]

People with cognitive disability

3.74. Cognitive disability 'arises from the interaction between a person with cognitive impairment and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others'.[108] Cognitive impairment may be experienced by a person if they have an intellectual disability, acquired brain injury, neurological disorder or mental health condition.[109]

3.75. Over-representation of people with cognitive disability at each stage of the criminal justice system is widely acknowledged.[110] However, the degree of this disproportionate representation may be even greater than presently understood, given the actual number of people with disability in the criminal justice system is unknown.[111] The Disability Royal Commission reported a lack of mechanisms to effectively and accurately indicate 'the number of people with disability in custody or forensic systems in any jurisdiction' and a lack of data to inform understandings of intersectional characteristics, including a person's Aboriginal or Torres Strait Islander status and type of disability.[112]

3.76. People with disability who experience multiple and intersecting forms of disadvantage are more likely to be charged with and convicted of criminal offences.[113] The Disability Royal Commission found that people 'with cognitive disability in contact with the criminal justice system are more likely to have experienced multiple disadvantages that contribute to their offending'.[114]

3.77. The Disability Royal Commission identified that people with disability can experience forms of disadvantage including poverty, disrupted family background, family violence, other forms of abuse, misuse of alcohol and drugs, unstable housing and homelessness.[115] Research into the lived experience of disability and the justice system found that:

> People with disability in contact with criminal justice systems often have a history of cumulative social disadvantage that is not adequately addressed by existing social resources.[116]

3.78. For example, having unresolved trauma, experiencing disadvantage early in life, being a victim of crime and lacking access to social and financial resources can lead to a cycle of criminalisation for people with disability.[117]

3.79. People with disability who are victim-survivors of DFV also experience misidentification as a perpetrator, compounding over-representation in the criminal justice system.[118] Insufficient accommodations for people with disability in the criminal justice system also compound over-representation.[119]

3.80. Queensland Advocacy for Inclusion has highlighted that some people with cognitive disability are subject to indefinite detention under forensic orders.[120] Given the high rates of cognitive impairment amongst Aboriginal peoples and Torres Strait Islander peoples in detention, these groups are disproportionately affected by indefinite detention.[121]

3.81. People with disability also experience substantially higher rates of victimisation than people without disability. The Office of the Victims' Commissioner reported that 'people with disability routinely face barriers when interacting with police, including being dismissed or not being believed'.[122] Ableism and sexism have been attributed to these responses.[123] As a result, women with disability are far less likely to trust police and report victimisation.[124]

3.82. There is a significant overlap between experiences of victimisation and offending for people with disability. Research on police responses to people with disability found that 'the majority of criminalised people with disability have been victims of frequent and recurring forms of violence'.[125] People with cognitive disability, especially people with complex support needs, experience increased vulnerability, which means they are significantly more likely to have contact with police as a victim or offender.[126] **Figure 3.7** provides a snapshot of what we know about the over-representation of people with disability in the criminal justice system.[127]

Figure 3.7: Over-representation of people with disability in the criminal justice system

People with disability are over-represented as victims and offenders of crime

14x Aboriginal peoples and Torres Strait Islander peoples with disability are about 14 times more likely to be imprisoned than the general population.

4–10x Women with disability are between 4–10 times more likely to be victims of sexual violence compared to women without disability.

39–60% Between 39–60% of women with cognitive disability will be sexually assaulted before the age of 18.

Responding to the drivers of over-representation

3.83. Aboriginal communities and Torres Strait Islander communities told us about the intergenerational effects of colonisation on their families and the need to heal intergenerational trauma. Communities spoke about the strength in their culture and told us that DFV does not reflect this strength, but instead reflects the violence of colonisation. Building stronger families and communities and bringing back men's business and women's business is a priority, so that there are strong role models in communities. We heard from communities that the criminal justice system and DFV support services must be culturally responsive, trauma aware and healing informed.

3.84. Participants in a regional consultation with Aboriginal community-controlled organisations told us:

> It's understanding, where did this come from, how did it start, to build our communities stronger and families stronger. We're village raised. We get stronger when we're around each other and being able to support that healing.

3.85. We heard from stakeholders that it is critical to ensure reforms do not have unintended consequences, including limiting the rights of Aboriginal peoples and Torres Strait Islander peoples and compounding over-representation in the criminal justice system.[128]

3.86. In 2022, the Government released Queensland's Disability Plan 2022–27.[129] The plan adopts the policy priorities of Australia's Disability Strategy, which include achieving safety, rights and justice for people with disability.[130] Specifically, that:

- the rights of people with disability are promoted, upheld and protected
- people with disability have equal access to justice
- the criminal justice system responds effectively to the complex needs and vulnerabilities of people with disability.[131]

3.87. In 2023, the Government established the First Nations Justice Office, which published the Better Justice Together strategy in 2024. This was in response to Recommendation 1 of the Taskforce that the Government work in partnership with Aboriginal peoples and Torres Strait Islander peoples to develop and implement a co-designed, whole of government and community strategy to address the over-representation of Aboriginal peoples and Torres Strait Islander peoples in the criminal justice system.[132]

3.88. Our recommendations for reform align with the Better Justice Together strategy and Queensland Disability Plan 2022–2027 to respond to the systemic factors driving over-representation. This includes by:

- reforming defences in the Criminal Code to support just outcomes
- introducing appropriate judicial discretion in setting the minimum non-parole period in sentencing for murder, to support just outcomes that consider the circumstances of the offence and the offender (**Recommendation 15**)
- improving the criminal justice system response to people from disadvantaged communities, by:
  - increasing the safeguards for questioning for indictable offences (**Recommendation 22**)
  - improving prosecutorial and evidence collection practices (**Recommendation 23**)
  - clarifying that courts can deem Aboriginal peoples, Torres Strait Islander peoples and people from culturally and linguistically diverse backgrounds special witnesses in appropriate circumstances (**Recommendation 27(b)**)
  - allowing courts to receive evidence of traditional laws and customs and supporting juries to understand how to treat this evidence (**Recommendation 30**)
  - establishing a comprehensive training framework about cultural capability and barriers to accessing justice for people from disadvantaged communities (**Recommendation 33**)
  - increased funding for legal and advocacy services and Community Justice Groups (**Recommendations 34** and **35**).

3.89. This would promote:

- trauma-informed cultural capability across the criminal justice system so that Aboriginal peoples and Torres Strait Islander peoples can experience cultural safety
- understanding across the criminal justice system of the intersection between race, gender, trauma, DFV and barriers to accessing justice
- co-design with communities and community-controlled organisations so that the implementation of recommendations is informed by the knowledge and experiences of Aboriginal peoples and Torres Strait Islander peoples
- community education and awareness about the reforms in ways that are culturally responsive
- accountability through the monitoring of and reporting on particular reforms to identify, at an early stage, if there are any unintended consequences for Aboriginal peoples and Torres Strait Islander peoples.

Systemic issues connected to our review

3.90. This section discusses the systemic issues of access to justice and delay that we have identified in our review and provides further context to our recommendations. Barriers to justice and delay have a direct impact on whether individuals can access the criminal justice system. They also influence the experiences of those who do engage with the system, shaping the fairness and quality of justice they receive. This not only includes defendants but also victims, witnesses and the friends and families of those involved.

Access to justice

3.91. Access to justice can mean many things. It is traditionally connected to a person's formal right to seek justice as provided by law. These rights are supported by State commitments to provide certain trial guarantees such as access to interpreters and legal representation.[133]

3.92. Increasingly, access to justice is understood to mean everyday justice.[134] This means that people experience justice in daily activities and feel supported and included in society. The Better Justice Together strategy notes that enabling Aboriginal peoples and Torres Strait Islander peoples to be able to 'see' justice in their own communities requires strategies within the justice system and across organisations and services.[135]

3.93. This broader conception of justice requires that law reform efforts consider both legal mechanisms and how 'various institutions influence each other and work together to support or limit people's capacity to address legal problems and resolve disputes'.[136] Stakeholders told us that this broader concept of justice was important. We heard that legislative reform of defences will have little practical effect if people cannot access the legal system to begin with.[137]

Our approach and what we heard from stakeholders

3.94. Our first guiding principle for reform is to promote just outcomes and protect fundamental human rights. Another guiding principle is to develop defences that better reflect the circumstances of DFV and coercive control. These principles guided our consideration of issues and development of recommendations.[138] For example, we consulted on access to defences and other barriers in DFV circumstances.[139]

3.95. Stakeholders identified a range of barriers to justice. These included forms of disadvantage which create barriers for marginalised communities, including Aboriginal peoples, Torres Strait Islander peoples, culturally and linguistically diverse communities, people from the LGBTQIA+ community and people with disability. Stakeholders shared examples, including:

- Racial profiling, stereotyping and over-policing of Aboriginal peoples and Torres Strait Islander peoples and their communities, including the misidentification of Aboriginal women or Torres Strait Islander women as primary perpetrators of DFV.
- The misidentification of women as primary perpetrators of DFV because they are from culturally and linguistically diverse communities.
- A lack of cultural competency in the QPS and criminal justice system generally.

- Distrust and/or fear of police by Aboriginal peoples and Torres Strait Islander peoples and their communities and people from the LGBTQIA+ community due to historical experiences of discrimination and/or marginalisation which makes a person from one of these communities less likely to report violence to police.
- Vulnerability of people in the justice system because of cognitive disability, mental health conditions, neurodevelopmental disorders, substance use disorders, memory and adaptive functioning impairments. This includes inadequate identification of cognitive disability which leads to threatening interactions with police and prevents people with disability from accessing appropriate supports, adjustments and diversionary options.
- A lack of outreach and support for people in regional and remote locations, which disproportionately impacts Aboriginal peoples and Torres Strait Islander peoples.
- A lack of access to support services, particularly for Aboriginal women and Torres Strait Islander women experiencing DFV.
- Language barriers and cross-cultural miscommunication issues, including 'gratuitous concurrence' (the pattern of saying yes in answer to a question, or no to a negative question, regardless of actual agreement).

3.96. Other barriers to justice identified by stakeholders include:

- Barriers to accessing bail, resulting in long periods on remand and 'pragmatic pleas' of guilty to resolve the matter quickly despite the availability of a defence.
- A lack of emphasis on prevention and deterrence measures, as well as restorative justice and mediation, in favour of an emphasis on punitive approaches.
- A lack of adequate funding to support the collection and recording of DFV evidence.
- Socio-economic factors such as limited housing and work options and inequity in education resulting in illiteracy or innumeracy.
- Costs and delay associated with accessing support services, legal advice and court.

Systemic barriers and intersectionality

3.97. These barriers affect most people to varying degrees, but people who are systemically marginalised have the greatest difficulty accessing justice. This is amplified when systemic failures intersect.

3.98. An intersectional lens helps us to understand that people's lives are shaped by many different factors including their identity and their relationships. This includes their relationships to the justice system.[140] For example, a person may experience multiple barriers to justice because they live in a remote location, are from a culturally and linguistically diverse background and have a disability. Systemic improvements can alleviate these intersecting barriers.

3.99. While we are aware of many barriers to justice, there are also gaps in our knowledge, particularly where barriers to justice intersect.[141] **Figure 3.8** draws on stakeholder feedback and other review findings to illustrate what we know about barriers to justice and how they may be related and intersecting. It emphasises the systemic nature of barriers to justice and that historic and ongoing marginalisation is a central driver for some communities.

Figure 3.8: Barriers to justice

Connection to over-representation

3.100. The over-representation of individuals from particular marginalised communities becomes an access to justice issue because formal justice systems are not a place of justice for some people. Legal Aid Queensland submitted that this marginalisation is felt acutely by Aboriginal communities and Torres Strait Islander communities because of 'historical and contemporary failings both within and outside of the justice system in Australia'.[142] **Figure 3.9** shows the relationship between over-representation and access to justice.

Figure 3.9: Access to justice and over-representation

How we try to improve access to justice

3.101. Our reforms seek to improve access to defences and justice through:

- education about provocation which is culturally sensitive and suitable for people with impaired capacity (**Recommendation 14(a)**)
- a court-based diversionary scheme that aims to support compliance with the abolition of physical punishment and minimise the criminalisation of parents (**Recommendations 16** and **17**)
- improved processes for victim-survivors and witnesses in DFV offences, improve evidence of DFV, allow evidence of traditional laws and customs and require jury directions on DFV (**Recommendations 26–32**)
- improved training for police, legal practitioners, judges and magistrates on DFV, cultural capability and barriers to accessing justice (**Recommendation 33**)
- increased funding for legal and advocacy services and Community Justice Groups (**Recommendations 34** and **35**).

Delay in the criminal justice system

3.102. The criminal justice system is a busy system that operates under pressure to provide resolutions that are just and timely. Delay is a systemic issue. Reviews of the criminal justice system have described delay as an endemic problem and one that affects public confidence in the criminal justice system.[143] Unreasonable or unjustifiable delay can affect the rights of parties and the ability to reach just outcomes.

3.103. Stakeholders told us that it typically takes three to four years to finalise a murder prosecution by trial. There may be further delays where there are re-trials or where matters are referred to the Mental Health Court.

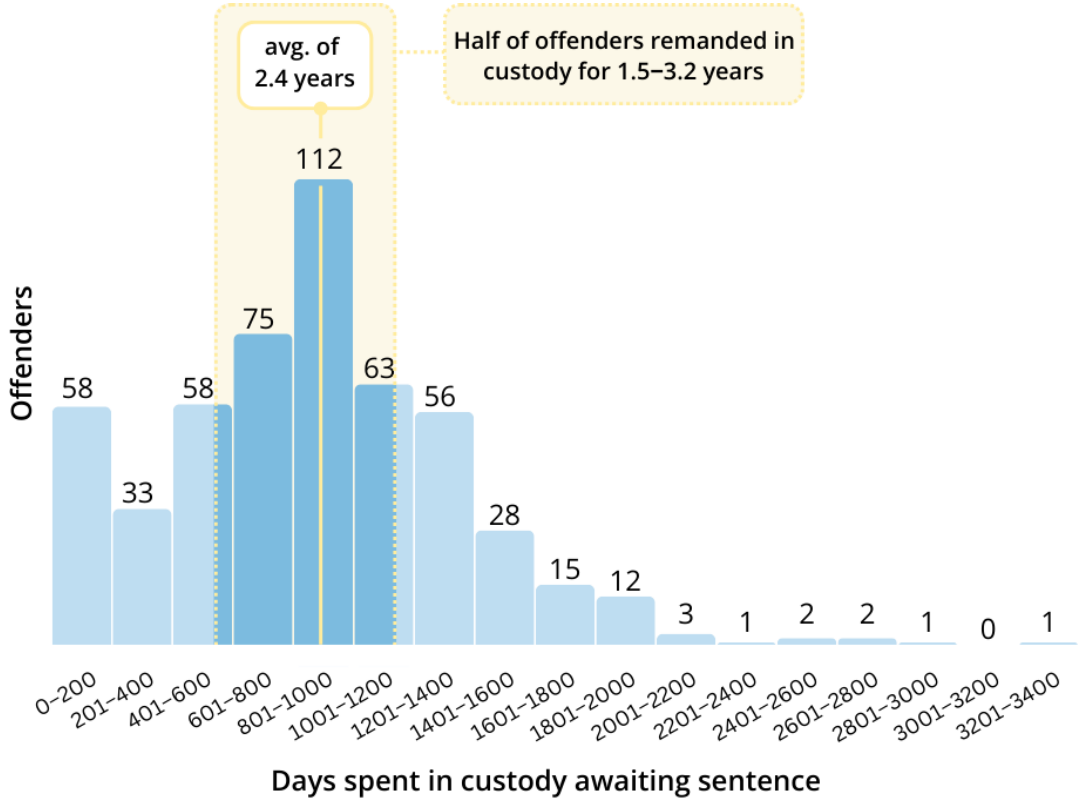
3.104. Our analysis of days declared at sentence provided quantitative insights into the number of days spent in custody before a person was sentenced. This analysis was limited to people who were charged with an offence of murder or manslaughter.[144] These insights are reflected in **Figure 3.10** below.

3.105. We found that half of offenders spent between 546–1169.5 days (or 1.5–3.2 years) in custody waiting for their sentence. The average time spent in custody waiting for a sentence was 873 days (or 2.4 years).[145]

3.106. A quarter of offenders spent between 1170–2051 days (or 3.2–5.6 years) waiting for their sentence.

Days declared means that when giving an offender their sentence, the court recognises and declares the time they have already served in custody while waiting for their sentence.

Figure 3.10: Days declared as presentence custody (murder and manslaughter)



Impacts of delay

3.107. Delay can have considerable consequences for individuals. Defendants may be held on remand for extended periods without a finding of guilt. This delay may affect a defendant's decision about whether to plead guilty or to continue with a criminal trial. Witness recollection may also deteriorate over time, potentially compromising the reliability of evidence. Delay also causes distress to a deceased's family and friends who must face drawn out proceedings and uncertainty about whether a matter will go to trial.

3.108. We heard that delay can re-traumatise DFV victim-survivors who use lethal violence, as well as other parties including the families and friends of both victims and the accused.[146] However, we also heard that families and friends of the deceased are often dissatisfied when a trial is discontinued because of plea negotiations brought about by delay. The Queensland Homicide Victims' Support Group submitted that, while families and friends of the deceased acknowledged experiences of delay, they did not advocate for speed at the expense of justice.[147]

3.109. Delay can be aggravated by other systemic issues. For example, defendants in remote areas may plead guilty more readily, rather than attempt to defend the charge, because of difficulties accessing legal advice, bail and supports.

3.110. Delay also creates barriers to justice. The Justice Project identified that an under-resourced criminal justice system placed under growing pressure means 'many people are missing out on timely and effective help, increasing their risk and vulnerability'.[148] The Taskforce made similar findings in relation to victims, noting that resourcing problems had:

> detrimental flow-on effects for victims and the administration of justice. The Taskforce has heard in multiple submissions from victims and prosecutors about their frustration that matters are repeatedly prepared for trial when they are listed during a sittings period only to not be reached in the list and are adjourned.[149]

3.111. The rights of parties are affected by undue delay.

Reasons for delay

3.112. Stakeholders told us there were numerous reasons for delay with reasons tending to be interdependent and related. These included:

- **Difficulty identifying issues early:** Timely disclosure of investigation and prosecution material to the defence promotes an informed assessment of trial prospects. However, this can be resource intensive for the prosecution.
- **Committal and trial issues:** Difficulties settling trial dates and case backlogs can delay trials. However, sometimes delays at committal and trial stages arise because parties are not ready to proceed on given dates.
- **Resourcing challenges:** Challenges obtaining and retaining legal practitioners and staff in certain roles and locations, including in regional and remote areas, can create delay. Delay can also result from lawyers and agencies working under increased expectations without appropriate resourcing.

3.113. Other reviews of the criminal justice system have reported similar findings.[150] They found that delay was driven by underfunding, a shortage of legal practitioners, forensic backlogs, inadequate support services such as interpreters and other procedural inefficiencies. These issues create bottlenecks that slow the resolution of cases and strain the criminal justice system's capacity to meet growing demands.

3.114. These reports made a range of suggestions to address delay including supporting early resolution of matters, reducing unnecessary mentions and ensuring readiness for hearings. Greater cooperation between agencies and increased resourcing are also critical to improving efficiency. The Shanahan review noted that many of these recommendations have been longstanding and are yet to be fully realised.[151]

How we address delay

3.115. Recommendations that seek to improve timely and just resolution of matters include our recommendations about the early involvement of the ODPP in all murder and manslaughter cases (**Recommendation 25**) and about disclosure (**Recommendation 26**), discussed in Chapter 12.

References

1 Statistics referred to in this section and Figure 3.1 are drawn from courts data (Court Performance and Report Unit) we accessed and analysed. See Appendix F.

2 Note that these statistics are confined to adults.

3 'Personal Safety, Australia', Australian Bureau of Statistics (Web Page, 15 March 2023) <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>.

4 'Queensland Courts' Domestic and Family Violence Statistics', Queensland Courts (Web Page, 7 August 2025) <https://www.courts.qld.gov.au/court-users/researchers-and-public/stats>.

5 'Queensland Courts' Domestic and Family Violence Statistics', Queensland Courts (Web Page, 7 August 2025) <https://www.courts.qld.gov.au/court-users/researchers-and-public/stats>.

6 'Queensland Courts' Domestic and Family Violence Statistics', Queensland Courts (Web Page, 7 August 2025) <https://www.courts.qld.gov.au/court-users/researchers-and-public/stats>.

7 'Queensland Courts' Domestic and Family Violence Statistics', Queensland Courts (Web Page, 7 August 2025) <https://www.courts.qld.gov.au/court-users/researchers-and-public/stats>.

8 Domestic and Family Violence Death Review and Advisory Board, Annual Report 2020–21 (Report, 2021) 13, 26.

9 Domestic and Family Violence Death Review and Advisory Board, Annual Report 2020–21 (Report, 2021) 24.

10 Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 1, xlv; Women's Safety and Justice Taskforce, Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System (Report No 2, 2022) vol 1, 11.

11 With specific reference to Peniamina v The Queen (2020) 271 CLR 568. Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 1, xl.

12 Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 261.

13 Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 1, xl.

14 QLRC, Review of Particular Criminal Defences: Our Terms of Reference (Background Paper No 1, November 2023).

15 QLRC, Review of Particular Criminal Defences: Our Terms of Reference (Background Paper No 1, November 2023) 7.

16 See Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 17–20, 59, 81.

17 Domestic and Family Violence Protection Act 2012 (Qld) ss 8, 11, 12, as inserted by the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023 (Qld) ss 31–33.

18 Domestic and Family Violence Protection Act 2012 (Qld) s 22A, as inserted by Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023 (Qld) s 34.

19 Evidence Act 1977 (Qld) ss 103CA–103CB as inserted by Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023 (Qld) s 64.

20 Evidence Act 1977 (Qld) ss 103CC–103CD as inserted by Domestic and Family Violence Protection (Combating Coercive Control) and other Legislation Amendment Act 2023 (Qld) s 64.

21 Evidence Act 1977 (Qld) pt 6A div 3, as inserted by Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023 (Qld) s 67.

22 Preliminary complaint evidence is evidence that a person told another person about their DFV or sexual violence victimisation before they made a formal witness statement to police.

23 Evidence Act 1977 (Qld) s 94A, as inserted by Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024 (Qld) s 62.

[24] Criminal Code (Qld) s 334C; Domestic and Family Violence Protection Act 2012 (Qld) s 179A; as inserted by Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024 (Qld) ss 20, 46.

[25] Domestic and Family Violence Protection Act 2012 (Qld) pt 4, div 2, as inserted by Domestic and Family Violence Protection and Other Legislation Amendment Act 2025 (Qld) s 19.

[26] Section 590AH of the Criminal Code was amended to require the prosecution to give the accused a copy of the person's domestic violence history for relevant proceedings: Criminal Code (Qld) s 590AH; as inserted by Domestic and Family Violence (Combating Coercive Control) and Other Legislation Amendment Act 2023 (Qld) s 26.

[27] R v Rowan (A Pseudonym) (2024) 278 CLR 470, 474.

[28] Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021); Women's Safety and Justice Taskforce, Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System (Report No 2, 2022).

[29] Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence: A Call for Change (Report, November 2022).

[30] It is proposed that a new Criminal Procedure (Magistrates Court) Bill will replace the Justices Act 1886 (Qld).

[31] Department of Youth Justice and Victim Support (Qld), 'Victims Advocate Service' (Web Page, 26 September 2025) <https://www.youthjustice.qld.gov.au/victim-support/victims-advocate-service>.

[32] 'Legal Assistance Services Funding', Department of Justice (Qld) (Web Page, 4 November 2025) <https://www.justice.qld.gov.au/about-us/services/legal-assistance-strategy-and-funding-unit>.

[33] 'Making Queensland Safer: Restoring Safety Where You Live', Queensland Government (Web Page, 2025) <https://www.qld.gov.au/makingqldsafer/home>.

[34] Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 314.

[35] Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 6, 9.

[36] Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 252.

[37] Heather Nancarrow et al, 'Accurately Identifying the "Person Most in Need of Protection" in Domestic and Family Violence Law' (Research Report No 23, Australia's National Research Organisation for Women's Safety, November 2020) 71; Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 252; Domestic and Family Violence Death Review and Advisory Board, Annual Report 2023–24 (Report, 2024) 22, 24.

[38] Elizabeth Sheehy, Julie Stubbs and Julia Tolmie, 'Securing Fair Outcomes for Battered Women Charged with Homicide: Analysing Defence Lawyering in R v Falls' (2014) 38 Melbourne University Law Review 666, 707.

[39] Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 9.

[40] Australian Institute of Health and Welfare, 'Understanding FDSV: Who Uses Violence?', Family, Domestic and Sexual Violence (Web Page, 30 July 2025) <https://www.aihw.gov.au/family-domestic-and-sexual-violence/understanding-fdsv/who-uses-violence>.

[41] Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 9–13; Michael Flood et al, 'Who Uses Domestic, Family and Sexual Violence, How and Why? The State of Knowledge Report on Violence Perpetration' (Report, Queensland University of Technology, 2022) 22.

[42] Australia's National Research Organisation for Women's Safety, Defining and Responding to Coercive Control (Policy Brief, January 2021) 1.

[43] See, for example, Australia's National Research Organisation for Women's Safety, Defining and Responding to Coercive Control (Policy Brief, January 2021) 1.

[44] Kristen Diemer, 'ABS Personal Safety Survey: Additional Analysis on Relationship and Sex of Perpetrator' <https://violenceagainstwomenandchildren.wordpress.com/wp-content/uploads/2015/07/abs-personal-safety-survey-victim-perpetrator-sex-and-relationship6.pdf>; 'Recorded Crime – Offenders, 2020–21', Australian Bureau of Statistics (Web Page, 10 February 2022) <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/2020-21>.

45 Domestic and Family Violence Death Review and Advisory Board, Annual Report 2020–21 (Report, 2021) 59.

46 Domestic and Family Violence Death Review and Advisory Board, Annual Report 2016–17 (Report, 2017) 82.

47 Women's Safety and Justice Taskforce, Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System (Report No 2, 2022) vol 2, 435, 455.

48 Heather Nancarrow et al, 'Accurately Identifying the "Person Most in Need of Protection" in Domestic and Family Violence Law' (Research Report No 23, Australia's National Research Organisation for Women's Safety, November 2020) 11–12.

49 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 112; see also Heather Douglas, 'A Consideration of the Merits of Specialised Homicide Offences and Defences for Battered Women' (2012) 45(3) Australian & New Zealand Journal of Criminology 367, 377–8.

50 Heather Douglas, 'A Consideration of the Merits of Specialised Homicide Offences and Defences for Battered Women' (2012) 45(3) Australian & New Zealand Journal of Criminology 367, 377; Rachel Dioso-Villa and Caitlin Nash, 'Identifying Evidentiary Checkpoints and Strategies to Support Successful Acquittals for Women Who Kill an Abusive Partner During a Violent Confrontation' (2024) 13(4) International Journal for Crime, Justice and Social Democracy 44, 55.

51 Stella Tarrant, Julia Tolmie and George Giudice, 'Transforming Legal Understandings of Intimate Partner Violence' (Research Report 3, Australia's National Research Organisation for Women's Safety, June 2019) 15–17.

52 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 114.

53 Domestic and Family Violence Death Review and Advisory Board, Annual Report 2020–21 (Report, 2021) 75–6. See also, Felix Leung and Lily Trimboli, 'Improving Police Risk Assessment of Intimate Partner Violence' (Crime and Justice Bulletin No 244, NSW Bureau of Crime Statistics and Research, February 2022) 16.

54 Domestic and Family Violence Death Review and Advisory Board, Annual Report 2020–21 (Report, 2021) 55.

55 Stella Tarrant, Women Who Kill Their Spouse in A Context of Domestic Violence: An Opinion for the Law Reform Commission of Western Australia (Opinion, August 2006) 6.

56 Caitlin Nash and Rachel Dioso-Villa, 'Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners' (2023) 30(9) Violence Against Women 2275, 2275–6.

57 Child Death Review Board, Annual Report 2023–24 (Report, October 2024) 95–6.

58 Child Death Review Board, Annual Report 2023–24 (Report, October 2024) 95–6.

59 Child Death Review Board, Annual Report 2023–24 (Report, October 2024) 109.

60 Child Death Review Board, Annual Report 2023–24 (Report, October 2024) 109.

61 Australian Child Maltreatment Study, The Prevalence and Impact of Child Maltreatment in Australia: Findings from the Australian Child Maltreatment Study (Brief Report, 2023) 3.

62 Australian Government, National Plan to End Violence Against Women and Children 2022–2023: Ending Gender-Based Violence in One Generation (Plan, 2022) 36.

63 Women's Safety and Justice Taskforce, Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System (Report No 2, 2022) vol 2, 407 citing Queensland Corrective Services, Improving Outcomes for Incarcerated Women (Web Page, 2019) <https://corrections.qld.gov.au/improving-outcomes-for-incarcerated-women/>.

64 Australian Institute of Health and Welfare, 'Population Groups: Key Findings', Australian Institute of Health and Welfare (Web Page, 30 July 2025) <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/key-findings>.

65 Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence: A Call for Change (Report, November 2022) 212–13, 215, 217; Harry Blagg, Nicole Bluett-Boyd and Emma Williams, 'Innovative Models in Addressing Violence Against Indigenous Women' (State of Knowledge Paper, Australia's National Research Organisation for Women's Safety, August 2015) 13.

66 See QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 11 citing Heather Nancarrow, Unintended Consequences of Domestic Violence Law: Gendered Aspirations and Racialised Realities (Springer International Publishing, 2019) 189.

67 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, 2023) vol 8, 14.

68 Cathy Caughan et al, 'Promoting Community-Led Responses to Violence Against Immigrant and Refugee Women in Metropolitan and Regional Australia' (Compass Paper No 8, Australia's National Research Organisation for Women's Safety) 34–6, 60.

69 LGBTI Legal Service, Submission 15.

70 Rapid Review Expert Panel, Unlocking the Prevention Potential: Accelerating Action to End Domestic, Family and Sexual Violence (Report, August 2024) 39.

71 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 48.

72 The Public Advocate (Qld), Adults with Cognitive Disability in the Queensland Criminal Justice System: Courts (Discussion Paper, February 2025) 14.

73 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 99-102.

74 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 99-102, 110-16.

75 Legal Profession Interviews (Research Project 5, 2025).

76 See, Queensland Government, Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024–2031 (Strategy, July 2024) 15; Chris Cunneen, 'Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual and Explanatory Issues' (2006) 17(3) Current Issues in Criminal Justice 329, 334; Royal Commission into Aboriginal Deaths in Custody (National Report, May 1991) 1, 15, 160−4.

77 Queensland Government, Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024–2031 (Strategy, July 2024) 15.

78 See, Leanne Dowse et al, 'Police Responses to People with Disability' (Research Report, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2021) 9−13.

79 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, 2023) vol 8, 3.

80 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, 2023) vol 8, 4, 33, 38.

81 Queensland Government, Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024–2031 (Strategy, July 2024) 8, 15.

82 See, Chris Cunneen, 'Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual and Explanatory Issues' (2006) 17(3) Current Issues in Criminal Justice 329, 335.

83 Chris Cunneen and Juan Tauri, Indigenous Criminology (Policy Press, 2016) 1.

84 Chris Cunneen and Juan Tauri, Indigenous Criminology (Policy Press, 2016) 46. Cunneen and Tauri also discuss the criminogenic effects of colonialism: at 57−62.

85 See: Chris Cunneen and Juan Tauri, Indigenous Criminology (Policy Press, 2016) 1.

86 See: Human Rights and Equal Opportunity Commission, Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Report, 1997) 63; Tomoya Obokata, Visit to Australia: Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences, UN Doc A/HRC/60/28/Add.1 (16 July 2025) [48]−[50].

87 Royal Commission into Institutional Responses to Child Sexual Abuse (Final Report, 2017) vol 2, 53−4; Human Rights and Equal Opportunity Commission, Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Report, 1997) 143.

88 See: Tomoya Obokata, Visit to Australia: Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences, UN Doc A/HRC/60/28/Add.1 (16 July 2025) [48].

89 Queensland Government, Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024–2031 (Strategy, July 2024) 9; Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence: A Call for Change (Report, November 2022) 210.

90 Queensland Government, Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024–2031 (Strategy, July 2024) 16.

91 Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence: A Call for Change (Report, November 2022) 209, 210.

92 House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, Inquiry into Family, Domestic and Sexual Violence (Report, March 2021) 177 [5.35].

93 Australian Institute of Health and Welfare, 'Population Groups: Aboriginal and Torres Strait Islander People', Family, Domestic and Sexual Violence (Web Page, 30 July 2025) <http://aihw.gov.au/family-domestic-and-sexual-violence/population-groups/aboriginal-and-torres-strait-islander-people>.

94 Queensland Productivity Commission, Inquiry into Imprisonment and Recidivism (Final Report, August 2019) 30, 405.

95 Queensland Government, Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024–2031 (Strategy, July 2024) 16.

96 Queensland Government, Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024–2031 (Strategy, July 2024) 16.

97 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, 2023) vol 8, 38.

98 Eileen Baldry et al, '"It's Just A Big Vicious Cycle That Swallows Them Up": Indigenous People with Mental and Cognitive Disabilities in the Criminal Justice System' (2016) 8(22) Indigenous Law Bulletin 10, 11.

99 Queensland Productivity Commission, Inquiry into Imprisonment and Recidivism (Final Report, August 2019) 404.

100 Australian Institute of Health and Welfare, Closing the Gap Targets: Key Findings and Implications (Report, 2025) 391.

101 Stephane M Shepherd et al, 'Identifying the Prevalence and Predictors of Suicidal Behaviours for Indigenous Males in Custody' (2018) 18(1) BMC Public Health 1159, 1160.

102 'Queensland: Aboriginal and Torres Strait Islander Population Summary', Australian Bureau of Statistics (Web Page, 1 July 2022) <https://www.abs.gov.au/articles/queensland-aboriginal-and-torres-strait-islander-population-summary>.

103 Since 1991, there have been at least 22 inquiries, reports and reviews in Queensland or Australia more broadly that have examined factors relevant to the over-representation of Aboriginal peoples and Torres Strait Islander peoples in the criminal justice system. See, Queensland Government, Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024–2031 (Strategy, July 2024) 29; National Agreement on Closing the Gap, Between the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and All Australian Governments Signed July 2020 (Agreement, 2020) Targets 10 and 11.

104 'Prisoners in Australia', Australian Bureau of Statistics (Web Page, 19 December 2021) <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2021#data-downloads> Tables 10, 11, 21; 'Queensland: 2021 Census All Persons QuickStats', Australian Bureau of Statistics (Web Page, 2021) <https://www.abs.gov.au/census/find-census-data/quickstats/2021/3>; Queensland Productivity Commission, Inquiry into Imprisonment and Recidivism (Final Report, August 2019) 403.

105 Queensland Government Statistician's Office, Justice Report, Queensland, 2022−23 (2024) 108. This widening has been apparent since 2019, with the exception of a slight narrowing in 2021.

106 Queensland Government Statistician's Office, Justice Report, Queensland, 2022−23 (2024) 108. This widening has been apparent since 2019, with the exception of a slight narrowing in 2021.

107 Samantha Bricknell and Hannah Miles, 'Homicide of Aboriginal and Torres Strait Islander Women' (Statistical Bulletin No 46, Australian Institute of Criminology, October 2024) 7.

108 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Executive Summary — Our Vision for an Inclusive Australia and Recommendations (Final Report, 2023) 316.

109 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Executive Summary — Our Vision for an Inclusive Australia and Recommendations (Final Report, 2023) 316.

110 The Public Advocate (Qld), Adults with Cognitive Disability in the Queensland Criminal Justice System: Courts (Discussion Paper No 2, February 2025) 26; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, 2023) vol 8, 3; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, 2023) vol 3, 237; Michael Shanahan, Report for the Criminal Procedure Review—Magistrates Courts (Final Report, 2023) 50; Ruth McCausland and

Eileen Baldry, "'I Feel Like I Failed Him By Ringing the Police": Criminalising Disability in Australia' (2017) 19(3) Punishment & Society 290, 290–2.

111 For instance, due to data collection methods, reliance of self-reporting and a reluctance by many people with disability to disclose their disability. See, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, 2023) vol 8, 33.

112 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, 2023) vol 8, 234.

113 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, 2023) vol 8, 39.

114 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, (Final Report, 2023) vol 8, 295.

115 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, (Final Report, 2023) vol 8, 3. See also, K Ellem et al, 'Insights from People with Lived Experience of Disability and the Justice System' (Final Report, The University of Queensland School of Nursing, Midwifery and Social Work, 3 July 2023) 76.

116 K Ellem et al, 'Insights from People with Lived Experience of Disability and the Justice System' (Final Report, The University of Queensland School of Nursing, Midwifery and Social Work, 3 July 2023) 76.

117 K Ellem et al, 'Insights from People with Lived Experience of Disability and the Justice System' (Final Report, The University of Queensland School of Nursing, Midwifery and Social Work, 3 July 2023) 11.

118 Queensland Advocacy for Inclusion, Submission to the Office of the Victims' Commissioner, Review of the Charter of Victims' Rights (28 March 2025) 4–5.

119 K Ellem et al, 'Insights from People with Lived Experience of Disability and the Justice System' (Final Report, The University of Queensland School of Nursing, Midwifery and Social Work, 3 July 2023) 28, 36.

120 Queensland Advocacy for Inclusion, Submission to the Queensland Law Reform Commission, Nominate Law Reform Topics (February 2025) 16–19.

121 Australian Human Rights Commission, Submission to the Senate Community Affairs Reference Committee, Parliament of Australia, Inquiry Into Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia (March 2016) [4] 3, [7] 4.

122 Office of the Victims' Commissioner, Review of the Queensland Charter of Victims' Rights (Detailed Paper, August 2025) 19.

123 Linda Steele, 'Policing Normalcy: Sexual Violence Against Women Offenders with Disability' (2017) 31(3) Continuum: Journal of Media & Cultural Studies 422, 423.

124 K Ellem et al, 'Insights from People with Lived Experience of Disability and the Justice System' (Final Report, The University of Queensland School of Nursing, Midwifery and Social Work, 3 July 2023) 61.

125 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, 2023) vol 8, 35.

126 K Ellem et al, 'Insights from People with Lived Experience of Disability and the Justice System' (Final Report, The University of Queensland School of Nursing, Midwifery and Social Work, 3 July 2023) 22; Eileen Baldry et al, 'Reducing Vulnerability to Harm in Adults with Cognitive Disabilities in the Australian Criminal Justice System' (2013) 10(3) Journal of Policy and Practice in Intellectual Disability 222, 222.

127 Leanne Dowse et al, 'Police Responses to People with Disability' (Research Report, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2021) 11; Australian Civil Society CRPD Shadow Report Working Group, Disability Rights Now 2019: Australian Civil Society Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities — UN CRPD Review 2019 (Report, July 2019) 24; Rachel A Bowman, Joseph R Scotti, and Tracy L Morris, 'Sexual Abuse Prevention: A Training Program for Developmental Disabilities Service Providers' (2010) 19(2) Journal of Child Sexual Abuse 119, 120.

128 Divna Haslam and the Consortium, Submission 19; Queensland Aboriginal and Torres Strait Islander Child Protection Peak, Submission 27; Queensland Human Rights Commission, Submission 41.

129 Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (Qld), Queensland's Disability Plan 2022–27: Together, A Better Queensland (Plan, 2022).

130 Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (Qld), Queensland's Disability Plan 2022–27: Together, A Better Queensland (2022) 16.

131 Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (Qld), Queensland's Disability Plan 2022–27: Together, A Better Queensland (2022) 18.

132 Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 1, xlvi.

133 International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 14. See also: Human Rights Act 2019 (Qld) ss 31, 32.

134 Law Council of Australia, The Justice Project (Final Report, August 2018) <https://lawcouncil.au/justice-project/final-report> Introduction and Overview, 50; Access to Justice Taskforce, Attorney General's Department (Cth), A Strategic Framework for Access to Justice in the Federal Civil Justice System: A Guide for Future Action (Report, September 2009) 2.

135 Queensland Government, Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024–2031 (Strategy, July 2024) 23.

136 Access to Justice Taskforce, Attorney General's Department (Cth), A Strategic Framework for Access to Justice in the Federal Civil Justice System: A Guide for Future Action (Report, September 2009) 3.

137 QLRC, Review of Particular Criminal Defences: Equality and Integrity — Reforming Criminal Defences in Queensland (Consultation Paper, February 2025) 17.

138 QLRC, Review of Particular Criminal Defences: Our Guiding Principles for Reform (Background Paper No 2, July 2024) 6.

139 See for example: QLRC, Review of Particular Criminal Defences: Equality and Integrity — Reforming Criminal Defences in Queensland (Consultation Paper, February 2025) 29–31 [137]–[149] .

140 UN Women and United Nations Partnership on the Rights of Persons with Disabilities, Intersectionality Resource Guide and Toolkit: An Intersectional Approach to Leave No One Behind (Guide, 2021) 8.

141 Trishima Mitra-Kahn, Carolyn Newbigin and Sophie Hardefeldt, 'Invisible Women, Invisible Violence: Understanding and Improving Data on the Experiences of Domestic and Family Violence and Sexual Assault for Diverse Groups of Women' (State of Knowledge Paper, Australia's National Research Organisation for Women's Safety, December 2016) 31.

142 Legal Aid Queensland, Submission 31.

143 Michael Shanahan, Report for the Criminal Procedure Review—Magistrates Courts (Final Report, 2023) xxii, 8; Martin Moynihan, Review of the Civil and Criminal Justice System in Queensland (Report, December 2008) 33.

144 This analysis used data from the Courts Performance and Reporting Unit (CPRU), which included all homicide related offences lodged in the Queensland Supreme Court between July 2010 and April 2024. We included only individuals charged with either murder or manslaughter who were convicted of an offence. The primary data point for identifying how long a person served in custody while awaiting finalisation of their case was the number of days declared at sentencing (time served), supplemented by information drawn from sentencing remarks. Defendants who were acquitted, offenders sentenced under the Youth Justice Act, and cases with missing data were excluded. The final sample comprised 535 individuals: 92 females and 443 males. These quantitative insights complement qualitative data from stakeholder comments about delay, or the time spent waiting for sentence.

145 The median was 879 days (or 2.4 years).

146 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 20.

147 Queensland Homicide Victims' Support Group, Submission 34.

148 Law Council of Australia, The Justice Project (Final Report, August 2018) <https://lawcouncil.au/justice-project/final-report> Overarching Themes, 10.

149 Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 388.

150 Martin Moynihan, Review of the Civil and Criminal Justice System in Queensland (Report, December 2008); Law Council of Australia, The Justice Project (Final Report, August 2018) <https://lawcouncil.au/justice-project/final-report>; Michael Shanahan, Report for the Criminal Procedure Review—Magistrates Courts (Final Report, 2023).

151 Michael Shanahan, Report for the Criminal Procedure Review—Magistrates Courts (Final Report, 2023) 57 [5.65].

PART 3

Defensive conduct reforms

CHAPTER 4

Simplifying and clarifying self-defence

Contents

Recommendations

R1 Self-defence (sections 271–273) should be amended so that it is available to a person:

(a) who acts in the belief that they need to defend themselves or another person, or to free themselves or another person from being unlawfully deprived of their liberty ('necessity element'), and

(b) whose actions are reasonable in the circumstances as they believe them to be ('reasonableness element').

R2 Self-defence should not be available to a person who uses force in response to a lawful act where there is no reasonable basis for believing the act is not lawful.

R3 The Criminal Code should be amended to make explicit how self-defence applies when a person is intoxicated:

(a) If a person voluntarily consumes intoxicating substances, their intoxication is only relevant to the necessity element.

(b) If a person involuntarily consumes intoxicating substances, their intoxication is relevant to the elements of necessity and reasonableness.

R4 The interaction between self-defence and DFV should be made explicit in the Criminal Code. If a person uses force in the context of a domestic relationship involving DFV, the necessity and reasonableness elements may be met even if the person:

(a) is responding to non-imminent harm, or

(b) uses force greater than the force or threat of force responded to.

(QLRC Draft Bill cl 11)

Introduction

4.1. This chapter discusses our recommendations to simplify and clarify self-defence to support its effective operation. Self-defence involves the socially acceptable use of proportionate force to protect oneself or another.[1] It is a complete defence to all offences involving the use of force, including assault and homicide.

4.2. The concept of self-defence is well-understood by the community.[2] However, the self-defence provisions of the Criminal Code are complex. Different legal tests apply depending on factors like whether the defendant provoked the interaction, their level of fear and whether a person was defending themselves or another. This reduces the accessibility of self-defence, including for DFV victim-survivors who act defensively and kill their abuser, and creates difficulties applying the laws. Despite attempts to confine jury directions to relevant issues where self-defence is in issue, judges must frequently explain all competing tests, creating confusion and complexity in jury directions that can lead to appeals against convictions.

4.3. Our reforms pare back the layers of complexity to the core elements of self-defence:

- whether a person genuinely believed they needed to protect themselves or someone else
- whether their actions were reasonable in the context of this belief.

4.4. We recommend a single legislative provision that sets out the test for self-defence and defending another. We recommend removing threshold questions, such as whether there was an assault, whether the assault was provoked and whether the person was defending themselves or another. Our reforms align the legal test for self-defence with community understanding, simplify its application in practice and ensure its just operation in DFV contexts.

4.5. This chapter has two sections. The first section explains our reforms for self-defence. It considers the core elements of the defence, its application in response to lawful acts, the interaction between self-defence and intoxication and the interaction between self-defence and DFV.

4.6. The second section discusses the rationale for our reforms, which are to:

- simplify and clarify the law
- increase consistency with other jurisdictions
- improve access to justice by improving the efficacy of the defence and addressing its gendered operation.

4.7. Chapter 5 continues our consideration of self-defence, discussing our self-defence reforms for murder.[3] It also explains our recommendations to reform the partial defence of killing for preservation in an abusive domestic relationship (section 304B) to a bespoke partial defence that applies where lethal defensive force is used in DFV contexts. Chapter 5 concludes by considering the human rights implications of our self-defence reforms.[4]

Our reforms explained

4.8. Our reforms simplify and clarify self-defence to reflect the basic concepts of necessity and reasonableness. This would support just processes and outcomes, improving access to justice.

4.9. Self-defence is a complete defence that absolves a person of criminal responsibility for any offence involving the use of force. We recommend retaining and amending the existing thresholds limiting the operation of self-defence where lethal force is used or where a person is responding to lawful acts.

4.10. The reforms to self-defence would be located within a new chapter division within Chapter 26 of the Criminal Code. This would improve clarity in the Criminal Code.

Reforms to the core elements of self-defence

4.11. We recommend reforms to the test for self-defence to align with the test successfully used in most other Australian jurisdictions and New Zealand.

4.12. The current separate self-defence provisions (sections 271–273) would be repealed and replaced with a single consolidated test for self-defence. This would apply where a person is defending themselves or protecting another. The core elements of self-defence would be:

- the defendant believed their conduct was necessary to defend themselves or another, or to free themselves or another from being unlawfully deprived of their liberty ('necessity element')
- the conduct was reasonable in the circumstances as the defendant believed them to be ('reasonableness element').

4.13. Our reforms would remove the assault threshold, improving access to justice including for DFV victim-survivors who kill their abusers.

4.14. As self-defence is a complete defence to any criminal offence involving use of force, balancing objectivity and subjectivity is critical. Our recommended reforms would achieve this by separating the core elements of self-defence — necessity and reasonableness — and embedding different perspectives to each element.

4.15. Our proposed test for self-defence uses the phrase, 'it is lawful', to clarify that self-defence is a justification not an excuse.[5] It maintains the traditional onus of proof, requiring the prosecution to disprove self-defence beyond reasonable doubt.

The necessity element

4.16. Our reforms would change the approach to the necessity element, by not requiring reasonable grounds for the belief.[6] This element would be assessed through a subjective lens, considering the person's genuine and honest belief in the need to act for a defensive purpose.[7] This focus would allow proper consideration of the characteristics of the defendant and the surrounding circumstances at the time of the alleged offending.

4.17. Making this element subjective and removing the assault requirement would also remove the need to consider mistake of fact under section 24.[8] As mistake of fact is limited in its application to beliefs regarding the existence of a state of things and not as to their consequences,[9] it is not applicable when assessing whether the degree of force was necessary.[10]

4.18. While the Commonwealth, the ACT, NSW, the Northern Territory and Victoria use the phrase, 'circumstances as the person perceives them'[11] in the reasonableness element, Tasmania, Western Australia and New Zealand use the phrase, 'circumstances as the person believes them to be'.[12] South Australia uses the phrase, 'circumstances as the defendant genuinely believed them to be', which is similar to the latter approach.[13] Our preference is to use 'belief' because it draws a clearer link to the necessity element and the research from Tasmania demonstrates that it is working well.[14]

4.19. Our reformed self-defence covers defensive force used for the purpose of defending oneself, defending another and preventing or terminating the unlawful deprivation of liberty. It is appropriate to include and explicitly identify these purposes for three reasons:

- The Criminal Code presently separates defending oneself and defending another into different provisions. Clarifying the application of the new provision for both scenarios is appropriate.
- Other defences in the Criminal Code justify the defensive use of force for other purposes, including protecting property and preventing criminal trespass.[15]
- Unlawful deprivation of liberty may arise in circumstances where a person's physical integrity is not necessarily at risk. However, this does not diminish the seriousness of conduct that unlawfully confines, detains or otherwise deprives a person of their liberty. The case law regarding the right to use force to terminate unlawful imprisonment is limited.[16] It is therefore appropriate to specify this defensive purpose.

4.20. The link between necessity and the defensive purpose is essential to distinguish acts in self-defence from retaliation and revenge.

The reasonableness element

4.21. The reasonableness element would be assessed through a mixed subjective-objective lens. This requires an objective assessment of reasonableness in the circumstances as the defendant believes them to be.[17]

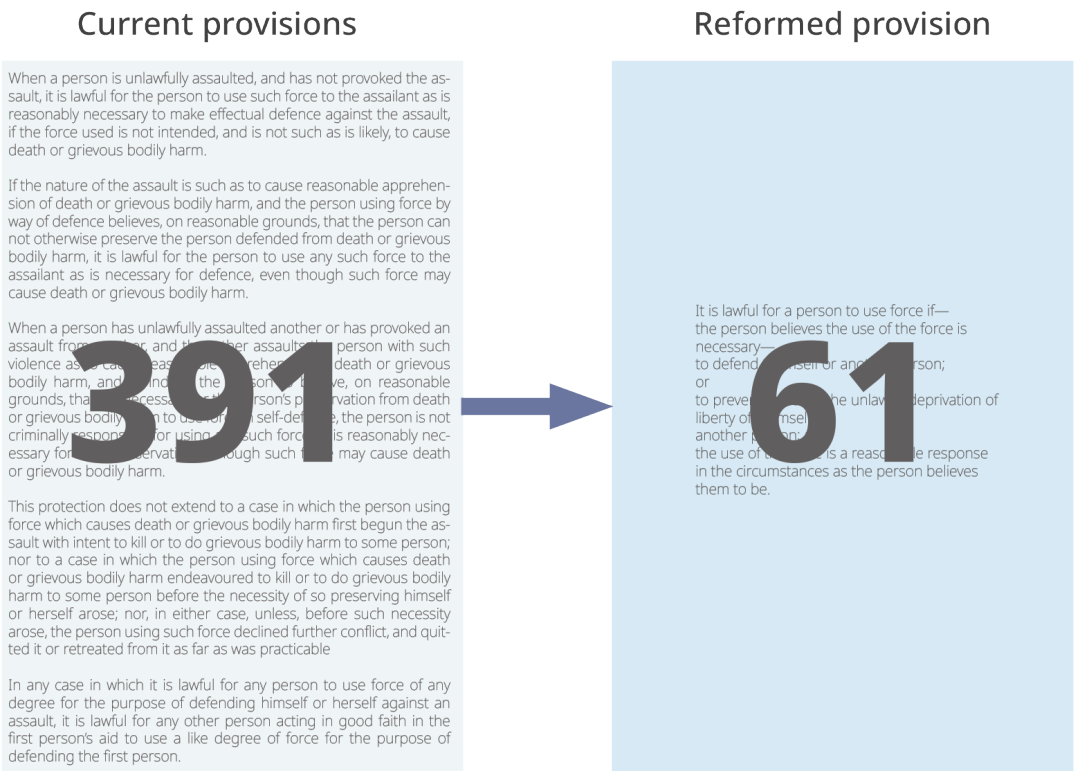
4.22. The reasonableness element would incorporate consideration of factors such as whether the defendant provoked the assault, whether retreat was possible and the nature of the threat.[18] This objective component of the test is important in giving effect to community expectations of behaviour.

4.23. Reasonableness would be assessed from the defendant's perspective, considering the particular circumstances of the defendant, such as their physical characteristics in comparison to the complainant/deceased and the history of the relationship between the parties. This recognises that a person's instinctive protective response in a threatening situation is shaped by their experiences, including their knowledge and relationship with the complainant/deceased, circumstances and perceptions. This improves accessibility of the defence, including for vulnerable defendants like DFV victim-survivors.

4.24. The phrase 'believes them to be' creates a clear link to the belief in the necessity element and requires that a person must genuinely believe in the circumstances they rely on to justify their actions.

4.25. In most cases where self-defence arises, the core test for self-defence would be the only relevant provision for consideration. **Figure 4.1**, below, provides a graphic representation of the number of words in the current and reformed provisions.

Figure 4.1: Simplifying the drafting of the self-defence provisions



Self-defence in response to lawful acts

4.26. We recommend reforms to clarify the application of self-defence in response to lawful acts by introducing a discrete provision into the Criminal Code. Self-defence would not apply if a person:

- is responding to a lawful act, and
- has no reasonable basis for believing the act is not lawful.

4.27. In the current legal framework, unlawfulness of the complainant/deceased's actions is expressly or impliedly required under both sections 271 and 272.[19]

4.28. Removing the assault threshold and the distinction between provoked and unprovoked assaults would remove the lawfulness element in self-defence. Our recommended lawful acts provision would distinguish between provoked and unprovoked assault in a simple way. It would clarify that self-defence is not available where a person is responding to a lawful act where there is no reasonable basis for believing the act was not lawful.[20] In Zecevic v Director of Public Prosecutions (Vic), Wilson, Dawson and Toohey JJ stated that:

> A person may not create a continuing situation of emergency and provoke a lawful attack upon himself and yet claim upon reasonable grounds the right to defend himself against that attack.[21]

4.29. We recommend including this provision in our reformed self-defence laws as it provides clarity. It also reflects the policy intent that the law should not condone use of force against known lawful conduct or permit self-defence to be used 'as a pretext to carry out a criminal purpose'.[22]

When self-defence may apply to lawful acts

A person with hearing impairment using reasonable force against a plain clothes police officer attempting to arrest them, when they did not hear the officer identify themselves and provide reasons for arrest.

Self-defence would be open to the person under the current laws and our proposed reform, provided the other elements are met.

4.30. Our recommended reforms would clarify that self-defence is not available where a person is responding to a lawful act and has no reasonable basis for believing that the act is not lawful. This reflects the position that officers of the public, including police and child safety officers, should not be subjected to violence when lawfully executing their duties. This maintains the current approach to limiting the availability of self-defence in response to lawful acts. Use of force to prevent or cease deprivation of liberty already requires that it is unlawful.[23]

4.31. They would also clarify that conduct is not lawful merely because the person carrying it out is not criminally responsible for it.[24] This refers to persons who are not criminally responsible for an act or omission due to, for example, the defence of insanity (section 27 of the Criminal Code) or immature age (section 29 of the Criminal Code).

4.32. The provision would also retain the traditional onus of proof, so self-defence would not apply only if the prosecution prove beyond reasonable doubt that either limb of the lawful acts provision applies

Intoxication and self-defence

4.33. **Recommendation 3** makes explicit the relevance of evidence of intoxication for self-defence. Our reforms would maintain the current legal position, consolidating the separate provisions and case law guidance in a clear and discrete provision. This approach is generally consistent with other Australian jurisdictions.[25]

4.34. Presently, although there is explicit legislative guidance about how evidence of intoxication is relevant to offences under the Criminal Code, there is less clarity about how it interacts with defences.[26] Case law regarding relevance of mistake of fact to intoxication can be applied for self-defence as it is presently framed.[27] However, since our reforms remove the need to rely on

mistake of fact and change the test for self-defence, we recommend explicitly clarifying the relevance of evidence of intoxication to self-defence.

4.35. Where a defendant is voluntarily intoxicated, their intoxication is a relevant factor in determining:

- their belief in the necessity to act in self-defence (including, in murder cases, their belief in the necessity to defend themselves or another from death or serious harm)
- the circumstances as the defendant believed them to be.

4.36. Voluntary intoxication is irrelevant to the reasonableness of the defendant's response. This is assessed from the perspective of a sober person.

4.37. Where a defendant is involuntarily intoxicated (for example, where they have been drugged or unknowingly consumed a particular substance), their intoxication is relevant to all elements of the test for self-defence.

4.38. We discuss the distinction between voluntary and intentional intoxication below.[28]

Voluntary vs intentional intoxication

We recommend the use of 'voluntary' and 'involuntary' rather than 'intentional' and 'unintentional'. They have different legal meanings. The term 'intentional' is used in section 28, which discusses unintentional intoxication as a defence and the relevance of a person's intoxication to the elements of an offence.

'Voluntary' and 'involuntary' appropriately reflects the relevance of intoxication to criminal liability.

A person who decides to drink alcohol socially and becomes drunk without the specific objective of becoming drunk is voluntarily but not intentionally intoxicated.

This terminology is consistent with the general approach in the Criminal Code.

4.39. We also recommend a future review considering intoxication and criminal responsibility in the Criminal Code as a whole (**Recommendation 36**). We discuss this in Chapter 15.[29]

DFV and self-defence

4.40. We heard from stakeholders that self-defence is not always accessible to DFV victim-survivors who use resistive violence. This includes where the defendant:

- is not an 'ideal victim'
- was responding to a serious verbal threat or conduct that, when viewed in the context of the relationship as a whole, would cause reasonable apprehension of future violence
- was acting pre-emptively or equipped themselves against a larger and stronger assailant, which is viewed as excessive force.

4.41. Chapter 3 discusses the relevance of the DFV context.[30]

4.42. **Recommendation 4** introduces a new provision into the Criminal Code which makes explicit the interaction between DFV and self-defence. If a person uses force in the context of a domestic relationship involving DFV, the necessity and reasonableness elements in **Recommendation 1** may be met even if:

- they are responding to a non-imminent threat of harm (for example, they are responding to threat of future financial, physical or emotional abuse), or
- their use of force is in excess of any force involved in the harm or threatened harm by the complainant/deceased (for example, the defendant uses a knife where the complainant/deceased is unarmed).

4.43. **Recommendation 4** is aimed at educating and promoting changes to the narratives around DFV. It does not change the core elements of the reformed self-defence provision or provide a specialised interpretation of self-defence for DFV contexts. It clarifies the current interaction between self-defence and DFV in case law, with the intended effect of:

- reflecting that a history of DFV is the leading lethality risk indicator in intimate partner homicides[31] and is often a relevant factor where self-defence is raised
- reframing some of the myths and misconceptions of self-defence in DFV contexts, to establish that, as a matter of law, imminence and proportionality are not inherent requirements of self-defence
- reminding practitioners of how DFV may intersect with self-defence and encouraging the use of a social entrapment lens by taking a detailed relationship history and developing a case theory focused on the cumulative effect of DFV[32]
- requiring jury directions that dispel community assumptions of self-defence and DFV by reference to the provision.

4.44. For this reason, we consider it important to include these provisions in the Criminal Code rather than the Evidence Act.[33]

4.45. Our proposed provision is declaratory only. It does not 'remove' imminence and proportionality for DFV victim-survivors because, regardless of the identity of the defendant, the core elements of self-defence do not require imminence or proportionality.[34] 'For this reason, our proposed provision does not limit the core elements of self-defence.

4.46. We recommend using the phrase 'if the use of the force happens in the context of a domestic relationship involving domestic violence' to highlight that the provision applies where there is a temporal and causal link to DFV.[35]

4.47. Our recommended reforms maintain the traditional onus of proof, requiring the prosecution to disprove self-defence beyond reasonable doubt.

4.48. **Recommendation 31**, which reforms the Evidence Act to make existing jury directions about self-defence in DFV contexts mandatory in relevant proceedings,[36] supports and works together with this recommendation.

The case for reform

4.49. This section outlines our case for reform, identifying three key justifications:

- clarifying and simplifying self-defence to reduce its complexity
- increasing consistency with other jurisdictions

- improving access to justice by modernising the defence to support its just and effective operation, including in DFV contexts.

4.50. We draw on a broad range of evidence including insights from our consultations, interviews with legal professionals, written submissions, original research findings and doctrinal and academic research.

Simplifying and clarifying the law

4.51. In drafting the self-defence provisions, Sir Samuel Griffith reflected the common law in 1897 and closely followed the wording of the English Draft Code of 1879.[37] At the time, the common law of self-defence was complex and based on a 'series of rules or tests' designed to streamline relevant considerations in each case.[38] While the common law has since evolved to a simple test as outlined in Zecevic v Director of Public Prosecutions (Vic),[39] sections 271–273 remain complex.

4.52. In practice, a single case of self-defence often enlivens various limbs of self-defence. Consequently, jury directions can be overlapping and convoluted, especially when other defences are also relevant.

4.53. The self-defence laws are applied by ordinary citizens on a jury, who are required to evaluate the conduct of their peers charged with criminal offending. This distinguishes the criminal law from other areas of the law and increases the importance of ensuring its clarity and simplicity. While judges assist juries by explaining the law and its operation in each case, complex laws translate into complex jury directions. This complexity can also create challenges for lawyers providing advice to clients about the availability of the defences and can impact defence decisions.

4.54. Reforming the law of self-defence to a single test would simplify and clarify the law. It would improve access to justice and reduce the complexity of jury directions and the frequency of appeals.

The current law is too complex

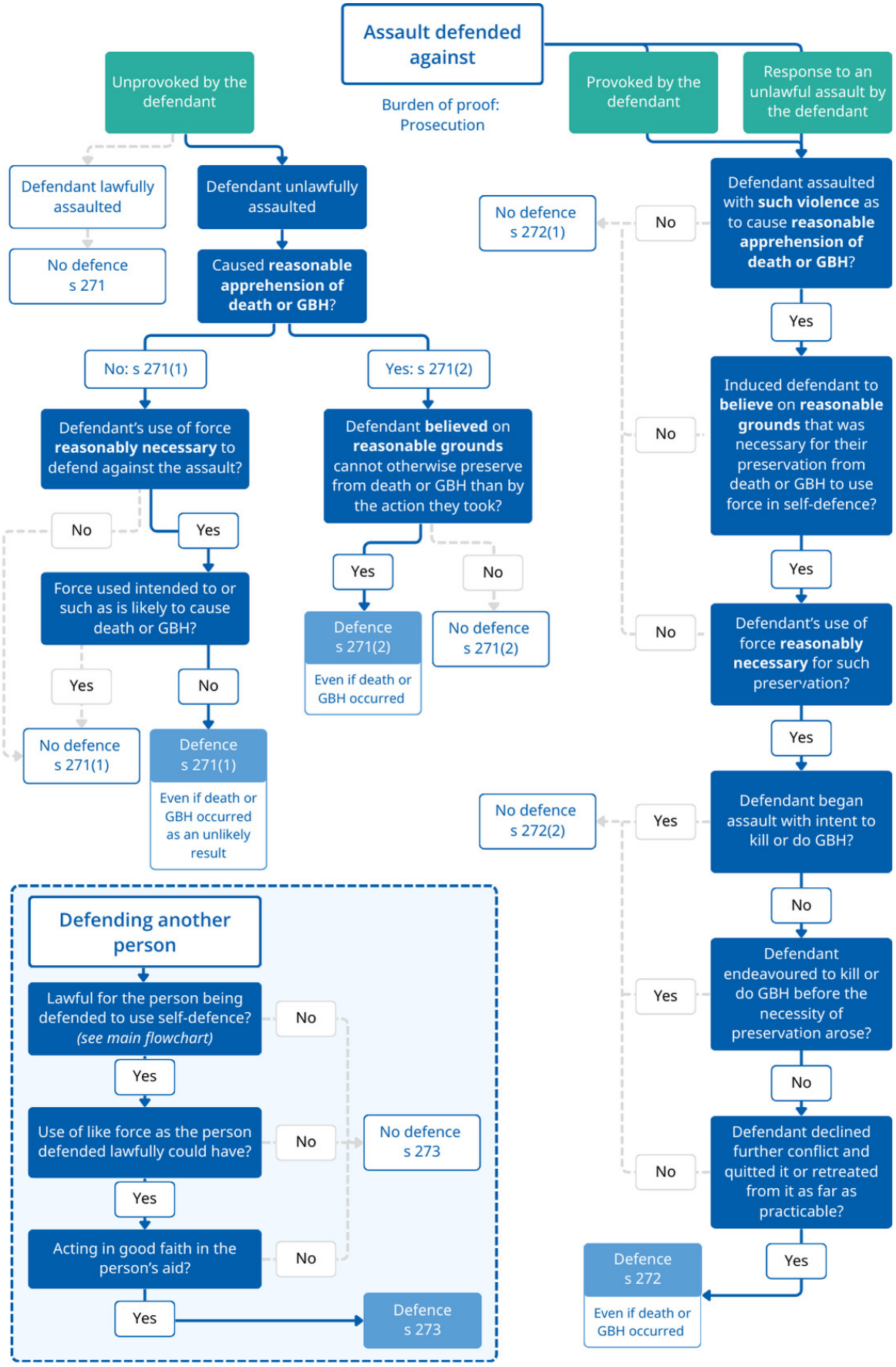
4.55. The complexity of the provisions has been criticised by previous reviews.[40] Queensland judges have also expressed doubts about aspects of the current laws.[41]

4.56. As O'Regan observed in 1979, self-defence could be framed as a simple inquiry:

> Such questions as whether the initial attack was unprovoked or provoked, whether it was major or minor and whether the accused retreated are crucial under ss. 271 and 272 in deciding whether a defence is open. However, all these matters complicate an otherwise simple inquiry—whether the accused, in taking the defensive action he did, acted reasonably? It is submitted that this is the appropriate general test and that the refinements and distinctions of the Code sections distract attention from it.[42]

4.57. **Figure 4.2**, below, shows the different elements of the current laws. The intention of having many elements is to support a structured consideration of reasonableness by the jury. However, this can prevent juries from taking a common-sense approach. While the propositions are stated as positive for consistency with the legislative provisions, the onus is on the prosecution to exclude the propositions beyond reasonable doubt.

Figure 4.2: The current laws of self-defence provisions in Queensland[43]



4.58. Specific causes of complexity within the current provisions (sections 271–273) include distinctions drawn between:

- whether the person is acting in defence of themselves or another
- whether the assault was provoked or unprovoked by the defendant
- the degree or apprehension of force used.

4.59. Different references to 'lawfulness' and 'criminal responsibility' in the defence also create confusion as to whether the defence is a justification or an excuse. Although there is no legal distinction in criminal law between these categories, given self-defence is traditionally viewed as a justification and reliance on section 271 compared to section 272 does not create different outcomes, it is unclear why the distinction exists.[44]

4.60. In its current form, in cases where a person is acting in defence of another, section 273 proposes elements to be considered in addition to the requirements in sections 271 and 272. This consideration can be artificial.[45] In some cases, an aider may be entirely mistaken about the necessity for aiding in self-defence. If their mistake is honest and reasonable, they can raise the defence even though the person they are aiding cannot.[46] An example of this complexity is R v Lefoe, discussed below.[47]

Aiding in defence of another — R v Lefoe (Qld)

Two groups of men became involved in a drunken fight. After seeing Susin attempt to assault his friend, Lefoe punched Susin once to the head. Susin fell to the ground, hitting his head on the concrete path and later died. Lefoe was charged and found guilty of manslaughter.

In dismissing the appeal, the judge noted that a literal reading of section 273 would require the person being defended to hold the requisite belief before the aider could act in self-defence. This could prevent access to section 273 to a person aiding someone who did not know they were at risk of assault (for example, if they were asleep) or who was unable to understand the threatened assault (for example, if they were a child). The judge held this could not be the intended effect of requiring the aider to 'stand in the shoes' of the person they were defending and concluded that the requisite belief must be held by the aider.

4.61. The distinction between provoked and unprovoked assaults has also been criticised for its complexity. Section 271 refers to 'the assault', requiring either no provocation, or no provocation for the assault actually made. Section 272 refers to 'an assault', a broader term that can cover an assault other than the assault actually made.[48] As Hart J observed, 'there will not be many circumstances in which a person could raise a defence under section 272 and in which he could not also raise one under section 271'.[49] A jury may need to be directed about both sections 271 and 272 if the evidence is capable of raising a defence under both. A useful illustration of this is R v Wilmot, discussed below.[50]

Provoked vs unprovoked assaults — R v Wilmot (Qld)

Wilmot attempted to open the door to a vehicle in which the deceased was sleeping and asked him to come out of the vehicle. The deceased emerged from the vehicle, armed with heavy metal piping. He chased Wilmot until they were in a physical altercation which led to the man's death. This evidence could support self-defence under both sections 271 and 272. Although Wilmot may have provoked an assault, the nature of the deceased's assault was arguably far greater than any provoking conduct of Wilmot, meaning Wilmot did not provoke the assault at all.

4.62. The overlap and complexity between the provisions, and the implication that any provocation by the defendant is generally relevant to an assessment of reasonableness, supports removal of the distinction between provoked and unprovoked assaults.

4.63. The elements of the defence differ depending on the apprehended degree of force. For provoked assaults, the defendant must have a reasonable apprehension of death or GBH. For unprovoked assaults, the elements differ depending on whether the nature of the assault was sufficient to cause reasonable apprehension of death or GBH. Where this issue is contested, both limbs of section 271 must be left to the jury. There is also an anomaly between the degree of force and the defendant's apprehension for provoked assaults, because the defendant may only have access to the defence if they had a reasonable apprehension of death or GBH. Any lesser apprehension is insufficient, even if the force used was less than GBH.[51] This complexity was discussed in R v Beetham.[52]

Nature and degree of force — R v Beetham (Qld)

Two men were arguing and one of them punched the other on the jaw. This occurred in the context of the 'One Punch Can Kill' campaign warning the community about the dangers of even moderately powerful punches. It was held that this could cause a reasonable apprehension of at least GBH and that both limbs of section 271 were therefore open on the evidence.

The complexity of the law creates problems

4.64. The complexity of the law impacts jury directions and may increase appeals against convictions. This is especially so where multiple defences may be available.

4.65. We discuss stakeholder feedback on the current laws of self-defence in Background Paper 4. Many stakeholders supported simplifying and clarifying self-defence.[53] In written submissions, the distinction between provoked and unprovoked assaults was described as 'outdated' and 'anachronistic',[54] with the provisions described as 'overly complex' and 'difficult to follow for practitioners, let alone jurors'.[55]

4.66. Stakeholders raised concerns about difficulties created by the intersection of self-defence with other defences and that the complexity gives rise to appeals.[56] Legal practitioners in one consultation spoke of a trial where the jury directions on self-defence took longer than the trial itself.

4.67. Many judges and legal practitioners we interviewed supported simplification and clarification of the self-defence provisions.[57] One District Court Judge stated: 'the directions that are given

for all parts of self-defence wash over a jury, and so, I think there is a very strong case for appropriate redrafting of them in a simpler way'.[58]

4.68. Describing a case that went to trial three times, one Crown Prosecutor explained how complex the self-defence provisions can become:

> [T]he defendant was saying that the complainant had ... threatened to [strike him]. And because the defendant's blow was so forceful then it was a situation where all of those different provisions potentially were coming into play, which is what the Court of Appeal identified ... [I]t was just a massively technical, unnecessary, complex mess because each of the three self-defence provisions potentially applied and therefore they had to be left ... [T]here was all sorts of different complications that arose from this one relatively simple set of circumstances.[59]

4.69. Participants identified the multiple limbs of self-defence and the availability of multiple defences with similar concepts but different legal positions as specific matters that complicate self-defence.[60] Some participants considered that the complexity of jury directions in self-defence results from application of the Benchbook directions without appropriate tailoring, rather than from the current laws.[61] This sentiment was also reflected by one Supreme Court Judge, who stated:

> I think the problem is the Benchbook directions are not meant to be a script. They're meant to be the template that is adjusted by the trial judge to meet the circumstances of the case.[62]

4.70. However, as one District Court Judge explained:

> The common law or the jurisprudence in the area is so complicated that even if you get one aspect wrong, there'll be a retrial. So, judges are, I think, hesitant to depart from the Benchbook, which creates a problem for people who have to listen to it.[63]

4.71. Our review of Queensland Court of Appeal decisions involving self-defence found numerous appeals based on alleged errors with jury directions on self-defence provisions.[64] The case of R v Dayney illustrates this, as discussed below.[65]

Appeals and re-trials — R v Dayney (Qld)

Dayney was charged with the murder of Spencer during a planned burglary of Spencer's home. Dayney's girlfriend, Lorang-Goubran, was present during the burglary. Dayney was unarmed but gave evidence at trial that he was told that Spencer kept guns at his house, including a shotgun and a pistol.

At his first trial, Dayney testified that Spencer pulled out a gun immediately after he entered the lounge room and that everything he did after that point was to save his or Lorang-Goubran's life. When he first saw Spencer, he saw him reach down and take a gun from between his legs, which is why he punched Spencer and they then wrestled. Dayney said he didn't leave because there was a chance there were other guns in the house. Douglas J, the first trial judge, directed the jury only on section 272, refusing to direct on section 271. Dayney was found guilty.

Dayney appealed his conviction on the grounds that section 271 should have been left to the jury and that the directions to section 272 were incorrect. The Court of Appeal accepted that section 271 should have been left to the jury because the threat to use a gun could have amounted to an unlawful assault. The Court was divided on the interpretation of section 272 but the majority agreed with the approach taken by Douglas J.

Dayney was re-tried in 2021 and the trial judge directed the jury regarding section 272 in line with the majority of the Court of Appeal's approach. Dayney was again convicted of murder and he appealed his conviction on the grounds that the interpretation of section 272 by the trial judge was plainly wrong. The Court of Appeal unanimously rejected this. Dayney applied and was granted special leave to the High Court. The High Court dismissed the appeal, upholding the decision of the Court of Appeal and the interpretation advanced by the majority in the first
appeal case.

The complexity is unnecessary

4.72. Our community attitudes research (Research Report 1) demonstrates that community attitudes align with traditional rules of self-defence and that community members can appropriately weigh relevant factors to assess culpability. Traditional considerations for self-defence — such as necessity to use defensive force, reasonableness, whether the original conduct was provoked, options for retreat and proportionality — were consistently grasped and applied by participants without reference to the legislation.[66]

4.73. Reports considering self-defence in Queensland have also highlighted its complexity and recommended reform:

- In 1992, the Criminal Code Review Committee reviewed the entire Criminal Code. They noted that the self-defence provisions were complex and the criteria detracted from the critical question. They recommended simplifying the self-defence provisions to a single provision.[67]
- In 1999, a private member's Bill was introduced into Queensland Parliament proposing amendments to self-defence in response to public outcry about the outcome in the case of Lorna MacKenzie. The second reading speech of this Bill referenced many of the issues identified above, as well as the need to make the law applicable to a person who kills a violent partner in an act of self-preservation.[68]

- In 2000, the Taskforce on Women and the Criminal Code considered reform of self-defence at length. While the Committee was split on this issue and did not ultimately recommend reform, they provided a draft provision simplifying the defence and including DFV considerations.[69]
- In 2007, the Law Reform Commission of Western Australia, considering self-defence provisions equivalent to sections 271–273, recommended a simplified and unified self-defence provision.[70]

4.74. Other jurisdictions have simplified self-defence. Every other Australian jurisdiction and New Zealand:

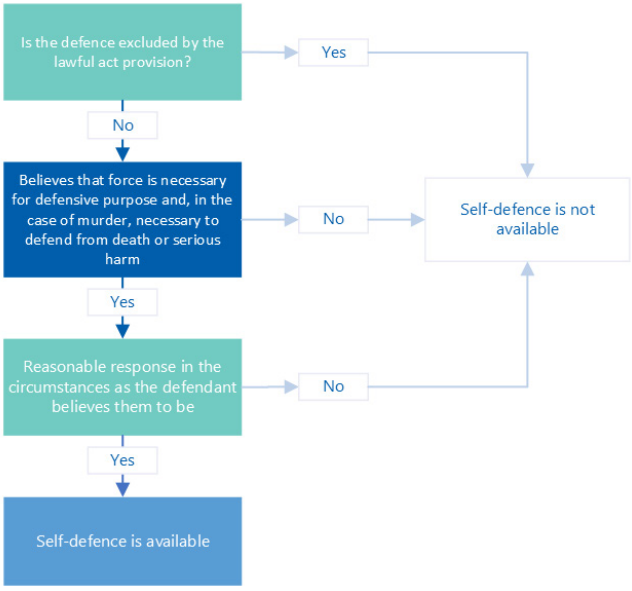
- has a single defence for self-defence which also applies to defence of another
- does not have different tests for cases involving apprehension of serious injury or death
- does not distinguish between provoked and unprovoked assaults
- does not have an assault requirement.[71]

Our recommendations achieve simplicity and clarity

4.75. Our recommended approach reduces the complexity of self-defence, improving its effectiveness and just operation. Stakeholders broadly supported the proposed test for self-defence in our Consultation Paper on this basis.[73]

4.76. The reduced complexity also supports clearer and simpler jury directions. As one Supreme Court Judge stated: 'No review of criminal defences ought to occur without a consideration of the way in which the reformed law translates to a jury direction'.[74]

Figure 4.3: Reformed self-defence[72]



4.77. **Figure 4.3** reflects our recommended approach to self-defence. Where relevant, the prosecution must establish the first proposition and exclude the remaining propositions beyond reasonable doubt.

Increasing consistency with other jurisdictions

4.78. There is significant consistency in the core elements of self-defence in comparable jurisdictions. The 'single statement' approach of Tasmania and New Zealand is essentially the same as the 'two element' approach.[75] All jurisdictions except Western Australia and South Australia have a single test for self-defence which incorporates the same two elements we recommend (**Recommendation 1**).[76]

4.79. Legal consistency is desirable as it helps us to understand the likely practical application of our reforms and any potential implications. It also supports development of legal jurisprudence and increases the accessibility of the law, for legal practitioners and the community. Some

stakeholders noted the value of consistency in their submissions.[77] Our reforms increase consistency with other Australian jurisdictions and New Zealand.

4.80. We have analysed appellate cases in Victoria, NSW, the Northern Territory and the ACT where self-defence was an issue, as well as appellate cases considering the Commonwealth Criminal Code definition of self-defence. Our analysis did not reveal any concerns regarding unintended consequences in the interpretation of self-defence through simplification. It established that the key elements of self-defence can be appropriately considered within a simplified self-defence test. Below, we provide examples of two such cases.[78]

A simplified self-defence test — Colosimo & Ors v DPP (NSW)

An altercation arose between security guards and a group of men at a casino. One of the men was assessed by security staff as being excessively intoxicated and was asked to leave the premises. The security officer who made this request was screamed at, racially abused and challenged to fight. One of the men challenged another security guard, saying: 'move me'. That security guard pushed the man towards the door, after which he was pushed hard from behind. A fight began, resulting in multiple serious injuries to the security guards and minor injuries to the men. The men were convicted after trial of affray.

They appealed this decision, challenging the finding that the evidence did not raise self-defence. In dismissing the appeal, the Court found that the fact the men wanted to fight did not prevent the men from accessing self-defence, but it was relevant to whether they could have believed their conduct was necessary. The Court also held that if the men believed the risk of harm could have been avoided by withdrawing from the situation, they could not have believed their force was necessary to defend themselves or another. Taking into consideration that the security officers lawfully asked the men to leave, the lack of evidence that there was a risk of harm or attack by the officers, and that the men could have withdrawn by leaving the premises, the Court held that the conduct could not reasonably have been believed to be necessary.

A simplified self-defence test — R v Sivaraja & Sivathas (NSW)

Two men were charged with wounding with intent to cause GBH following a fight that occurred after a house party. They arrived by car, exited their vehicle with cricket bats and approached the victim's home. The victim came outside with a wooden chopping board. A fight ensued, involving further weapons including a knife and an iron rod. The trial judge refused to direct the jury on self-defence. The men were convicted and appealed their conviction, challenging the decision not to leave self-defence to the jury.

In dismissing the appeal, the court held that their conduct in 'failing to [either withdraw from the scene or stay in the car], and instead crossing the road as a group while at least one of them was armed, excluded the reasonable possibility that they held a belief that assaulting [the complainant] with a weapon was necessary for their self-defence'.

4.81. These cases demonstrate that the factors ordinarily considered in deciding whether the defendant provoked the assault — the nature and seriousness of the original assault, the complainant's subsequent assault and their ability to withdraw or retreat from the altercation — are capable of being appropriately considered within the reformed self-defence test without complicating the task of the jury.

4.82. Other jurisdictions include the defence of property in self-defence.[79] They also state that self-defence does not apply if the force used involves the intentional or reckless infliction of death only to protect property, prevent criminal trespass or remove a person committing criminal trespass. In Queensland, defences of property are contained in seven provisions and have separate policy considerations to self-defence.[80] In their submission, Lelliott and Wallis recommended the consolidation of these defences within self-defence and introduction of a provision comparable to section 420 of the Crimes Act 1900 (NSW).[81] We have not considered this approach in detail as it is outside the scope of our review.

4.83. In consultations, stakeholders also discussed recent reform attempts, including private members' Bills introduced into Queensland Parliament to broaden the defence of dwelling.[82] Our reforms would not change the application of self-defence to defensive acts including from unlawful conduct like criminal trespass.

Access to justice

4.84. Our self-defence reforms support access to justice by addressing aspects of the defence that can presently limit its accessibility, including in the DFV context. Our reforms:

- address the current under-utilisation of this defence in achieving justice in DFV contexts
- remove the assault threshold, which can prevent people responding to a non-imminent or verbal threat of physical force from accessing the defence. This is a significant barrier to justice for DFV victim-survivors
- appropriately balance subjectivity and objectivity, placing an appropriate focus on the defendant's perception of the threat
- maintain equal accessibility of the defence for people who use alcohol and other drugs.

The current law does not support access to justice in DFV contexts

4.85. The law of self-defence was developed to address traditional male violence, between people of similar size and strength involved in one-off confrontations. It was not developed for the DFV context and it has not kept pace with our contemporary understanding of the nature and effects of DFV.[83]

4.86. Research on the use of violence in the DFV context has predominantly focused on lethal defensive force. Previous considerations of self-defence reform have also focused on the importance of achieving justice and equal access to self-defence for DFV victim-survivors who kill their abusers.[84] This research has informed our review. We discuss its relevance for our reforms briefly in Chapter 3 and in detail in Background Paper 3.[85] We recognise that similar considerations apply to non-lethal resistive violence.

4.87. Historically, theories of 'battered woman syndrome' and 'learned helplessness' have informed understandings of resistive violence. These theories have been criticised for pathologising women rather than demonstrating that their actions are rational acts of self-preservation in circumstances where they would otherwise be the victim of homicide.[86] The modern 'social entrapment lens' is supported by both qualitative lived experience and quantitative research, as we discuss in Chapter 3.[87]

4.88. The Taskforce on Women and the Criminal Code noted:

> According to those who work with domestic violence survivors many survivors are really exercising a form of 'self-defence' for much of the relationship – often, by remaining 'passive' in the face of physical, emotional and other types of abuse. It also tends to include complying

with the on-going and ever-present demands of their abuser (for example having dinner ready on time, not eating until he arrives no matter how long the wait is, keeping the children quiet, taking a beating, concealing a beating).

One day some of these women choose a different kind of self-defence – attack. This is often a kind of self-preservation or final desperate act and does not always happen when there appears to be a present threat – as would usually happen in a 'man-to-man combat' situation.[88]

4.89. Many of the lethality indicators represent features of the 'ordinary existence' of a DFV victim-survivor in an abusive relationship and may not translate to 'an extraordinary eruption' of violence.[89] DFV victim-survivors who use resistive violence can face challenges relying on self-defence in circumstances where a specific incident cannot be identified and they are responding in self-preservation to a continuing threat presented through insidious patterns of behaviour.[90] The imminence and proportionality requirements can be difficult to establish. Sisters Inside's submission summarised this issue as follows:

> Establishing the objective necessity of the force used can be difficult for the following reasons:
>
> 1) In non-confrontational settings, juries may be less likely to consider the force as strictly necessary for preservation;
> 2) Jurors and legal professionals without sufficient domestic violence education have been historically distracted by the rhetoric that 'she should just leave' the relationship; and
> 3) Women who are victim survivors of abuse who commit [intimate partner homicide] often use weapons, which can be viewed by jurors as disproportionate and indicative of pre-meditation.[91]

4.90. Amendments to the Evidence Act introduced jury directions about self-defence in response to DFV that may be given on request from defence counsel, as well as more general jury directions about DFV. In Part 7, we discuss our recommendations for practice and procedure reforms, which make these jury directions mandatory (**Recommendation 31**). We also discuss our recommendation for further training for judges, legal practitioners and people working in the criminal justice system about DFV (**Recommendation 33**).

4.91. The current self-defence laws and the need for further education and direction regarding self-defence and DFV create barriers for DFV victim-survivors. Our recommendation to make explicit the interaction between self-defence and DFV (**Recommendation 4**) would serve an important declaratory and educative function for the legal profession that complements the Evidence Act provisions. This is demonstrated by the differing views in the case of Silva v The Queen,[92] discussed below, where a majority in the NSW Court of Criminal Appeal quashed the conviction of a DFV victim-survivor who killed her abuser and entered an acquittal.

Self-defence in DFV contexts — Silva v The Queen (NSW)

Silva was charged with the murder of her former partner, Polkinghorne. She had been subject to sustained physical and verbal abuse from Polkinghorne, including threats to kill her if she obtained a protection order. One morning after spending the evening at Polkinghorne's apartment, Silva left for her family's home. Polkinghorne made approximately 80 threatening or abusive phone calls and sent several messages to Silva, before arriving at the family home.

When Silva went to confront Polkinghorne, he punched her twice in the face. There was a physical altercation between Polkinghorne and Silva's brother, with her father later becoming involved too. Silva retrieved a kitchen knife and fatally stabbed Polkinghorne five to six times in the back. She was convicted of manslaughter and appealed her conviction, arguing that the verdict was unreasonable. The appeal was successful and Silva was acquitted of all charges.

The majority held that, even if the jury thought there was some doubt about whether Silva's conduct was reasonable, these scenarios were ones which usually led to women being the murder victims, and that the evidence could not prove beyond reasonable doubt that Silva's response in the circumstances was unreasonable as she perceived them. McCallum J noted that Polkinghorne's rage was such that, '[a]bsent some act in self-defence, serious harm to Ms Silva, her brother or her father at the hands of the deceased must have seemed virtually certain'.

In contrast, Leeming JA held that although it was reasonable for her to arm herself with the knife, it was open to the jury to find that it was not reasonable for her to stab the defendant and consequently, the appeal should be dismissed. His Honour stated that her attack 'could only have been reasonable if she perceived that she or her family was in immediate danger of grievous injury'.

4.92. Neither immediacy nor proportionality are requirements under the NSW self-defence provision, which is very similar to our recommended provisions (**Recommendation 1**). Despite this, the focus placed by Leeming JA on the immediate context in which the incident occurred contrasts greatly to the majority approach which considered the cumulative DFV history. Despite the outcome in the trial, the division in the Court demonstrates the varying application of the same test and overall benefit of a declaratory provision, which NSW does not have.

4.93. Clarifying provisions similar to **Recommendation 4** have been recommended by various law reform bodies, some of which were of general application, rather than specific to the DFV context.[93] The Victorian Government, in implementing the recommendations of the Victorian Law Reform Commission for a generalised clarifying provision, limited it to 'circumstances where self-defence in the context of family violence is in issue'.[94] We consider this preferable to a provision of general application. Including a specific link to DFV ensures it serves an educative purpose benefiting DFV victim-survivors.[95]

4.94. In the remainder of this section, we explore the following elements of self-defence that may make it difficult for victim-survivors to access the defence:

- the assault requirement, which often implies immediacy or imminence
- objective requirements that result in women's defensive force being characterised as 'disproportionate' despite the background of DFV.[96]

4.95. In Chapter 5, we discuss our reforms to set the threshold for lethal self-defence as 'serious harm'. We explore how this appropriately balances the need to limit the defence to recognise

the unique seriousness of murder while ensuring DFV victim-survivors who experience significant harm, including sexual and psychological harm, can access it.[97]

Removing the assault threshold supports access to justice

4.96. The current self-defence laws contain a requirement that the defendant is responding to an assault. As shown in **Figure 4.4**, below, 'assault' is defined in section 245 to constitute not only the physical application of force, but can also constitute threats or attempts to apply force.

Figure 4.4: Assault under section 245 of the Criminal Code[98]

Physical application of force	Threats or attempts to apply force
• Strikes, touches, moves or applies force of any kind to another person • Directly or indirectly • Without consent or with fraudulent consent	• Any bodily act or gesture • Attempts or threatens to apply force of any kind to another person • Without consent • In circumstances where the person has, actually or apparently, a present ability to effect the threat/attempt

4.97. Words alone cannot amount to an assault. Some bodily act or gesture that demonstrates the person has an actual or apparent ability to give effect to the threat, and an associated intention, is required.[99] While implied threats can constitute assault, purely verbal threats cannot, even if the person has the intent and ability to carry out the threatened assault. Self-defence is not available for a defendant acting pre-emptively in response to a verbal threat.

4.98. Although this is designed to distinguish between a need to protect and a desire to retaliate for past wrongs,[100] it is a barrier to accessing the defence for DFV victim-survivors in abusive relationships. As MacKenzie and Colvin explained:

> [T]he condition requires that the defender be responding to some specific action of an assailant. The defence is not available to someone who acts in anticipation of an attack or a series of attacks which has not materialised into an assault at the relevant time, even where there has been a previous history of violence which may provide reasonable grounds for a belief that defensive violence is necessary to avert the danger.[101]

4.99. Another difficulty with the assault requirement is its 'imminence' requirement. The words 'imminence' and 'immediate' do not appear in the provisions, and Queensland Courts have recognised that it is not necessary that the relevant threat is of imminent danger (we discuss this below).[102] However, sections 271 and 272 require ongoing conduct at the time of the defensive act: '**When** a person is unlawfully assaulted' or '**When** a person has unlawfully assaulted another'.[103]

4.100. DFV victim-survivors' defensive force may include pre-emptive actions responding to the power imbalance between the parties, the history of violence and coercion in the relationship and their relative physical weakness.[104]

4.101. The current framing of the defence may lead juries to reach decisions based on an expectation of imminence in self-defence. Perceptions of the need to satisfy this requirement may deter DFV victim-survivors from relying on self-defence, encouraging pleas of guilty to manslaughter. This was the outcome in R v Sweeney,[105] discussed below (we consider this case in detail in Background Paper 3).[106] This case illustrates concerns with the imminence requirement in practice.

Jury directions regarding the assault threshold

In R v Secretary, the Northern Territory Court of Appeal held that a sleeping aggressor could have an 'actual or apparent ability to effect his purpose' upon waking, thus satisfying the assault element.

This was applied in the Queensland case of R v Falls. Falls was acquitted of murder in non-confrontational circumstances. After years of suffering domestic violence and fearing for her life, Falls drugged her abusive husband and shot him in the head. She was acquitted of murder in non-confrontational circumstances. Applegarth J directed the jury that a threat necessarily relates to future conduct and the law does not require the threat to be one of imminent danger.

However, concerns have been expressed that not all defendants would achieve this outcome. We discuss the notion of the 'ideal victim' in Chapter 3.

4.102. The duty to retreat requires that the defendant believe on reasonable grounds that they cannot otherwise preserve themselves from death or GBH.[107] It can be problematic in cases where DFV victim-survivors offend against their abuser because it prompts questions like 'why didn't she just leave?' or 'why didn't she just call the police?'. Such questions fail to grasp that in many cases the victim-survivor has the best gauge of risk and may perceive that fleeing will delay the threatened harm rather than prevent it.[108]

Pre-emptive strike based on a reasonable belief in the need for self-preservation — R v Sweeney (Qld)

Sweeney's relationship with her partner was marked by serious physical violence including non-fatal strangulation. On the night of his death, they returned home from drinking at a venue. Both were intoxicated and an argument began. Sweeney was dragged on the ground, assaulted and berated by her partner. She tried to placate him and walk away. As she did so, she heard him saying things like, 'Should I get rid of her, I think she's got to go'. At this point, Sweeney became fearful of her life given his intoxication and potential psychosis. As her partner approached her, Sweeney searched for something to protect herself, finding a steak knife. Believing he was going to grab the knife from her, without looking, Sweeney stabbed him once to the chest. She was charged with murder but pleaded guilty to manslaughter.

4.103. Removing the assault requirement removes the inherent imminence and retreat requirements and would support consideration of contextual factors relevant to the offence and defendant, including the cumulative effect of DFV, as part of assessing the core elements of self-defence. It would promote greater access to justice for all defendants who honestly and genuinely believe in the need to use force for a defensive purpose. As well as DFV victim-survivors, this

would protect sex workers who experience entrapment and need to act defensively to protect themselves from a credible threat,[109] as well as residents acting defensively to protect themselves and their family in a burglary.

Balancing objectivity and subjectivity

4.104. Striking the appropriate balance between objective and subjective elements in self-defence laws is critical but challenging. The defence applies to a broad range of scenarios and flexibility is essential. However, it is a complete defence, rendering a person's actions lawful regardless of the seriousness of the crime. Therefore, the circumstances of the defendant and community standards about acceptable behaviour are important.

4.105. Reasonableness must remain at the heart of self-defence, as it allows the jury to consider the seriousness of the threat, availability of alternatives and retreat from force and the nature and seriousness of the response. It represents current community standards of behaviour, as decided by the jury.[110]

4.106. Vulnerable defendants, including DFV victim-survivors, face barriers to accessing the defence if the objective requirements are too onerous. Proportionality requirements can be simplistic and fail to recognise circumstances relevant to the DFV context, including responses to cumulative patterns of harm, differences in relative size and strength between the defendant and victim, and the types of weapons used in self-defence.[111]

4.107. Our reforms appropriately balance these considerations by taking a mixed subjective-objective approach to reasonableness.

4.108. Most stakeholders broadly supported an approach that included both subjective and objective elements in the test for self-defence.[112] However, there were differing views about the appropriate balance. Some stakeholders favoured greater objectivity. Some based this on concern that the necessity element, without a reasonableness requirement, may legitimise 'fanciful', irrational, delusional or prejudiced beliefs regarding the need to act defensively. Others considered that emphasising the defendant's state of mind at the time of the alleged offending 'may have the unintended effect of forcing [them] to give evidence to establish the defence, rather than being able to rely upon evidence raised in the Crown case to support the application of the defence'.[113]

4.109. The defendant's honest and genuine perception of the danger they face is central to self-defence. An entirely objective test would not allow sufficient consideration of the context for the offending, including the relationship history and other context that shapes a person's decision to act defensively. This is especially problematic for DFV victim-survivors whose experience of DFV may not be easily understood by members of the jury. As Hopkins and Easteal explain:

> [T]he full context of a battered woman's predicament must be considered to determine whether her actions were justified in self-defence, thereby warranting her acquittal. Indeed, her 'reality' must be brought into sharp relief at trial. It must be explored and explained for and to those who will be making judgments.[114]

4.110. An entirely objective test is also harsher than the current test, which embeds consideration of the defendant's apprehension of harm. Mistake of fact in section 24 of the Criminal Code also recognises the relevance of a defendant's honest and genuine belief, which is accepted to be determined with reference to 'the circumstances in which, and the information on which, it is formed'.[115]

4.111. Juries are well equipped to apply a mixed subjective-objective test. Empathy is an innately human concept. The Tasmanian Law Reform Institute has recognised that 'retention of a subjective test demonstrates confidence in the ability of the jury to scrutinise an offender's

claim that they were acting in self-defence'.[116] They recommended that their test should not be amended to add reasonableness to the necessity element.[117] In noting the benefit of the mixed subjective-objective approach to the reasonableness element, the Queensland Council of Social Service submitted that it:

> [S]upports requiring a jury to consider the 'circumstances as the person perceives them,' to ensure the defendant's personal circumstances are appropriately considered. Without this direction, the current weight afforded to proportionality potentially criminalises women who may be defending themselves against coercive control, particularly if a weapon is used.[118]

4.112. The subjective test of necessity we recommend requires the defendant to hold an honest and genuine belief in the need to use force for a defensive purpose. If it would be inconceivable on the evidence that the defendant could have held that belief, then it would be open for the jury to question the credibility of the defendant's claim and reject their claim to hold that belief. On the other hand, if the defendant did hold an honest and genuine but unreasonable belief, for example, one grounded in prejudice, the response would have to be equally limited.[119]

4.113. Below, we briefly outline three cases from other jurisdictions where the applicable test for self-defence has the same elements we recommend and judges have denied the defence due to a lack of an evidentiary basis.[120] These cases demonstrate that the core elements of the defence work appropriately as a safeguard against unreasonable beliefs.

R v Burgess (NSW)	Fernando v Firth (NT)	R v Burton & Katelaris (NSW)
Burgess and others were convicted of maliciously damaging property for painting the words 'No War' on one of the sails of the Sydney Opera House. They said they possessed the belief that the Australian Government would go to war with other countries, with the consequence that people in Iraq would be killed. They appealed their conviction, including on grounds that self-defence should have been left by the trial judge, who refused to do so. They argued their actions were in defence of others (innocent people in Iraq). The appeal was dismissed. The Court found there was no evidentiary basis for the action being a reasonable response and there being an argument that they were not acting for a defensive purpose.	Fernando was charged with contravening a domestic violence order and aggravated unlawful assault. Fernando took the victim's ID from her bag. When she tried to retrieve it from him, he grabbed her wrist and twisted her arm, leaving deep scratches. Although he accepted that he did the wrong thing by taking her ID, Fernando argued that he acted in self-defence, only grabbing her to stop her from attacking him. He was convicted after trial on both counts and appealed the decision. His appeal was dismissed. The Court found that the necessity element was not fulfilled as he was resisting her attempt to recover her property that he had unlawfully taken. The Court also found that it was not a reasonable response as he could have returned her ID.	Burton and Katelaris were convicted of publishing or broadcasting the name of a child in relation to whom child protection proceedings had been brought. They made Facebook posts referring to the child by name and the child protection proceedings and uploaded a video showing the child's removal. Burton argued that he believed the posts were necessary to defend the child and to stop the unlawful deprivation of his liberty. However, the appeal was dismissed as the court found there was no evidentiary basis for the elements of self-defence, with 'no tenable connection' between the act and any need to 'defend' the child in the evidence.

4.114. Concerns that subjectivity in the defence may legitimise using force in response to an unwanted 'homosexual advance' are understandable given the history of the provocation defence in Queensland.[121] However, this has not been a reported unintended consequence in other jurisdictions that have adopted the recommended model.[122] We do not identify it as a concern with our recommended approach.

4.115. Self-defence is not available where a person acts on a delusional belief about the need to act defensively, even where the belief is genuinely held. The decision in Walsh v The Queen,[123] discussed below, outlines the interaction between self-defence, the presumption of sanity and the defence of insanity.[124]

Self-defence is not available where a person acts on a delusional belief — Walsh v The Queen (Tas)

Walsh was convicted of murder after shooting an acquaintance at close range. At the time of the incident, he was hallucinating due to his PTSD from being a solider in the Korean war.

In allowing his appeal and setting aside his conviction, the court found that if Walsh had delusional beliefs which meant he was incapable of understanding that he had done the wrong thing, the presumption of sanity is reversed, the insanity defence should apply and he should be acquitted. If a jury rejects the insanity defence, the presumption of sanity remains but the defendant cannot rely on delusional beliefs in self-defence. They could still have regard to the situational factors (size disparity, deceased's military training) and the defendant's susceptibility to his surroundings and fear of danger. Crawford J observed that this did not mean that evidence of mental illness and its impacts can never be regarded when considering self-defence where insanity had been rejected. However, the operation of the presumption of sanity and the insanity defence protects against relying on delusional beliefs in self-defence.

4.116. Introducing reasonableness in the necessity element would reduce relevance of the reasonableness element. It would create a legal inconsistency where either:

- the response was necessarily reasonable because the defendant had reasonable grounds for believing what they did was necessary (making the second element redundant), or
- an overarching 'more objective' notion of what is reasonable would be required by the reasonableness element, in addition to the necessity element. This would mean that a person's claim of self-defence could be defeated even if a person had reasonable grounds for acting in self-defence.

4.117. The reformed Western Australian self-defence provision, which requires all beliefs referenced in the provision to be held on reasonable grounds, has been critiqued on this basis.[125]

4.118. Concern about subjectivity in the reasonableness element have been based on the view that this approach confuses the traditional onus of proof. A similar argument was run in the Victorian Court of Appeal in Babic v R regarding the murder self-defence provisions in Victoria at the time. Ashley JA held:

> I do not accept that the sections should be read in such a way. So to construe them would involve radical changes in the criminal law to the disadvantage of accused persons; disadvantages, moreover, in the case of only one defence, and that only with respect to very few offences.[126]

4.119. The Queensland Law Society suggested in their submission that a legislative provision or note specifying the onus of proof in self-defence cases could be included for clarity.[127] NSW, South Australia and Victoria have provisions to this effect.[128]

4.120. Our reforms would maintain the traditional onus of proof. We do not recommend inclusion of a legislative provision or note as this would be inconsistent with the approach in other defences in the Criminal Code, including defences that include the subjective belief of the defendant as an element.[129] In practice, juries are directed about the onus of proof. All Benchbook directions provide appropriate guidance in this regard.

Determining reasonableness

4.121. In our Consultation Paper, we considered whether a non-exhaustive list of factors was required to assist in determining reasonableness. Many stakeholders were generally supportive on the basis that it may assist proper consideration of relevant surrounding circumstances, provide clarity and support access to justice for DFV victim-survivors.[130]

4.122. We have carefully considered this further and we do not recommend a legislative list of factors. No Australian jurisdiction takes this approach. There is a risk that it could lead to the reasonableness test being read down or narrowly interpreted or that it could 'exacerbate a jury's uncertainties than alleviate their concerns'.[131] There are also challenges determining the appropriate factors to include.[132]

4.123. Our community attitudes research (Research Report 1), assures us that juries, comprised of ordinary community members, are best placed to apply this test.[133] Including a reasonableness test in its pure form would ensure that it continues to reflect evolving community attitudes and standards, as assessed on the facts of each case by the jury. Prosecution guidelines and Benchbook directions would also support its application.[134]

Responding to lawful acts

4.124. The Law Reform Commission of Western Australia has explained '[t]he concept of self-defence generally implies that defensive force is used against an unlawful assault or attack'.[135] A person who is responding to force that they know is lawful is not acting in self-defence but is 'an aggressor in pursuit of his original design'.[136]

4.125. In our Consultation Paper, we considered whether the lawful acts limitation should be framed subjectively based on whether the defendant actually knew the act they were responding to was lawful. This is used in the Commonwealth, the ACT, Northern Territory and Victoria.[137] Although our comparative research has not revealed any unintended consequences of this construction,[138] we consider that an entirely subjective question as to knowledge is an insufficient limitation.

4.126. There are also factors that do not support inclusion of any lawful acts provision:

- the provision may be unnecessary, as responding to a lawful act is rarely going to be reasonable[139]
- the common law does not recognise this limitation[140]
- NSW[141] and Tasmania do not have this limitation.

4.127. We have carefully considered these factors and ultimately recommend the inclusion of an entirely objective lawful acts limitation because:

- the Criminal Code should explicitly reflect that responding with force to a lawful act, where there is no reasonable basis to think it is not lawful, is not self-defence

- there are a range of stakeholders, like police and child safety officers acting lawfully and DFV victim-survivors acting defensively, who should be explicitly protected
- it maintains the traditional onus of proof.

Intoxication

4.128. In our Consultation Paper, we considered whether the new self-defence provision should provide that self-defence is not available where the person's belief that their actions were necessary and reasonable was substantially affected by self-induced intoxication. Overall, stakeholders were concerned about the proposal limiting accessibility of the defence, providing feedback that the proposal over-simplified the relationship between intoxication and violence, was overly punitive and would disproportionately impact vulnerable groups.[142]

4.129. Intoxication by alcohol and other drugs is often associated with violence.[143] Roughly half of all homicides in Australia between 2000 and 2006 were classified as alcohol-related, 60% of which involved alcohol consumption by both the victim and offender.[144] However, as highlighted by the Queensland Network of Alcohol and Other Drug Agencies in their submission, 'there is no direct causal relationship between alcohol and other drug ('AOD') use and violence perpetration'.[145] The relationship between intoxication and violence is a complex interaction of personal, environmental and cultural factors.[146] Oversimplification of the relationship fuels stigma and discrimination towards people who use drugs and alcohol without addressing these interconnected and complex factors.[147]

4.130. In 2015, the Tasmanian Law Reform Institute surveyed legal professionals, analysed media reports and analysed a selection of sentencing and appeal cases to determine whether intoxicated defendants were relying on a mistaken belief arising from their intoxication to raise self-defence successfully. They did not find evidence that this was occurring, instead finding that intoxicated defendants were more likely to be convicted.[148] They recommended clarifying the role of intoxication in assessing self-defence through an explicit provision in their Criminal Code.[149]

4.131. We reviewed a selection of Queensland homicide trial transcripts, from which we located 18 trials where self-defence and intoxication were raised. Our review of these 18 trial transcripts found that:

- in all of the trials, the trial judge directed that the defendant's intentional intoxication did not entitle them to an acquittal, but may be relevant to assessing their memory and whether they formed the requisite intent to kill or cause GBH
- in many of the trials, the relevance of the defendant's intoxication to the subjective or objective elements of self-defence was not raised
- in eight of the trials, juries returned a guilty verdict for murder. This may be because asking juries to accept that the defendant was extremely intoxicated, and also that they acted reasonably in response to a threat, is counter-intuitive
- in five of the trials, juries returned a guilty verdict for manslaughter, meaning the jury did not accept self-defence.[150]

4.132. We do not recommend excluding consideration of intoxication in assessing self-defence or excluding the availability of the defence in cases where intoxication has substantially affected a person's belief in the necessity to use force. This would have significant implications for access to justice, not only for DFV victim-survivors but also for people who use alcohol and other drugs. We consider that the reasonableness element — assessed objectively from the perspective of a sober person — provides a sufficient safeguard.

4.133. **Recommendation 3** provides clarity about the relevance of intoxication in assessing self-defence.[151] It reflects a policy position that a person's voluntary decision to become intoxicated should not affect the assessment of whether their response is reasonable. Where a defendant is involuntarily intoxicated (for example, where they have been drugged or unknowingly consumed a particular substance), it should be taken into account when considering the reasonableness of their response in self-defence.

References

1 Thomas Crofts and Danielle Tyson, 'Homicide Law Reform in Australia: Improving Access to Defences for Women Who Kill Their Abusers' (2013) 39(3) Monash University Law Review 864, 877–8.

2 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 106–7.

3 Chapter 5, 'Self-defence and defence of another in murder cases' and 'A proportionate approach'.

4 Chapter 5, 'Human rights considerations'.

5 R v Rowan (A Pseudonym) (2024) 278 CLR 470, 498–9 [79]; R v Prow [1990] 1 Qd R 64, 68.

6 Our reforms depart from the High Court's approach in Zecevic v Director Of Public Prosecutions (Vic) (1987) 162 CLR 645.

7 R v Katarzynski [2002] NSWSC 613, [22]–[23]; R v Burgess (2005) 152 Crim R 100, 105 [11]–[12].

8 Mistake of fact may interact with sections 271 and 272 of the Criminal Code where the defendant held an honest and reasonable, but mistaken, belief that they were being assaulted. Otherwise, section 24 has limited operation alongside self-defence since the phrases 'reasonable apprehension' and belief on 'reasonable grounds' cover the same ground as s 24: R v Allwood [1997] QCA 257.

9 R v Gould & Barnes [1960] 283, 297–8.

10 Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 160–1.

11 Criminal Code (Cth) s 10.4(2); Criminal Code 2002 (ACT) s 42(2)(b); Crimes Act 1900 (NSW) s 418(2); Criminal Code (NT) s 43BD(2)(b). Note that the Commonwealth and NSW legislation uses 'circumstances as he or she perceives them' rather than 'circumstances as the person perceives them'.

12 Criminal Code (Tas) s 46; Criminal Code (WA) s 248; Crimes Act 1961 (NZ) s 48. Note that Tasmania uses 'as he believes them to be' and New Zealand 'as he or she believes' rather than 'as the person believes them to be'.

13 Criminal Law Consolidation Act 1935 (SA) s 15(1)(b).

14 Tasmania Law Reform Institute, Review of the Law Relating to Self-Defence (Final Report No 20, October 2015) 37.

15 Criminal Code (Qld) ss 267, 274–279.

16 Model Criminal Code Officers Committee, Model Criminal Code: Chapters 1 and 2 — General Principles of Criminal Responsibility (Report, December 1992) 71.

17 R v Katarzynski [2002] NSWSC 613, [22]–[23]; R v Burgess (2005) 152 Crim R 100, 105 [11]–[12].

18 Zecevic v Director Of Public Prosecutions (Vic) (1987) 162 CLR 645, 663. See also Criminal Code Review Committee, Final Report of the Criminal Code Committee to the Attorney-General (Final Report, June 1992) 188; RS O'Regan, 'Self-Defence in the Griffith Code' (1979) 3 Criminal Law Journal 336, 353.

19 See further discussion about ss 271(1), 272(1) in Queensland Courts, 94A. Self-Defence Against Unprovoked Assault: Section 271(1) (Supreme and District Courts Criminal Directions Benchbook, May 2022) 1.

20 Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cl 11.

21 Zecevic v Director Of Public Prosecutions (Vic) (1987) 162 CLR 645, 664.

22 Edmunds v The King [2025] VSCA 31, [212].

23 Burton v The King; Katelaris v The King [2025] NSWCCA 89, [91]. We note NSW does not have a lawful acts threshold.

24 See 'The current law is too complex' below for a discussion of the difference between lawfulness and criminal responsibility.

25 Criminal Code (Cth) s 8.4; Criminal Code 2002 (ACT) s 33; Criminal Code (NT) s 43AU; Crimes Act 1958 (Vic) s 322T. In Tasmania, NSW and South Australia key authorities can be found in common law: McCullogh v The Queen [1982] Tas R 43; R v Katarzynski [2002] NSWSC 613; R v Conlon (1993) 69 A Crim R 92. Western Australia and Queensland share a common approach to mistake of fact: LexisNexis, Criminal Law Western Australia (at 20 October 2025) [s.24].

26 Criminal Code (Qld) s 28, compare s 348A.

27 Brendan Butler and Saul Holt, Indictable Offences Queensland (Thomson Reuters, 2025) [CCA.271.620]. This point is made by analogy with reference to the following cases regarding mistake of fact: R v O'Loughlin [2011] QCA 123, [33]; R v Rad [2018] QCA 103, [40]. See also discussion in Tasmania Law Reform Institute, Intoxication and Criminal Responsibility (Final Report No 7, August 2006) 38.

28 RS O'Regan, 'Intoxication and Criminal Responsibility Under the Queensland Code' (1977) 10(1) University of Queensland Law Journal 70, 72–3.

29 Chapter 15, 'Reviewing diminished responsibility and intoxication'.

30 Chapter 3, 'The DFV context'.

31 Domestic and Family Violence Death Review and Advisory Board, Annual Report 2020–21 (Report, 2021) 75–6.

32 See for example, Heather Douglas, Stella Tarrant, and Julia Tolmie, 'Social Entrapment Evidence: Understanding Its Role in Self-Defence Cases Involving Intimate Partner Violence' (2021) 44(1) University of New South Wales Law Journal 326, 332–42.

33 Compare the recommendation to add a clarifying provision in the Evidence Act 1977 (Qld): Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 168–9.

34 Compare with stakeholder concerns that a provision for DFV victim-survivors excludes other categories of vulnerable people, like sex workers and victim-survivors of sexual abuse: QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 14–15.

35 Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cl 11.

36 Evidence Act 1977 (Qld) ss 103U, 103ZA.

37 Samuel Griffith, Draft Criminal Code 1897 cls 278–80; RS O'Regan, 'Self-Defence in the Griffith Code' (1979) 3 Criminal Law Journal 336, 337.

38 R v Kerr [1976] 1 NZLR 335, 343.

39 Zecevic v Director Of Public Prosecutions (Vic) (1987) 162 CLR 645.

40 Criminal Code Review Committee, Final Report of the Criminal Code Committee to the Attorney-General (Final Report, June 1992) 188; Model Criminal Code Officers Committee, Model Criminal Code: Chapters 1 and 2 — General Principles of Criminal Responsibility (Report, December 1992) 71; Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 162–4.

41 R v Dayney (No 2) (2023) 13 QR 650, 680 [76]; Gray v Smith [1997] 1 Qd R 485, 489–90.

42 RS O'Regan, 'Self-Defence in the Griffith Code' (1979) 3 Criminal Law Journal 336, 353.

43 See also QLRC, Review of Particular Criminal Defences: Self-Defence Information Sheet (Information Sheet, November 2023) 3.

44 See discussion in R v Rowan (A Pseudonym) (2024) 278 CLR 470, 498–9 [79]; R v Prow [1990] 1 Qd R 64, 68; QLRC, Review of Particular Criminal Defences: Equality and Integrity — Reforming Criminal Defences in Queensland (Consultation Paper, February 2025) 19.

45 RS O'Regan, 'Self-Defence in the Griffith Code' (1979) 3 Criminal Law Journal 336, 349–50.

46 R v Markovski (2023) 14 QR 20, 33 [36].

47 R v Lefoe [2024] QCA 240.

48 Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 163.

49 R v Muratovic [1967] Qd R 15, 28.

50 R v Wilmot [2006] QCA 91.

51 This gap in the protection was questioned in Gray v Smith [1997] 1 Qd R 485, 489–90.

52 R v Beetham [2014] QCA 131.

53 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 11.

54 Red Rose Foundation, Submission 33; Australian National University Law Reform and Social Justice Research Hub, Submission 16 (respectively).

55 Queensland Law Society, Submission 30; Legal Aid Queensland, Submission 31.

56 Queensland Law Society, Submission 30; Legal Aid Queensland, Submission 31.

[57] QLRC, Legal Profession Interviews (Research Project 5, 2025); Supreme Court Judge, Interview 1; Supreme Court Judge, Interview 3; Supreme Court Judge, Interview 4; Supreme Court Judge, Interview 6; Supreme Court Judge, Interview 7; District Court Judge, Interview 2; District Court Judge, Interview 3; District Court Judge, Interview 4; District Court Judge, Interview 5; District Court Judge, Interview 6; Magistrate, Interview 2; Magistrate, Interview 3; Crown Prosecutor, Interview 1; Crown Prosecutor, Interview 2; Crown Prosecutor, Interview 4; Crown Prosecutor, Interview 5; Crown Prosecutor, Interview 9; Defence Counsel, Interview 1; Defence Counsel, Interview 5; Defence Counsel, Interview 8; Defence Counsel, Interview 9.

[58] QLRC, Legal Profession Interviews (Research Project 5, 2025); District Court Judge, Interview 3.

[59] QLRC, Legal Profession Interviews (Research Project 5, 2025); Crown Prosecutor, Interview 9.

[60] Complexity due to the multiple limbs of self-defence: QLRC, Legal Profession Interviews (Research Project 5, 2025); Supreme Court Judge, Interview 1; District Court Judge, Interview 3; District Court Judge, Interview 5; Crown Prosecutor, Interview 3; Crown Prosecutor, Interview 4; Crown Prosecutor, Interview 6; Crown Prosecutor, Interview 9. Complexity due to multiple defences being led: QLRC, Legal Profession Interviews (Research Project 5, 2025); Supreme Court Judge 7; District Court Judge, Interview 2; Crown Prosecutor, Interview 3; Crown Prosecutor, Interview 4.

[61] QLRC, Legal Profession Interviews (Research Project 5, 2025); Supreme Court Judge, Interview 6; District Court Judge, Interview 3; Crown Prosecutor, Interviews 3; Crown Prosecutor, Interviews 4.

[62] QLRC, Legal Profession Interviews (Research Project 5, 2025); Supreme Court Judge, Interview 6.

[63] QLRC, Legal Profession Interviews (Research Project 5, 2025); District Court Judge, Interview 3.

[64] For example, R v Micallef; R v Lourens [2025] QCA 21; R v Lefoe [2024] QCA 240; R v Speakman [2024] QCA 164; R v Kelleher [2024] QCA 99; Dayney v The King (2024) 418 ALR 512.

[65] R v Dayney (No 1) (2020) 10 QR 638; R v Dayney (No 2) (2023) 13 QR 650; Dayney v The King (2024) 418 ALR 512.

[66] QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 106–107.

[67] Criminal Code Review Committee, Final Report of the Criminal Code Committee to the Attorney-General (Final Report, June 1992) 52, 188. This recommendation was not implemented. For discussion on the history of this recommendation: Sally Kift, 'Defending the Indefensible: The Indefatigable Queensland Criminal Code Provisions on Self-Defence' (2001) 25 Criminal Law Journal 28, 28–30.

[68] Criminal Code Amendment Bill (No 2) 1999 (Qld); Queensland, Parliamentary Debates, Legislative Assembly, 27 October 1999, 4366.

[69] Taskforce on Women and the Criminal Code, Report of the Taskforce on Women and the Criminal Code (Report, February 2000) 147–64.

[70] Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 162–72.

[71] QLRC, Review of Particular Criminal Defences: Self-Defence Information Sheet (Information Sheet, November 2023) 7–10.

[72] Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cl 11.

[73] QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 11.

[74] QLRC, Legal Profession Interviews (Research Project 5, 2025); Supreme Court Judge, Interview 6.

[75] QLRC, Review of Particular Criminal Defences: Equality and Integrity — Reforming Criminal Defences in Queensland (Consultation Paper, February 2025) 23. The Model Criminal Code, which began the 'two element' approach in Australia, is consistent with the Tasmanian 'single statement' approach that preceded it: Model Criminal Code Officers Committee, Model Criminal Code: Chapters 1 and 2 — General Principles of Criminal Responsibility (Report, December 1992) 71.

[76] Criminal Code (Cth) s 10.4; Criminal Code 2002 (ACT) s 42; Crimes Act 1900 (NSW) s 418; Criminal Code (NT) s 43BD; Criminal Code (Tas) s 46; Crimes Act 1958 (Vic) s 322K; Crimes Act 1961 (NZ) s 48. See discussion in QLRC, Review of Particular Criminal Defences: Equality and Integrity — Reforming Criminal Defences in Queensland (Consultation Paper, February 2025) 22–3.

[77] QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 12.

[78] Colosimo & Ors v Director of Public Prosecutions [2006] NSWCA 293; Sivaraja v The Queen; Sivathas v The Queen [2017] NSWCCA 236.

79 Criminal Code (Cth) ss 10.4(2)(c)–(e); Crimes Act 1900 (NSW) ss 418(2)(c)–(d); Crimes Act 1958 (Vic) s 322K note 2.

80 R v Cuskelly [2009] QCA 375, [30]. The defence of property provisions are Criminal Code (Qld) ss 267, 274–279.

81 Joseph Lelliott and Rebecca Wallis, Submission 22.

82 See, for example Michael Hurtado, Submission 40. See also QLRC, Legal Profession Interviews (Research Project 5, 2025); Crown Prosecutor, Interview 3; Occupants (Home Invasion) Protection Bill 2002 (Qld); Criminal Code (Defence of Dwellings and Other Premises—Castle Law) Amendment Bill 2024 (Qld).

83 QLRC, Review of Particular Criminal Defences: Equality and Integrity — Reforming Criminal Defences in Queensland (Consultation Paper, February 2025) 27.

84 Criminal Code Amendment Bill (No 2) 1999 (Qld); Queensland, Parliamentary Debates, 27 October 1999, 4366 (Peter Wellington), Legislative Assembly; Taskforce on Women and the Criminal Code, Report of the Taskforce on Women and the Criminal Code (Report, February 2000) 148; Geraldine Mackenzie and Eric Colvin, Homicide in Abusive Relationships: A Report on Defences (Report, Bond University, 6 July 2009); Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 261.

85 Chapter 3, 'DFV shapes behaviour in specific ways' and 'Community and professional understandings of DFV'; QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 27–8.

86 Stella Tarrant, George Giudice and Julia Tolmie, 'Transforming Legal Understandings of Intimate Partner Violence' (Research Report No 03/2019, Australia's National Research Organisation for Women's Safety, June 2019) 15–17; Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 257. See also QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025); Vincent Farrugia, 'Family Violence and the Crimes Amendment (Abolition of Defensive Homicide) Act 2014 (Vic): Justice in the Accessibility of Self-Defence' (PhD Thesis, Victoria University, 2020) 53–5.

87 Chapter 3, 'What we know about DFV'.

88 Taskforce on Women and the Criminal Code, Report of the Taskforce on Women and the Criminal Code (Report, February 2000) 149.

89 Stella Tarrant, 'Something Is Pushing Them to the Side of Their Own Lives: A Feminist Critique of Law and Laws' (1990) 20 University of Western Australia Law Review 573, 597–8. See also Chapter 3, 'DFV has a significant lethality risk'.

90 Elizabeth Sheehy, Julie Stubbs, and Julia Tolmie, 'When Self-Defence Fails' in Arie Freiberg AM and Kate Fitz-Gibbon (eds), Homicide Law Reform in Victoria: Retrospect and Prospects (Federation Press, 2015) 110–11.

91 Sisters Inside, Submission 45 (footnotes omitted). See also Heather Douglas, 'A Consideration of the Merits of Specialised Homicide Offences and Defences for Battered Women' (2012) 45(3) Australian & New Zealand Journal of Criminology 367, 373; Thomas Crofts and Danielle Tyson, 'Homicide Law Reform in Australia: Improving Access to Defences for Women Who Kill Their Abusers' (2013) 39(3) Monash University Law Review 864, 879–80.

92 Silva v The Queen [2016] NSWCCA 284.

93 South Australian Law Reform Institute, The Provoking Operation of Provocation: Stage 1 (Report, April 2017) 84. Compare other law reform bodies who preferred a clarifying provision of general application: Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 168–9; Tasmania Law Reform Institute, Review of the Law Relating to Self-Defence (Final Report No 20, October 2015) 66–7; Victorian Law Reform Commission, Defences to Homicide (Final Report, October 2004) 318. Note that the wording of the clarifying provision varied across all law reform bodies.

94 Crimes Act 1958 (Vic) s 322M.

95 Regarding the impact of clarifying provisions, see: Vincent Farrugia, 'Family Violence and the Crimes Amendment (Abolition of Defensive Homicide) Act 2014 (Vic): Justice in the Accessibility of Self-Defence' (PhD Thesis, Victoria University, 2020) 375.

96 See Taskforce on Women and the Criminal Code, Report of the Taskforce on Women and the Criminal Code (Report, February 2000) 148–51.

97 Chapter 5, 'Self-defence and defence of another in murder cases' and 'A proportionate approach'.

98 See also Criminal Code (Qld) s 245(2); Queensland Courts, 106. Assault: S 335 (Supreme and District Courts Criminal Directions Benchbook, October 2024) 1–2.

99 Soraya Ryan et al, Carter's Criminal Law of Queensland (LexisNexis, 26th ed, 2024) vol 1, 374 [s 245.15].

100 Michelle Edgely and Elena Marchetti, 'Women Who Kill Their Abusers: How Queensland's New Abusive Domestic Relationships Defence Continues To Ignore Reality' (2011) 13(2) Flinders Law Journal 125, 136.

101 Geraldine Mackenzie and Eric Colvin, Homicide in Abusive Relationships: A Report on Defences (Report, Bond University, 6 July 2009) 26.

102 R v Secretary (1996) 5 NTLR 96; Transcript of Proceedings, R v Falls, Coupe, Cummin-Creed & Hoare (Supreme Court of Queensland at Brisbane, Applegarth J, 2 June 2010) 13–90 – 13–91; Heather Douglas, 'A Consideration of the Merits of Specialised Homicide Offences and Defences for Battered Women' (2012) 45(3) Australian & New Zealand Journal of Criminology 367, 377. See also Chapter 3, "The 'ideal' victim".

103 Taskforce on Women and the Criminal Code, Report of the Taskforce on Women and the Criminal Code (Report, February 2000) 149 (emphasis added).

104 Thomas Crofts and Danielle Tyson, 'Homicide Law Reform in Australia: Improving Access to Defences for Women Who Kill Their Abusers' (2013) 39(3) Monash University Law Review 864, 880.

105 Transcript of Proceedings, R v Sweeney (Supreme Court of Queensland at Mount Isa, Henry J, 3 March 2015).

106 QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 32–3.

107 This is in s 272(2) and implied in s 271(2): RS O'Regan, 'Self-Defence in the Griffith Code' (1979) 3 Criminal Law Journal 336, 343.

108 See Elizabeth Sheehy, Julie Stubbs and Julia Tolmie, 'Securing Fair Outcomes for Battered Women Charged with Homicide: Analysing Defence Lawyering in R v Falls' (2014) 38 Melbourne University Law Review 666, 697–9; Anthony Hopkins, Anna Carline and Patricia Easteal, 'Equal Consideration and Informed Imagining: Recognising and Responding to the Lived Experiences of Abused Women Who Kill' (2018) 41(3) Melbourne University Law Review 1201, 1222–3.

109 Respect Inc, Submission 14.

110 Stella Tarrant, 'Self Defence In The Western Australian Criminal Code: Two Proposals for Reform' (Research Paper No 2015–6, University of Western Australia, 2015) 9–11.

111 New Zealand Law Commission, Understanding Family Violence: Reforming the Criminal Law Relating to Homicide (Report No 139, May 2016) 82–3; Sophie Kate Howes, Katy Swaine Williams and Harriet Wistrich, 'Women Who Kill: Why Self-Defence Rarely Works For Women Who Kill Their Abuser' (2021) (11) Criminal Law Review 945, 952–3.

112 See discussion in QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 11.

113 Queensland Law Society, Submission 30. See also Legal Aid Queensland, Submission 31; Bar Association of Queensland, Submission 42.

114 Anthony Hopkins and Patricia Easteal, 'Walking in Her Shoes: Battered Women Who Kill in Victoria, Western Australia and Queensland' (2010) 35(3) Alternative Law Journal 132, 132.

115 R v Mrzljak [2005] 1 Qd R 308, 330 [90].

116 Tasmania Law Reform Institute, Review of the Law Relating to Self-Defence (Final Report No 20, October 2015) 33.

117 Tasmania Law Reform Institute, Review of the Law Relating to Self-Defence (Final Report No 20, October 2015) 37.

118 Queensland Council of Social Services, Submission 28.

119 Tasmania Law Reform Institute, Review of the Law Relating to Self-Defence (Final Report No 20, October 2015) 33–4.

120 R v Burgess (2005) 152 A Crim R 100; Fernando v Firth [2017] NTSC 67; Burton v The King; Katelaris v The King [2025] NSWCCA 89.

121 LGBTI Legal Service, Submission 15. See discussion in Chapter 7, 'Provocation is not effective in other contexts'.

122 Tasmania Law Reform Institute, Review of the Law Relating to Self-Defence (Final Report No 20, October 2015) 30–7.

123 Walsh v The Queen (1993) 22 Tas R 368.

124 The Queensland Criminal Code also has provisions on the presumption of sanity and defence of insanity: Criminal Code (Qld) ss 26–27.

125 Stella Tarrant, 'Self Defence In The Western Australian Criminal Code: Two Proposals for Reform' (Research Paper No 2015–6, University of Western Australia, 2015) 11–13.

126 Babic v The Queen (2010) 28 VR 297, 302 [20].

127 Queensland Law Society, Submission 30.

128 Crimes Act 1900 (NSW) s 419; Criminal Law Consolidation Act 1935 (SA) s 15(5); Crimes Act 1958 (Vic) s 322I(2).

129 See, for example, Criminal Code (Qld) s 24.

130 See discussion in QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 13.

131 R v Dookheea (2017) 262 CLR 402, 416 [23].

132 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 13–14.

133 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 106–7.

134 Legal Aid Queensland, Submission 31.

135 Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 171.

136 Zecevic v Director Of Public Prosecutions (Vic) (1987) 162 CLR 645, 664. See also Edmunds v The King [2025] VSCA 31, [212]–[214].

137 Model Criminal Code s 2.3.17(4); Criminal Code (Cth) s 10.4(4); Criminal Code 2002 (ACT) ss 42(3)–(4); Criminal Code (NT) ss 43BD(3)–(4); Crimes Act 1958 (Vic) s 322L.

138 There is limited case law considering how the provision operates. An instructive case regarding the interpretation of the two elements contained in the provision is Edmunds v The King [2025] VSCA 31. We have identified only one published case where the threshold precluded self-defence from being left to the jury: Director of Public Prosecutions v McDowall (Ruling No 1) [2019] VSC 341.

139 Victorian Law Reform Commission, Defences to Homicide (Final Report, October 2004) 89. See for example Fernando v Firth [2017] NTSC 67, [64]–[67], summarised above, where the Court reasoned along the lines of the core elements rather than their lawful conduct provision, which would have resulted in the same outcome.

140 See discussion Edmunds v The King [2025] VSCA 31, [175]–[176].

141 Crimes Act 1900 (NSW) s 422. This section explicitly states self-defence is not excluded merely because the conduct to which the person responds was lawful or the complainant/deceased would not have been criminally responsible for it.

142 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 15. See also QLRC, Legal Profession Interviews (Research Project 5, 2025); Magistrate, Interview 2; Crown Prosecutor, Interview 1; Defence Counsel, Interview 2; Defence Counsel, Interview 3; Defence Counsel, Interview 9.

143 See for example Jack Dearden and Jason Payne, 'Alcohol and Homicide in Australia' (Trends and Issues in Crime and Criminal Justice No 372, July 2009) 5–6; Domestic and Family Violence Death Review and Advisory Board, Annual Report 2020–21 (Report, 2021) 11; Patrick Noonan, Annabel Taylor and Jackie Burke, Links Between Alcohol Consumption and Domestic and Sexual Violence Against Women: Key Findings and Future Directions (Research to Policy and Practice No 8, Australia's National Research Organisation for Women's Safety, November 2017) 3–5.

144 Jack Dearden and Jason Payne, 'Alcohol and Homicide in Australia' (Trends and Issues in Crime and Criminal Justice No 372, July 2009) 5.

145 Queensland Network of Alcohol and Other Drug Agencies, Submission 11.

146 Anthony Morgan and Amanda McAtamney, 'Key Issues in Alcohol-Related Violence' (Summary Paper No 4, Australian Institute of Criminology, December 2009) 4; Jack Dearden and Jason Payne, 'Alcohol and Homicide in Australia' (Trends and Issues in Crime and Criminal Justice No 372, July 2009) 1–2; Julia Quilter et al, The Significance of 'Intoxication' in Australian Criminal Law (Trends and Issues in Crime and Criminal Justice Report No 546, May 2018) 2.

147 Queensland Network of Alcohol and Other Drug Agencies, Submission 11.

148 Tasmania Law Reform Institute, Review of the Law Relating to Self-Defence (Final Report No 20, October 2015) 21–22, 24, 26–7.

149 Tasmania Law Reform Institute, Review of the Law Relating to Self-Defence (Final Report No 20, October 2015) 44–6.

150 QLRC, Homicide Case Analysis (Research Project 6, 2025). We analysed 78 homicide trial transcripts using NVivo 14 to identify cases where the defendant's intoxication and self-defence were raised on the evidence. We identified 18 trials where these issues were raised. We took a qualitative approach to our analysis by reviewing and comparing the parts of the transcripts relevant to the judges' summing up and to parties' discussions about the law of self-defence and intoxication with the judge during applications for redirections or submissions about how the judge should respond to jury notes. Our analysis focused on how intoxication was raised, the arguments made by the Crown and defence, how the trial judge directed the jury to consider the issues, and the jury's verdict.

151 Compare Transcript of Proceedings, R v Ansford (Supreme Court of Queensland at Mackay, North J, 4 March 2019) 5–12–5–23, during discussion in the absence of the jury about jury directions.

CHAPTER 5

Lethal defensive force

Contents

Recommendations

R5 Self-defence should not be available as a defence to murder unless a person believes that the use of lethal force is necessary to prevent death or 'serious harm' to themselves or another person. 'Serious harm' should encompass harm, including its cumulative effect, that does or is likely to:

(a) endanger a person's life, or

(b) be significant and longstanding, including psychological harm or harm arising from a cause such as sexual assault.

R6 The partial defence to murder of killing for preservation in an abusive domestic relationship (section 304B) should be integrated within self-defence as a partial defence which will apply if the defendant believes their actions are necessary in self-defence but their actions are not reasonable.

(QLRC Draft Bill cl 11, 15)

Introduction

5.1. This chapter continues our consideration of self-defence and defensive conduct which began in Chapter 4, focusing on lethal defensive force. We discuss our reforms to:

- self-defence in cases of murder
- the partial defence of killing for preservation in an abusive domestic relationship (section 304B).

5.2. The existing self-defence provisions in relation to the use of lethal defensive force are very complex. We include a diagram demonstrating this complexity in Chapter 4.[1] The existing provisions limit access to self-defence where the force used in self-defence is intended or likely to cause death or GBH. We recommend retaining this limitation, in modified form, as it reflects the sanctity of life. The taking of a life, even in self-defence, is only permissible in appropriately limited circumstances. Our recommended approach expands access to self-defence in this context to fear of death or serious harm. This reflects the evidence on the use of defensive force in DFV contexts and better aligns the law with current community attitudes.

5.3. Our reforms to self-defence should lead to more DFV victim-survivors who kill their abuser[2] in fear and desperation accessing self-defence rather than pleading guilty to manslaughter. Our reforms also retain the safety net of a partial defence for DFV victim-survivors that reduces criminal responsibility from murder to manslaughter where they believed lethal defensive was necessary in self-defence but where their actions were not a reasonable response. The availability of this partial defence reflects contemporary understanding of the nature and effects of DFV, particularly that it is a lethality indicator. DFV victim-survivors' fear of being killed is real[3] and reflected in the data.[4]

5.4. This chapter has three sections. The first section explains our recommended reforms to retain and amend the threshold for self-defence to murder and to reform the section 304B partial defence.

5.5. The second section outlines the key arguments supporting our recommendations. Our reforms aim to respect the sanctity of human life and recognise the circumstances where lethal defensive force is the only reasonable response to threatened harm, based on the defendant's belief about the threat. We also aim to ensure access to justice, including for DFV victim-survivors.

5.6. The chapter concludes by considering how our reforms protect and promote human rights, particularly the rights of people most at risk of experiencing disadvantage in the criminal justice system.

5.7. The consideration of criminal liability where a person acts in response to a threat continues in the following chapter, which explores our recommendations for a new defence of duress.

Our reforms explained

Self-defence and defence of another in murder cases

5.8. The limitation on the use of self-defence for lethal defensive force in the current law should be retained, modified and simplified. The existing threshold for self-defence and defence of another (collectively referred to as self-defence) for force intended or likely to cause death or GBH in sections 271(1) and 272 of the Criminal Code should be expanded to encompass the use of lethal force in circumstances where the defendant believed their conduct was necessary to protect themselves or another person from death or serious harm. For lethal force used by a person to free themselves or another from unlawful deprivation of liberty, self-defence would only be available where the defendant fears death or serious harm in the context of their confinement.

5.9. The lethal defensive force threshold should only apply where the defendant is charged with murder. If a person is charged with manslaughter or another homicide offence, the general test for self-defence would apply.

5.10. 'Serious harm' would be defined to include cumulative harm that:

- endangers, or is likely to endanger, a person's life, or
- is, or is likely to be, significant and longstanding.

5.11. The concept of 'serious harm' is already used in Queensland's criminal law. It is not defined in the Criminal Code but is used in parts of the Criminal Code, including in the current defence of duress.[5] Our recommended definition of 'serious harm' is drawn from the Commonwealth Criminal Code and is the definition used in the Police Powers and Responsibilities Act and the Crime and Corruption Act.[6]

5.12. We recommend the threshold of serious harm instead of GBH. GBH is limited to loss of an organ or body part, serious disfigurement or bodily injury likely to endanger life or cause permanent injury to health if untreated.[7]

5.13. Serious harm is capable of covering threats of serious sexual assault and serious psychological harm. The long-term psychological effects of both are significant, cumulative and potentially life-altering, and recognise that many female victims of sexual assault fear they will be killed. The proposed threshold also appropriately allows for evidence of the defendant's genuine fear of harm which may be caused by DFV victimisation to meet the threshold in appropriate cases.

5.14. This reflects our policy intent to capture the DFV and sexual assault context in which defensive killing can be necessary.

5.15. The threshold requirement of fear of significant and longstanding harm, together with the reasonableness element, would prevent self-defence justifying lethal force where a person kills another in response to a non-violent unwanted homosexual advance. The use of lethal defensive force must be necessary in self-defence, with necessity assessed by reference to the higher standard demanded by the lethal defensive force threshold, and further constrained by the requirement the response is reasonable in the circumstances as the person believes them to be. A lethal response to a non-violent homosexual advance would not be necessary or reasonable.

5.16. We recommend the use of serious harm instead of GBH as the threshold for the same reasons it was recommended by the Model Criminal Code Officers' Committee:

- 'Serious harm' does not include 'normal everyday reactions such as distress' which would 'greatly extend the reach of the criminal law. Not every "harm" should amount to criminal harm'.
- 'Serious harm' was modelled on the Griffith Code definition of GBH with improvements taken from the US Model Penal Code definition (adopted by the Irish Law Commission). For example, it replaced the term 'permanent' — which appears in the definition of GBH regarding the level of injury that may constitute GBH — because it was considered 'too strict a test'.
- 'Serious harm' explicitly identifies that the cumulative effect of non-serious harm can constitute serious harm. This was included for clarity and consistency with Victoria.[8]

5.17. 'Serious harm' can capture both sexual violence and serious psychological harm, thus meeting the policy objective.

Prioritising self-defence and the reformed partial defence

5.18. We recommend legislative reform to:

- repeal the partial defence of killing for preservation in an abusive domestic relationship in section 304B
- introduce a bespoke partial defence for abusive domestic relationships into the Criminal Code.

5.19. Our reforms retain the relationship and abuse limitation and the belief in necessity requirement used in section 304B, with minor amendments. They change the structure and elements of the partial defence.

5.20. The reformed partial defence would have the following elements:

- the deceased had committed acts of serious domestic violence against the defendant in the course of an abusive domestic relationship
- the defendant believed the use of the force was necessary to defend themselves or another person from death or serious harm
- the defendant's response was not a reasonable response in the circumstances as the person believed them to be.

5.21. As for the complete defence of self-defence, intoxication, however caused, would be relevant to a person's belief in the necessity to use lethal defensive force.

5.22. The reformed partial defence would be integrated into Chapter 26 of the Criminal Code with the self-defence provisions. This would support correct interpretation of the provisions as a package. The partial defence should be considered as an alternative to the complete defence of self-defence to murder where the defendant used lethal defensive force and their response to the threat was not reasonable.

5.23. The jury would be required to consider whether the person believed their actions were necessary and whether the response was reasonable. If the prosecution failed to exclude the defence, the person would be acquitted. If the prosecution failed to prove beyond reasonable doubt that the person did not believe their actions were necessary but proved that the force was not a reasonable response, the partial defence would apply to reduce murder to manslaughter. In this way, the new partial defence would operate as an extension of self-defence. It would not require the jury to consider separate and distinct legal tests that blur or confuse the substantive issues in dispute. Our reforms adopt a modified excessive self-defence framework for the reformed partial defence.

5.24. **Table 5.1** compares the elements of the current partial defence in section 304B with our reformed partial defence.

Table 5.1: Comparison of elements of section 304B and the reformed partial defence

Element	Section 304B	Reformed partial defence
Abusive domestic relationship	The deceased has committed acts of serious domestic violence against the person in the course of an abusive domestic relationship (including **a history of acts of serious domestic violence**).	The person killed has committed acts of serious domestic violence against the person in the course of an abusive domestic relationship (including **acts of serious domestic violence)**.
Necessity element	The person believes that it is necessary for the person's preservation from death or grievous bodily harm to do the act or make the omission that causes the death.	The person believes the use of the force is necessary to defend themselves **or another person** from death or serious harm.
Reasonable grounds for belief in necessity	The person has **reasonable grounds for the belief** having regard to the abusive domestic relationship and all the circumstances of the case.	N/A
Reasonableness is excluded	N/A	The use of the force is not lawful, in self-defence, only because **the use of the force is not a reasonable response** in the circumstances as the person believes them to be.

5.25. As for self-defence, a jury would be required to assess necessity for the reformed partial defence. Where a person uses lethal force in the context of a domestic relationship involving DFV, their actions may be necessary in self-defence even if:

- they are responding to a non-imminent, ongoing threat of harm posed by the person who is killed
- they respond with greater force than the person who is killed used or threatened to use against them.

5.26. This recognises that, for some DFV victim-survivors, it may be:

- necessary to respond to a continuing, ever-present threat of serious harm posed by their abuser
- necessary and reasonable to use a weapon or wait until their abuser poses less risk (for example, when they are asleep) to defend themselves against the threat posed by a physically larger and stronger person.

5.27. The reformed partial defence expands the scope of the section 304B partial defence by removing the requirement that the defendant's belief in the need to act for self-preservation is held on reasonable grounds.[9] This requirement imposes a higher bar for necessity than self-defence. It is inappropriate for the partial defence to require a subjective belief in the need for lethal defensive force to be held on reasonable grounds when the complete defence only requires a subjective belief in the need for lethal defensive force.

5.28. The reformed partial defence modifies the definition of 'abusive domestic relationship' by removing the requirement that there is a 'history' of acts of serious domestic violence.[10] This would ensure the defence can be accessed by defendants whose abuse history is not well documented. It would also respond to concerns we heard in consultations and submissions that some women who use resistive force may be unable or unwilling to give evidence in their own defence.[11]

5.29. While our reforms would increase victim-survivors' reliance on self-defence and the reformed partial defence, our recommendation for repeal of provocation may result in a very small number of victim-survivors who kill their abusive intimate partners no longer having access to a partial defence. Our women who kill research (Research Project 4) and homicide cases research (Research Project 6) identified only two cases over a 15-year period where a woman was sentenced for manslaughter on the basis of provocation.[12] We discuss this further in Chapter 7. Our recommendations for reform would go some way towards ensuring just and evidence-based sentencing outcomes for murder.

5.30. In Part 7, we recommend practice and procedure reforms relevant to our criminal defence reforms. To achieve the policy intent of our lethal defensive force reforms, practice and procedure reforms are vital. We note the particular importance of reforms to:

- enhance understanding of DFV relationship context in investigation and charging processes (**Recommendations 21** and **22(a)**)
- support DFV victim-survivors to establish evidence of a history of DFV (**Recommendations 21, 22(a), 23, 26, 27(a)** and **29**)
- improve understanding of the nature and effects of DFV (**Recommendations 29** and **31**)
- improve the criminal justice response to DFV victim-survivors (**Recommendations 33** and **34**).

The case for reform

A proportionate approach

A threshold should be retained

5.31. A few stakeholders considered there was no need to retain a threshold for self-defence in murder cases, arguing that our reformed test for self-defence itself, particularly the requirement of a reasonable response, was sufficient to ensure that self-defence would only apply to murder in appropriate cases. Stakeholders expressed views including:

- a disproportionate response is unlikely to be reasonable so a threshold is not necessary and avoids the difficulty of defining the threshold clearly and inclusively[13]
- only Queensland and Victoria have a legislated threshold[14]
- instead of the threshold, the necessity element should include 'to prevent or terminate serious sexual assault' where 'serious sexual assault' is defined as having 'the potential to cause long-term physical and/or psychological and emotional harm'.[15]

5.32. A threshold for self-defence to murder has been part of Queensland law since the adoption of the Criminal Code in the nineteenth century. Its role is to legislatively signify that, as a matter of policy, lethal self-defence is only permissible in response to the most serious situations. It reflects respect for the sanctity of human life. In consultations, family members of homicide victims expressed the view that killing another person should rarely be justified or partially excused by the law.

Why not serious injury?

5.33. In our Consultation Paper we proposed that the threshold require fear of death or 'serious injury'.[16]

5.34. The Bar Association of Queensland proposed using 'serious harm' rather than 'serious injury', provided the threshold includes a definition of 'serious harm' or other legislative guidance as to its scope.[17]

5.35. A number of stakeholders expressed concerns that 'serious injury':

- might result in a presumption that proof of fear of physical harm is required[18]
- might not apply to sexual assault[19]
- lacks legal certainty.[20]

5.36. We recognise these concerns.

5.37. The reformed threshold would ensure self-defence is available where a person fears types of harm which were not contemplated when the Criminal Code was drafted in the 1890s and which are now recognised as significant.

Ensuring equity

5.38. Adopting a broad concept of harm focused on the seriousness of the effect, rather than listing types of harm which justify lethal defensive force, addresses the concerns of:

- the Queensland Law Society that explicit reference to psychological harm may not be appropriate in every case[21]

- the Red Rose Foundation and the Queensland Sexual Assault Network that explicit reference to sexual violence might provide a legislative excuse for homophobic violence[22]
- the LGBTI Legal Service that 'the victim's sexuality, gender identity, gender expression, transgender status or intersex status are never appropriate factors for the court to consider with regard to … self-defence'.[23]

5.39. The term 'grievous bodily harm', which is used in the current threshold and which we are not proposing as part of our recommended threshold, is not a commonly understood term.

5.40. The Criminal Code definition of 'grievous bodily harm' requires a physical injury.[24]

Grievous bodily harm

What is grievous bodily harm?

- Loss of a body part or organ
- Serious disfigurement
- An injury that might endanger or be likely to endanger life or cause permanent injury

What is not grievous bodily harm?

- Rape
- Severe and life altering mental trauma

5.41. Using this term would unnecessarily complicate what is essentially an assessment of the seriousness of the threat faced by a defendant. It would also result in a threshold which operates arbitrarily. For example, GBH encompasses a broken jaw, fear of which is arguably not as frightening as a serious sexual assault for a defendant who understands the accompanying risk of potential life altering trauma. Our definition is more appropriate.

DFV harm

5.42. The self-defence threshold for murder must be accessible to a DFV victim-survivor who kills their abuser in genuine fear for their life. As noted in Chapter 3, the Taskforce was concerned that criminal defences 'must evolve beyond outdated, gendered understandings about the types of behaviour that cause fear and create an imminent threat to safety'.[25]

5.43. DFV victim-survivors may face lethality risks without a history of prior physical violence.[26] One of the known lethality risk indicators for intimate partner homicide is a victim's fear of their abuser and intuitive sense of being in danger.[27]

5.44. Mackenzie and Colvin observed that the current lethal defensive force threshold limits the value of self-defence for victim-survivors of DFV who use force against their abusers:

> Where the force used was intended or likely to cause death or grievous bodily harm, the person must have believed on reasonable grounds that preservation from death or grievous bodily harm cannot otherwise be achieved. This might focus inquiry on the narrow question of whether there was any other option for escaping the danger, regardless of the risks associated with the other option. If there was such an option, the defence might be excluded even though the use of

> lethal force was a reasonable choice in all the circumstances, including the risks attaching to the other option.[28]

5.45. Our recommended threshold is sufficiently broad to respond to modern understandings of the fears caused by DFV, including coercive control.

Sexual violence and psychological injury

5.46. Sexual violence and mental trauma can be severe and life altering, which justifies expanding the scope of the self-defence threshold for murder. Some stakeholders told us the threshold should extend to cover fear of sexual violence and psychological injury.[29] We note that both potential types of harm are commonly experienced by victims of sexual assault and DFV victim-survivors and are highly gendered, affecting women more than men. Rathus explained in her submission:

> [T]here are circumstances where the level of fear of death experienced by a [sexual assault] victim may not be apparent to a jury. Many victims of rape report thinking that they are going to die.[30]

5.47. Our homicide cases research (Research Project 6) identified two matters where defendants who killed in response to a threat of sexual assault were unable to access self-defence.[31] Both women were convicted of manslaughter for killing a man who had previously raped them, and both deceased had threatened further sexual assault. Our reforms are aimed at broadening the availability of self-defence to cover contexts such as these.

Killing in response to a threat of sexual assault — the cases of Cooktown and Peters (Qld)

Cooktown's partner had raped her in the days before he died and threatened to rape her with an object just before she killed him. Cooktown gave evidence that she believed she would die if he carried out his threat. Both Cooktown and her partner had used violence against each other during their short relationship, but in sentencing, the trial judge accepted that the evidence suggested Cooktown's violence was mainly in response to the deceased's goading of her or use of violence against her. She was convicted of manslaughter and sentenced on the basis of the partial defence of killing for preservation in an abusive relationship.

Peters killed a drug associate who had previously raped her and threatened to hurt her child if she did not have sex with him. She pleaded guilty to manslaughter and was sentenced on the basis of the partial defence of killing on provocation.

Supporting access to justice

Ensuring genuine self-defence is recognised

5.48. Taken together, our recommendations for lethal defensive force are intended to lead to the acquittal of DFV victim-survivors who kill their abuser while genuinely acting in self-defence. Our reform approach is consistent with community attitudes that support the availability of complete and partial defences for victim-survivors who kill their abuser.[32]

5.49. Our women who kill research (Research Project 4) observed that women charged with murder proceeded to trial less often than men.[33]

5.50. Our homicide cases research (Research Project 6) found that, between July 2010 and April 2024, while 43.8% of men originally charged with murder were convicted of murder, only 18.6% of women originally charged with murder were convicted of murder. **Table 5.2**, below, sets out the gender distributions. Of the ten women we identified who were acquitted of murder and manslaughter between July 2010 and April 2024:

- six were DFV victim-survivors who killed their allegedly abusive intimate partners, and
- four of these six women were acquitted on the basis of self-defence.[34]

Table 5.2: Gender distributions of charges and convictions for murder and manslaughter (July 2010 – April 2024) *

	Female	Male	Total
All homicide charges	170	883	1053
All murder charges	70	448	518
Convicted of murder	13	198	211
Convicted of manslaughter	75	261	336

* This table is based on administrative data. We are unable to verify the accuracy of this data.

5.51. Our women who kill research (Research Project 4) and homicide cases research (Research Project 6) found that for the 35 women tried or convicted of murder or manslaughter of a current or former intimate partner between July 2010 and April 2024:

- four were acquitted on the basis of self-defence, including one who was acquitted of murder but convicted of misconduct with a corpse
- three were convicted of murder, one as party to the killing of their former intimate partner
- two matters did not proceed
- 26 were convicted of manslaughter, including five after being tried for murder. Of these 26:
  - four may have been sentenced on the basis of section 304B, three on a plea of guilty and one after trial
  - in one other matter, section 304B was the possible basis for the jury's manslaughter verdict, but she was sentenced on the basis of provocation
  - 11may have been sentenced on the basis of lack of intent
  - five were sentenced on the basis of the partial defence of diminished responsibility
  - three were party to the killing of their former partner by their current intimate partner
  - one was sentenced on the basis of criminal negligence
  - the basis of one sentence was unclear.[35]

5.52. This research demonstrates that many women convicted of manslaughter for the killing of a current or former intimate partner do so during a physical or verbal confrontation where a

5.52. This research demonstrates that many women convicted of manslaughter for the killing of a current or former intimate partner do so during a physical or verbal confrontation where a defensive killing would be in response to an imminent threat of harm.[36] This is consistent with Nash and Dioso-Villa's findings.[37] Where the death occurred in confrontational circumstances, self-defence should provide an effective defence in appropriate cases. However, as noted above, we found that many women who kill an intimate partner are convicted of manslaughter, often pleading guilty and avoiding the risks of a murder trial.

5.53. A female defendant's decision to enter a plea of guilty to manslaughter rather than pursue complete acquittal at trial may be shaped by a range of reasons. Many of these reasons are systemic. In the context of the current sentencing for murder framework, women fear failing in raising self-defence and being subject to a mandatory life sentence. By entering a plea of guilty to manslaughter, they may receive a significantly lower sentence that reflects the desperate circumstances of their offending. Delay in matters proceeding to trial also shapes decision-making. A defendant charged with murder and held on remand may have served a significant portion of their non-parole period by the time they are sentenced if they plead guilty to manslaughter. They may also face barriers to accessing culturally safe and trauma-informed legal representation. Their previous experiences engaging with the criminal justice system may have also created trauma and distrust and they may fear the prospect of going to court. Chapter 3 discusses these systemic issues.

5.54. Our lethal defensive force reforms would not address these systemic issues. However, by providing a realistic choice for victim-survivors who kill their abuser to seek an acquittal based on self-defence, we seek to address the current injustice in the operation of Queensland's defence laws.

5.55. Without an effective partial defence for DFV victim-survivors, most will continue to choose not to risk a murder conviction and seek to plead guilty to manslaughter to avoid that risk. When raised, self-defence can be highly effective for DFV victim-survivors.[38] The risk of intimate partner homicide for DFV victim-survivors is real and victims' fear of their abuser is an evidence-based lethality risk.[39] Our reformed partial defence is intended to 'de-risk' the choice to pursue justice for a very small cohort of DFV victim-survivors who genuinely believe they face lethal harm and kill their abuser.

5.56. Our reforms support access to self-defence by:

- simplifying the elements of the complete and partial defences and providing clarity about when the complete and partial defences may apply
- modernising the lethal defensive force threshold to ensure self-defence can respond to the fears and responses of women
- ensuring that if the prosecution does not exclude both the necessity and reasonableness elements, the defendant is acquitted
- retaining the partial defence and reframing it with wholly subjective elements to ensure defendants have confidence in its utility as a safety-net if they raise self-defence at trial
- making the defence available to victim-survivors who genuinely believe it is necessary to use lethal force in defence of others, including their children or other family members.

5.57. This is appropriate given:

- the recognised lethality risk faced by DFV victim-survivors in abusive domestic relationships, including those who experience coercive control[40]
- the potential effect DFV 'victim-blaming' attitudes have on views about the culpability of defendants, given ongoing low levels of community understanding of the effects of non-physical DFV and the gendered effects of DFV[41]
- access to the partial defence should not be limited in circumstances where self-defence might be available if the use of force was considered a reasonable response in the circumstances as the victim-survivor genuinely believes them to be
- it appears that section 304B has obstructed access to self-defence in some matters.[42]

5.58. Most pleas for manslaughter are accepted on the basis of a lack of intent rather than on the partial defence in section 304B. This may be preferred by the prosecution, as it avoids a focus on the deceased's behaviour.

5.59. Pleading guilty to manslaughter based on of lack of intent is often at odds with the reality of the offending. For example, the observation that many women who kill their abusive partner do so by stabbing them in the chest implies there is an intent to kill or do serious harm.[43] Our women who kill research (Research Project 4) found that stabbing was the cause of death in 19 of the 26 matters in which females were convicted of manslaughter for killing their current or former intimate partner between July 2010 and April 2024.[44] Academic consideration has suggested 'lack of intent' is often linked to viewing responses to fear as a defective emotional state, which risks pathologising women and recasting them as passive victims. This can suggest that the violence they have experienced does not provide a rational and reasonable account of the killing,[45] misrepresenting their defensive actions.

5.60. Nash and Dioso-Villa's research findings, discussed below, support our reforms to ensure that women's experiences of fear in physical confrontations are represented in the types of harm that come within the threshold for self-defence in murder cases.

Retaining the safety net

5.61. Where victim-survivors charged with murder for killing an abusive intimate partner do go to trial, Queensland has one of the highest rates of acquittal in Australia.[46] Recent research by Nash and Dioso-Villa found that, in a sample of 69 women prosecuted for killing an abusive male partner between 2010 and 2020, Queensland and NSW had the highest proportions of acquittals in Australia. These jurisdictions both have partial defences to murder.

5.62. In contrast, jurisdictions with fewer or no partial defences have very small numbers of acquittals.[47] Nash and Dioso-Villa suggest that partial defences provide an important safety net for victim-survivors who kill their abuser. They observe that the increase in Victorian women pleading guilty to murder following the removal of the defensive homicide offence supports concerns that abolishing partial defences to homicide is 'premature' given it is still difficult for women who kill their abusers to access self-defence.[48]

5.63. Legal Aid Queensland also highlighted the relevance of the mandatory penalty of life imprisonment for murder to the continued need for a partial defence:

> There is an important role for a partial defence to murder for those who kill in response to a history of serious abuse by another person. The defence properly mitigates culpability when a person kills their long-term abuser. While Queensland continues to have a mandatory sentence of life imprisonment for murder, or enacts a presumptive sentence of life imprisonment, the partial defence plays an

important role to permit a sentence that is proportionate to a defendant's moral and criminal culpability, including for vulnerable female defendants.[49]

5.64. Without a partial defence like section 304B, deserving defendants would continue to be unlikely to risk a mandatory life-sentence in order to achieve an acquittal at trial.

5.65. In practice, victim-survivors who do not meet community perceptions of the 'ideal victim', including those who have a history of using force in response to DFV, are more at risk of their actions being considered an unreasonable response in self-defence. They rarely take the risk of a trial and conviction for murder.[50] In reviewing manslaughter sentencing remarks for victim-survivors who killed their intimate partners, we found that nearly all had a prior history of DFV victimisation and many had a history of prior use of violence against their partners.[51]

5.66. As noted in Chapter 3, the Domestic and Family Violence Death Review and Advisory Board has recognised that victim-survivors often use resistive violence in self-defence or to protect their dignity and self-respect.[52] Our reforms must recognise and respond to the reality that many victim-survivors who act in genuine self-defence face significant difficulty accessing self-defence and provide an effective safety net for them.

5.67. While we recognise the importance of retaining a partial defence for DFV victim-survivors for the reasons we discuss, we do not support a partial defence of excessive self-defence of general application. We explored this option in our Consultation Paper and many stakeholders supported it.[53] Academics have expressed support for a general partial defence of excessive self-defence, for reasons including:

- a conviction of manslaughter based on excessive self-defence reflects the moral culpability of the offender and does not attach the stigma associated with 'murder'[54]
- relegating consideration of excessive self-defence to sentencing means that the evidence supporting it is not subject to the same exposure and scrutiny as it would be during trial proceedings.[55]

5.68. Two stakeholders qualified their support based on other reforms.[56] The Queensland Law Society did not support a partial defence of excessive self-defence.[57]

5.69. We are satisfied that our recommended reforms to self-defence and the partial defence in section 304B remove the need for a partial defence of excessive self-defence. Excluding excessive self-defence aligns with many other Australian jurisdictions and the approach in the Model Criminal Code.[58]

5.70. The subjective model we have adopted for the reformed partial defence would have significant disadvantages if adopted generally. This model has a heavy emphasis on the defendant's subjective beliefs, which has been criticised as potentially allowing unreasonable beliefs to be the basis of the belief in necessity for use of lethal defensive force.[59]

5.71. The reformed partial defence addresses these concerns by adopting the section 304B relationship and abuse limitation, which significantly limits the scope of the wholly subjective necessity element. In the context of an abusive domestic relationship, the use of a wholly subjective necessity element in the reformed partial defence is justified by the evidence-based lethality indicator for DFV.[60]

A partial defence that works with self-defence, not against it

5.72. We heard in consultation that, in its current form, the section 304B partial defence can inappropriately signal to juries that manslaughter, rather than a complete acquittal, is the most appropriate outcome where a DFV victim-survivor is charged with murder for killing their abuser in self-defence. The section 304B requirement that there are 'reasonable grounds for

the belief' in the necessity of using lethal defensive force can be easily conflated with the self-defence reasonableness element and present a barrier to acquittal.

5.73. In addition, Nash and Dioso-Villa's research suggests that section 304B has 'operated to undermine legitimate self-defence claims'.[61] They highlight the matter of Sweeney, summarised below, who pleaded guilty to manslaughter based on section 304B, and state that the sentencing judge's findings that Sweeney acted out of fear and self-preservation in the context of an abusive relationship would entitle a defendant to an acquittal in any other jurisdiction.[62]

5.74. In Chapter 4, we consider how this matter was framed as a defensive response in the absence of an assault.[63]

Section 304B undermining legitimate self-defence claims — R v Sweeney (Qld)

Sweeney had experienced an extensive history of DFV. One night, she grabbed a knife to defend herself. When her partner tried to take it from her, she stabbed at him, fearing that if he got the knife he would use it to seriously harm her.

The sentencing judge accepted that being grabbed by the throat, dragged along the ground, urinated on and hosed immediately prior to the killing were obvious reasons for her fearing further harm, together with the history of violence.

The sentencing judge accepted that her plea indicated she had a 'fleeting intention of causing him grievous bodily harm'. This suggests there were limited prospects of the prosecution proving intent to kill beyond reasonable doubt and that a murder conviction was unlikely if the matter went to trial.

5.75. One defence counsel, reflecting on a case example, highlighted how Aboriginal defendants or Torres Islander defendants with criminal histories may plead guilty despite having good prospects of successfully relying on self-defence:

> She pleaded guilty to manslaughter on the basis of section 304B. And it just screamed self-defence. … What would we need in a defence to make sure it worked for these Aboriginal women, because we know they're more likely to be killed … We know they're more likely to have a criminal history, usually as a result of being misidentified [as the primary perpetrator of DFV].[64]

5.76. The reformed self-defence provision would largely subsume matters previously within the scope of the section 304B partial defence. As Lelliott and Wallis submitted, 'The behaviours reflected in s 304B are more appropriately described as self-defence, and an accused should have the benefit of a full acquittal on that basis'.[65]

5.77. Our reforms also work with self-defence by recognising that culpability may be reduced when lethal defensive force is used to protect another. By incorporating the self-defence necessity element into the reformed partial defence, it extends to a defendant who acts to protect another, provided they have personally been abused by the person who is killed.

5.78. The section 304B partial defence only applies where the person believes their use of force is necessary for self-preservation.[66] As noted by the Australian National University Law Reform and Social Justice Research Hub, the Falls case 'demonstrates that the exception of killing in defence of another could be adopted into the partial defence'.[67]

Killing to protect another — R v Falls (Qld)

Falls successfully relied on self-defence in her murder trial for killing her abusive husband. She drugged him and killed him while he slept because she genuinely feared he intended to kill one of their children and that there was no other way to protect herself and her child.

5.79. The partial defence in section 304B is not effective and yet most victim-survivors of DFV who kill their abuser are sentenced for manslaughter. Our women who kill research (Research Project 4) and legal professional insights research (Research Project 5) indicates that many who plead guilty to manslaughter have an arguable case of self-defence.[68] A Supreme Court judge we interviewed told us that section 304B 'is flawed, as it does not fill the inadequacies of the more traditional defences of self-defence and provocation as those defences arise in relation to offences committed in the circumstances of an abusive domestic relationship'.[69]

5.80. Victims of significant DFV should face fewer barriers to accessing self-defence when they genuinely fear death or serious harm. Removing the requirement that the belief in necessity is held on reasonable grounds recognises the defendant will often be the person best placed to recognise the risks they face. It also reflects the limits of community understanding of the nature and impact of DFV.[70] Women's Legal Service Queensland observed that while:

> [M]ost community members don't blame victim-survivors for their abuse or have attitudes which minimise DFV, this does not necessarily mean that they are able to adequately conceptualise the subjective experience of victim-survivors or appreciate the complex responses to trauma.[71]

5.81. Our recommended reforms to self-defence and section 304B address the concerns of Lelliott and Wallis that the section 304B partial defence 'contributes to procedural and strategic complexity'.[72]

5.82. We do not propose limiting access to the reformed partial defence where the defendant's belief in necessity is influenced by self-induced intoxication.

5.83. Nash and Dioso-Villa's research found that slightly more than two-thirds of cases in their study of women prosecuted for killing abusive male partners involved use of alcohol and other drugs, most commonly by both the defendant and the deceased man.[73] In three-quarters of cases where the killing occurred in confrontational circumstances, there was alcohol and other drug use.[74] In almost three-quarters of cases where there was substance abuse at the time of the death the defendant was convicted of manslaughter.[75] They observe that:

> [W]hile many of these women were responding to an immediate threat of harm at the time of the offence, their actions were often attributed to alcohol and other drug use in the context of an abusive relationship.[76]

5.84. The number of matters in which the reformed partial defence may be relevant is small. In our women who kill research (Research Project 4) we identified only six women who successfully relied on self-defence after killing an intimate partner between July 2010 and April 2024.[77] Of the women convicted of the manslaughter of an intimate partner in our review of sentencing transcripts, there was evidence that:

- 10 were intoxicated at the time of death

- 14 killed in circumstances which were clearly or arguably defensive
- one was unable to communicate her motivations because English was not her first language, although there was a history of serious DFV perpetrated against her by her intimate partner
- four were intoxicated and killed in circumstances which were clearly or arguably defensive.[78]

5.85. It is possible the actual incidence of defendant intoxication was higher.[79]

5.86. Some of the women who were intoxicated would likely have difficulty accessing the reformed partial defence regardless of whether voluntary intoxication was relevant to their belief in the need to defend themselves.

5.87. We do not consider it necessary for further restrictions on access to the reformed partial defence where the defendant's belief in necessity is affected by intoxication.

Keeping what works

5.88. We were unable to find any evidence of successful use of the section 304B defence by men who killed an intimate partner.[80] It is likely that most male-perpetrated intimate partner homicide matters would lack evidence of:

- 'acts of serious domestic violence committed by the deceased in the course of an abusive domestic relationship' (the relationship and abuse limitation)[81]
- a belief in the necessity of lethal defensive force for their 'preservation from death or grievous bodily harm'.[82]

5.89. As noted in Chapter 3, there are significant differences in male use of and motives for intimate partner violence compared to women. Male perpetrated intimate partner violence often uses more severe violence and is motivated by jealousy and a desire for control, while female violence can involve the use of weapons to overcome size and strength disadvantages and is often motivated by fear.[83]

5.90. The reformed partial defence retains the elements of section 304B which have prevented inappropriate reliance on the partial defence. It is likely that these elements would continue to minimise the potential that the reformed partial defence would provide a defence for primary perpetrators of DFV, regardless of gender.

5.91. Our homicide cases research (Research Project 6) identified only two cases of men who sought to rely on the section 304B partial defence at trial between July 2010 and April 2024. These matters are discussed below.

Males seeking to rely on section 304B — the cases of Jones and Robbins (Qld)

Jones was charged with murdering his mother after stabbing her multiple times using a sharp instrument. During his murder trial, Jones raised section 304B. He gave evidence that his mother physically and emotionally abused him as a child, was a violent and aggressive alcoholic and that he tiptoed around her and lived in fear of her outbursts. The prosecution argued that his evidence of their relationship did not reach the level of an abusive domestic relationship. Jones appealed his conviction, arguing expert psychiatric evidence about his emotional state and resulting behaviour should have been admitted. In dismissing the appeal, the court found that a jury could form a sound judgment as to the impact of his mother's behaviour without expert evidence.

***

Robbins was convicted of murdering his older brother after a drunken fight between the two broke out and ended in Robbins stabbing his brother several times with a knife. Robbins described several occasions where his brother had assaulted their father or had ruined family events. However, the trial judge ruled there was no evidence that Robbins' relationship with his brother was an abusive domestic relationship. On appeal the Court agreed there was no evidence their relationship 'was one in which there had been a previous tendency by either to engage in acts of serious domestic violence'.

5.92. The expert evidence excluded in Jones' trial may now be admissible, which might have allowed him to successfully challenge the prosecution's arguments that his relationship with his mother was not an abusive domestic relationship.[84] One judge also told us about a matter in which he represented a male client charged with killing his abusive father when he was a defence counsel.[85] Both self-defence and the section 304B partial defence were in issue at trial and the client was acquitted based on self-defence.

5.93. The Jones case raises a shortcoming of the section 304B relationship and abuse limitation — the difficulties establishing the 'history of acts of serious domestic violence' for an abusive domestic relationship.[86] This was an issued raised by many legal practitioners during consultations.

5.94. Recent reforms to the Evidence Act and our practice and procedure reforms are intended to improve the availability of evidence of DFV.[87] These reforms should assist defendants seeking to rely on section 304B to raise sufficient evidence to establish an abusive domestic relationship. The recent Evidence Act reforms have not been in operation for enough time to assess their effectiveness.

5.95. DFV roundtable participants reflected that evidence of a victim-survivor's experience of coercion, control and the long-term effects of DFV must be adequately considered so the justice system does not further punish a person who has already suffered significant harm.[88] Many stakeholders highlighted the importance of social framework evidence.[89] The Office of the Victims' Commissioner stated:

> A social entrapment lens supports an understanding of the cumulative effects of abuse contributing to the state of mind of a defendant, and their perceptions of threat against themselves and others.[90]

5.96. Another implication of retaining the section 304B relationship and abuse limitation is that defendants prosecuted as parties to killings by another person would be able to access the partial defence if the defendant experienced serious domestic violence by the deceased and acted for a defensive purpose.[91]

Human rights considerations

5.97. Our self-defence reforms in Chapters 4 and 5 promote human rights.

5.98. Self-defence is founded on the rights to autonomy, physical integrity and security and, in more extreme circumstances, the right to life.[92] The right to life cannot be arbitrarily limited and has been interpreted to require 'special measures of protection' for vulnerable people including DFV victim-survivors.[93] Ensuring the defence is equally accessible for all persons who act in preservation of themselves or another, including vulnerable groups like DFV victim-survivors, promotes human rights.[94]

5.99. The Human Rights Committee has commented that, while the right to life should not be interpreted narrowly, it is not absolute.[95] A mixed subjective and objective test for self-defence, as we propose, has been found compatible with the right to life in this context.[96]

5.100. While a purely objective test would not be compatible with the right to life or the right to recognition and equality before the law, there is the potential for a predominantly subjective test to limit these rights.[97]

5.101. To address this concern, we have designed our reforms to the complete defence to include both subjective and objective elements (**Recommendation 1**),[98] an explicit provision where the defendant acts in self-defence in response to DFV (**Recommendation 4**) and an explicit provision regarding the relevance of intoxication to assessing self-defence (**Recommendation 3**). The lawful acts threshold (**Recommendation 2**) is also designed to ensure that the defendant acted for a defensive purpose and not for some other retaliatory or vengeful purpose, justification of which would not be compatible with human rights.

5.102. The use of lethal force in self-defence, where necessary and proportionate, is not considered arbitrary and does not limit the right to life.[99] The Human Rights Committee has set the following criteria for the lawful use of lethal force by an individual acting in self-defence:

- it is strictly necessary in view of the threat posed by the attacker
- it is a method of last resort after other alternatives have been exhausted or deemed inadequate
- the amount of force applied does not exceed the amount strictly needed for responding to the threat
- the force applied must be carefully directed only against the attacker
- the threat responded to must involve imminent death or serious injury.[100]

5.103. Our recommendation to include a 'death or serious harm' threshold for the necessity element in murder cases (**Recommendation 5**) gives effect to these criteria and recognises that lethal force, even if defensive, should only be justifiable if that threshold is met. However, given the specific barriers faced by DFV victim-survivors and the broader context of social entrapment and lethality risk we discuss in Chapter 3, we consider that a partial defence is necessary to protect the substantive equality of DFV victim-survivors (**Recommendation 6**). To have a general partial defence risks incompatibility with the right to life.

5.104. Our reforms balance the competing rights and interests in:

- addressing the gendered nature of self-defence and legitimate responses to non-imminent harm based on a history of DFV[101]
- the requirement to take special measures of protection towards people in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence[102]
- guarding against the inappropriate and discriminatory use of self-defence, including where the defendant's subjective beliefs (and actions) were informed by racism, homophobia or transphobia or to justify the use of excessive lethal force by police.

5.105. No other potential limits on human rights have been identified in relation to the proposed reform of self-defence.

References

1 Chapter 4, Figure 4.2: The current laws of self-defence in Queensland.

2 In this chapter we refer to the deceased person whose death is the subject of homicide charges as the 'abuser' because s 304B refers to 'abusive domestic relationship' and our reforms would adopt the language of the s 304B relationship and abuse limitation and require the reformed partial defence for victim-survivors of DFV to be considered together with self-defence and because the Explanatory Note to the Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Act 2010 (Qld) uses the language 'victims of abuse who kill their abusers'. We do not intend to suggest by language or otherwise that persons who are able to rely on self-defence where they kill a person with whom they are in a domestic relationship are part of a different cohort than persons who are able to access the reformed partial defence of s 304B.

3 Stella Tarrant, Women Who Kill Their Spouse in A Context of Domestic Violence: An Opinion for the Law Reform Commission of Western Australia (Opinion, August 2006) 6–7.

4 See Domestic and Family Violence Death Review and Advisory Board, Domestic and Family Violence Death Review and Advisory Board Annual Report 2020–21 (Report, 2021) 75–6; Felix Leung and Lily Trimboli, 'Improving Police Risk Assessment of Intimate Partner Violence' (Crime and Justice Bulletin No 244, NSW Bureau of Crime Statistics and Research, February 2022) observed that one of the most important predictors of risk of DFV re-victimisation was a victim's self-perception of the risk they faced.

5 Criminal Code (Qld), as enacted s 31(1)(d).

6 Criminal Code (Cth) Dictionary (definition of 'serious harm'). There are references to 'serious harm' throughout. For example, it is used in terrorist act offences and specific offences associated with murder and manslaughter of specific individuals (UN officials, Australian citizen or resident); Police Powers and Responsibilities Act 2000 (Qld) ss 179C(4), 211(6). 'Serious harm' is used in relation to whether a missing person is high risk and in defining a terrorist act for ch 9; Crime and Corruption Act 2001 (Qld) s 22A (definition of 'terrorist act').

7 Criminal Code (Qld) s 1 (definition of 'grievous bodily harm').

8 Model Criminal Code Officers Committee, Model Criminal Code Chapter 5 — Non Fatal Offences Against the Person (Report, September 1998) 27, 33. Note that the Model Criminal Code Officers Committee did not recommend the use of a lethal defensive force threshold but recommended the use of serious harm rather than GBH in offence provisions.

9 Criminal Code (Qld) s 304B(1)(c).

10 Criminal Code (Qld) s 304B(2) (definition of 'abusive domestic relationship').

11 Queensland Law Society, Submission 30.

12 We used Microsoft Excel to analyse data extracted from sentencing remarks, and court data provided by the Courts Performance Reporting Unit. We conducted crosstabulations to explore the relevance for women convicted of an intimate partner homicide of factors such as a history of DFV victimisation, substance abuse or dependence, intoxication, and whether the killing occurred in defensive circumstances. See Appendix F, 'Research Methodology' for limitations and methodology.

13 Joseph Lelliott and Rebecca Wallis, Submission 22.

14 Australian National University Law Reform and Social Justice Research Hub, Submission 16; Joseph Lelliott and Rebecca Wallis, Submission 22.

15 Zoe Rathus, Submission 29.

16 QLRC, Review of Particular Criminal Defences: Equality and Integrity — Reforming Criminal Defences in Queensland (Consultation Paper, February 2025).

17 Bar Association of Queensland, Submission 42.

18 Bar Association of Queensland, Submission 42.

19 Zoe Rathus, Submission 29; Bar Association of Queensland, Submission 42.

20 Kelley Burton, Submission 12; Joseph Lelliott and Rebecca Wallis, Submission 22; Legal Aid Queensland, Submission 31; Bar Association of Queensland, Submission 42.

21 Queensland Law Society, Submission 30.

22 Queensland Sexual Assault Network, Submission 26; Red Rose Foundation, Submission 33.

23 LGBTI Legal Service, Submission 15.

24 Criminal Code (Qld) s 1 (definition of 'grievous bodily harm').

25 Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 1, xl.

26 Domestic and Family Violence Death Review and Advisory Board, Annual Report 2019–20 (Report, 2020) 25.

27 Felix Leung and Lily Trimboli, 'Improving Police Risk Assessment of Intimate Partner Violence' (Crime and Justice Bulletin No 244, NSW Bureau of Crime Statistics and Research, February 2022) 16; Domestic and Family Violence Death Review and Advisory Board, Annual Report 2019–20 (Report, 2020) 28–9.

28 Geraldine Mackenzie and Eric Colvin, Homicide in Abusive Relationships: A Report on Defences (Report, Bond University, 6 July 2009) 26.

29 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 12. Sexual Assault: Queensland Sexual Assault Network, Submission 26; Zoe Rathus, Submission 29; Red Rose Foundation, Submission 33; Queensland Council for Civil Liberties, Submission 35; Bar Association of Queensland, Submission 42. Psychological harm: Zoe Rathus, Submission 29; Queensland Law Society, Submission 30; Office of the Victims' Commissioner, Submission 32; Red Rose Foundation, Submission 33.

30 Zoe Rathus, Submission 29.

31 Transcript of proceedings, Michelle Loretta Cooktown (Supreme Court of Queensland at Cairns, 98/2019, Henry J, 25 February 2020); Transcript of Proceedings, Roxanne Eka Peters (Supreme Court of Queensland at Brisbane, 1235/2018, Boddice J, 29 October 2018). We used Microsoft Excel to analyse data extracted from sentencing remarks, and court data provided by the Courts Performance and Reporting Unit. We conducted crosstabulations to explore the relevance for women convicted of an intimate partner homicide of factors such as a history of DFV victimisation, substance abuse or dependence, intoxication, and whether the killing occurred in defensive or provoked circumstances. See Appendix F, 'Research Methodology' for limitations and methodology.

32 See key finding 10 in: QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 113–16.

33 QLRC, Women Who Kill (Research Project 4, 2025). Results suggest that gender is significantly associated with whether a defendant pleaded not guilty and proceeded to trial or pleaded guilty. When charged with murder: Females are more likely than males to plead guilty (58.6% vs 39.6%). See Appendix F, 'Research Methodology' for limitations and methodology.

34 QLRC, Homicide Cases (Research Project 6, 2025). We used Microsoft Excel to analyse data extracted from sentencing remarks, and court data provided by the Courts Performance and Reporting Unit. We conducted crosstabulations to explore the relevance for women convicted of an intimate partner homicide of factors such as a history of DFV victimisation, substance abuse or dependence, intoxication, and whether the killing occurred in defensive circumstances. See Appendix F, 'Research Methodology' for limitations and methodology.

35 QLRC, Women Who Kill (Research Project 4, 2025); QLRC, Homicide Cases (Research Project 6, 2025).

36 QLRC, Women Who Kill (Research Project 4, 2025). For 19 of 26 manslaughter convictions of women for the death of a current or former intimate partner the killing occurred in confrontational circumstances. We used Microsoft Excel to analyse data extracted from sentencing remarks, and court data provided by the Courts Performance and Reporting Unit. We conducted crosstabulations to explore the relevance for women convicted of an intimate partner homicide of factors such as a history of DFV victimisation, substance abuse or dependence, intoxication, and whether the killing occurred in defensive circumstances. See Appendix F, 'Research Methodology' for limitations and methodology.

37 Caitlin Nash and Rachel Dioso-Villa, 'Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners' (2023) 30(9) Violence Against Women 2275, 2288–9.

[38] Caitlin Nash and Rachel Dioso-Villa, 'Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners' (2023) 30(9) Violence Against Women 2275, 2283.

[39] Felix Leung and Lily Trimboli, 'Improving Police Risk Assessment of Intimate Partner Violence' (Crime and Justice Bulletin No 244, NSW Bureau of Crime Statistics and Research, February 2022) 16; Domestic and Family Violence Death Review and Advisory Board, Annual Report 2019–20 (Report, 2020) 28–9.

[40] Domestic and Family Violence Death Review and Advisory Board, Annual Report 2020–21 (Report, 2021) 75.

[41] QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 100–2.

[42] Transcript of Proceedings, R v Sweeney (Supreme Court of Queensland at Mount Isa, Henry J, 3 March 2015) as discussed in Caitlin Nash and Rachel Dioso-Villa, 'Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners' (2024) 30(9) Violence Against Women 2275, 2284.

[43] Rebecca Bradfield, 'Women Who Kill: Lack of Intent and Diminished Responsibility as the Other "Defences" to Spousal Homicide' (2001) 13(2) Current Issues in Criminal Justice 143, 151.

[44] QLRC, Women Who Kill (Research Project 4, 2025). We used Microsoft Excel to analyse data extracted from sentencing remarks, and court data provided by the Courts Performance and Reporting Unit. We conducted crosstabulations to explore the relevance for women convicted of an intimate partner homicide of factors such as a history of DFV victimisation, substance abuse or dependence, intoxication, and whether the killing occurred in defensive circumstances. See Appendix F, 'Research Methodology' for limitations and methodology.

[45] Rebecca Bradfield, 'Women Who Kill: Lack of Intent and Diminished Responsibility as the Other "Defences" to Spousal Homicide' (2001) 13(2) Current Issues in Criminal Justice 143, 151–2.

[46] Caitlin Nash and Rachel Dioso-Villa, 'Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners' (2023) 30(9) Violence Against Women 2275, 2283.

[47] Caitlin Nash and Rachel Dioso-Villa, 'Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners' (2023) 30(9) Violence Against Women 2275, 2292–3.

[48] Caitlin Nash and Rachel Dioso-Villa, 'Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners' (2023) 30(9) Violence Against Women 2275, 2292.

[49] Legal Aid Queensland, Submission 31.

[50] Caitlin Nash and Rachel Dioso-Villa, 'Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners' (2023) 30(9) Violence Against Women 2275, 2291.

[51] QLRC, Women Who Kill (Research Project 4, 2025). Our observations of the data available to us suggest 11 of the 26 women sentenced for manslaughter of their intimate partner had a prior history of using violence against an intimate partner who also had a history of using DFV against them. Available data suggests 7 of these were Aboriginal women and/or Torres Strait Islander women. We used Microsoft Excel to analyse data extracted from sentencing remarks, and court data provided by the Courts Performance and Reporting Unit. We conducted crosstabulations to explore the relevance for women convicted of an intimate partner homicide of factors such as a history of DFV victimisation, substance abuse or dependence, intoxication, and whether the killing occurred in defensive circumstances. See Appendix F, 'Research Methodology' for limitations and methodology.

[52] Domestic and Family Violence Death Review and Advisory Board, Annual Report 2020–21 (Report, 2021) 59–60.

[53] Supportive: Andrew Hemming, Submission 1 (with objective necessity); Legal Aid Queensland, Submission 31; Queensland Council for Civil Liberties, Submission 35; Rachel Dioso-Villa and Caitlin Nash, Submission 38. Cautiously supportive: Respect Inc, Submission 14 ; Australian National University Law Reform and Social Justice Research Hub, Submission 16; Queensland Council of Social Services, Submission 28; Zoe Rathus, Submission 29. Modified domestic and family violence excessive self-defence-based defence only: Queensland Sexual Assault Network, Submission 26; Red Rose Foundation, Submission 33.

[54] George Mousourakis, 'Excessive Self-Defence and Criminal Liability' (1999) 12(2) South African Journal of Criminal Justice 143, 152.

[55] Stanley Yeo, 'Revisiting Excessive Self-Defence' (2000) 12(1) Current Issues in Criminal Justice 39, 42.

[56] Bar Association of Queensland, Submission 42; Joseph Lelliott & Rebecca Wallis, Submission 22.

[57] Queensland Law Society, Submission 30.

[58] None of the ACT, Northern Territory, Tasmania and Victoria have a partial defence of excessive self-defence.

59 See discussion in: Law Reform Commission of Western Australia, A Review of the Law of Homicide (Final Report No 97, September 2007) 171; Victorian Law Reform Commission, Defences to Homicide (Final Report, November 2004) 94–5 [3.93]. However, some commentators argue that where a belief is unreasonable, juries will not readily accept that the defendant genuinely held it: See discussion in Stanley Yeo, 'The Element of Belief in Self-Defence' (1989) 12 Sydney Law Review 132, 143. See also 'Proposal to Narrow the Defence of Excessive Self Defence', The Law Society of South Australia (Web Page, October 2024) <https://www.lawsocietysa.asn.au/site/site/news-media-and-advocacy/recent-advocacy-notes/proposal-to-narrow-the-defence-of-excessive-self-defence-reforms.aspx>.

60 Domestic and Family Violence Death Review and Advisory Board, Annual Report 2020–21 (Report, 2021) 75–6.

61 Caitlin Nash and Rachel Dioso-Villa, 'Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners' (2023) 30(9) Violence Against Women 2275, 2284.

62 Transcript of Proceedings, R v Sweeney (Supreme Court of Queensland at Mount Isa, Henry J, 3 March 2015) as discussed by Caitlin Nash and Rachel Dioso-Villa, 'Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners' (2024) 30(9) Violence Against Women 2275, 2284.

63 Chapter 4, 'Removing the assault threshold supports access to justice'.

64 QLRC, Legal Profession Interviews (Research Project 5, 2025) Defence Counsel, Interview 3.

65 Joseph Lelliott and Rebecca Wallis, Submission 22.

66 Criminal Code (Qld) s 304B(1)(b).

67 Trial transcript, R v Susan Falls (Supreme Court of Queensland at Brisbane, 928/2007, 17 May - 3 June 2010) as discussed by Australian National University Law Reform and Social Justice Research Hub, Submission 16.

68 QLRC, Women Who Kill (Research Project 4, 2025). 14 of the 26 women who were convicted of manslaughter for killing their intimate partner did so in circumstances that were clearly or arguably defensive, with a further 3 killing in circumstances having weaker arguably defensive cases. We used Microsoft Excel to analyse data extracted from sentencing remarks, and court data provided by the Courts Performance and Reporting Unit. We conducted crosstabulations to explore the relevance for women convicted of an intimate partner homicide of factors such as a history of DFV victimisation, substance abuse or dependence, intoxication, and whether the killing occurred in defensive circumstances. See Appendix F, 'Research Methodology' for limitations and methodology.

69 QLRC, Legal Profession Interviews (Research Project 5, 2025) Supreme Court Judge, Interview 3.

70 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 106–7.

71 Women's Legal Service Queensland, Submission 37.

72 Joseph Lelliott and Rebecca Wallis, Submission 22.

73 Caitlin Nash and Rachel Dioso-Villa, 'Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners' (2023) 30(9) Violence Against Women 2275, 2289.

74 Caitlin Nash and Rachel Dioso-Villa, 'Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners' (2023) 30(9) Violence Against Women 2275, 2290.

75 Caitlin Nash and Rachel Dioso-Villa, 'Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners' (2023) 30(9) Violence Against Women 2275, 2289.

76 Caitlin Nash and Rachel Dioso-Villa, 'Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners' (2023) 30(9) Violence Against Women 2275, 2290.

77 QLRC, Women Who Kill (Research Project 4, 2025). We used Microsoft Excel to analyse data extracted from sentencing remarks, and court data provided by the Courts Performance and Reporting Unit. We conducted crosstabulations to explore the relevance for women convicted of an intimate partner homicide of factors such as a history of DFV victimisation, substance abuse or dependence, intoxication, and whether the killing occurred in defensive circumstances. See Appendix F, 'Research Methodology' for limitations and methodology.

78 QLRC, Women Who Kill (Research Project 4, 2025). We used Microsoft Excel to analyse data extracted from sentencing remarks, and court data provided by the Courts Performance and Reporting Unit. We conducted crosstabulations to explore the relevance for women convicted of an intimate partner homicide of factors such as a history of DFV victimisation, substance abuse or dependence, intoxication, and whether the killing occurred in defensive circumstances. See Appendix F, 'Research Methodology' for limitations and methodology.

79 We were only able to identify if intoxication was a factor where there was available data. See Appendix F, 'Research Methodology' for limitations and methodology.

80 QLRC, Homicide Cases (Research Project 6, 2025).

81 Criminal Code (Qld) s 304B(1)(a).

82 Criminal Code (Qld) s 304B(1)(b).

83 Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 9–13; Michael Flood et al, 'Who Uses Domestic, Family and Sexual Violence, How and Why? The State of Knowledge Report on Violence Perpetration' (Report, Queensland University of Technology, 2022) 22.

84 Transcript of Proceedings, R v Horace Larenzo Lyken Jones (Supreme Court of Queensland at Rockhampton, 14/2014, 24 November – 2 December 2014; R v Jones (2016) 2 Qd R 310.

85 QLRC, Legal Profession Interviews (Research Project 5, 2025) Supreme Court judge, Interview 6.

86 Criminal Code (Qld) s 304B(2).

87 We consider recent reforms to evidence law in Chapter 4: A changing legal landscape.

88 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 14.

89 Respect Inc, Submission 14; Australian National University Law Reform and Social Justice Research Hub, Submission 16; Queensland Sexual Assault Network, Submission 26; Queensland Council of Social Services, Submission 28.

90 Victims' Commissioner, Submission 32.

91 R v Tracey (2024) 18 QR 26.

92 QLRC, A Review of the Excuse of Accident and the Defence of Provocation (Report No 64, September 2008) 414; AJ Ashworth, 'Self-Defence and the Right to Life' (1975) 34(2) The Cambridge Law Journal 282, 282, 288–9.

93 Human Rights Committee, General Comment No. 36: Article 6: Right to Life, UN Doc CCPR/C/GC/36 (3 September 2019) [20], [23]; Angelova and Iliev v Bulgaria (2008) 47 EHRR 7 [93], citing; Osman v United Kingdom (2000) 29 EHRR 245 [90]; Queensland Human Rights Commission, Submission 41.

94 See discussion in Queensland Human Rights Commission, Submission 41.

95 Human Rights Committee, General Comment No. 36: Article 6: Right to Life, UN Doc CCPR/C/GC/36 (3 September 2019) [3], [10].

96 McCann v United Kingdom (1995) 21 EHRR 97 [155]–[156]; Armani Da Silva v United Kingdom (European Court of Human Rights, Grand Chamber, Application Nos 5878/08, 30 March 2016) [248], [288]; R (Collins) v Secretary of State for Justice [2016] EWHC 33 [62]–[63].

97 The United Nations Human Rights Committee has set criteria for the lawful use of lethal force by an individual acting in self-defence, including that it is strictly necessary in view of the threat posed by the attacker and the force applied does not exceed the amount strictly needed for responding to the threat. Human Rights Committee, General Comment No. 36: Article 6: Right to Life, UN Doc CCPR/C/GC/36 (3 September 2019) [12]; Queensland Human Rights Commission, Submission 41.

98 In Chapter 4: 'Balancing objectivity and subjectivity', we have discussed why objectivity and subjectivity are adequately balanced in the core elements of self-defence.

99 Human Rights Committee, General Comment No. 36: Article 6: Right to Life, UN Doc CCPR/C/GC/36 (3 September 2019) [10].

100 Human Rights Committee, General Comment No. 36: Article 6: Right to Life, UN Doc CCPR/C/GC/36 (3 September 2019) [12]; Queensland Human Rights Commission, Submission 41.

101 Committee on the Elimination of Discrimination against Women, General Recommendation No. 19: Violence Against Women, UN Doc A/47/38 (30 January 1992) [7]; Committee on the Elimination of Discrimination against Women, General Recommendation No. 33: Women's Access to Justice, UN Doc CEDAW/C/GC/33 (3 August 2015) [28], [47].

102 This is based on the right to life: Explanatory Notes, Human Rights Bill 2018 (Qld) 19; Human Rights Committee, General Comment No. 36: Article 6: Right to Life, UN Doc CCPR/C/GC/36 (3 September 2019) [23].

CHAPTER 6

A new defence of duress

Contents

Recommendations

R7 The defence of compulsion (section 31(1)(c)) should be repealed.

R8 The defence of duress (section 31(1)(d)) should be expanded and modernised to apply where a person:

(a) reasonably believes that a threat of harm will be carried out unless they commit the relevant criminal offence ('threat element')

(b) reasonably believes that they need to commit the relevant criminal offence to avoid the threat being carried out ('necessity element'), and

(c) their conduct is a reasonable response to the threat ('proportionality element').

R9 The defence of duress should be available as a defence to murder where the relevant threat (referred to in Recommendation 8) is death or 'serious harm'. 'Serious harm' should encompass harm, including its cumulative effect, that does or is likely to:

(a) endanger a person's life, or

(b) be significant and longstanding, including psychological harm or harm arising from a cause such as sexual assault.

R10 A person who voluntarily engages in an unlawful association should not be able to rely on the defence of duress.

R11 The Criminal Code should be amended to make explicit how the defence of duress applies when a defendant is intoxicated:

(a) If a person voluntarily consumes intoxicating substances, their intoxication is relevant to their belief for the threat element and their belief for the necessity element.

(b) If a person involuntarily consumes intoxicating substances, their intoxication is relevant to the elements of threat, necessity and proportionality.

(QLRC Draft Bill cl 5, 6)

Introduction

6.1. This chapter discusses our recommendations to create a new defence of duress (**Recommendations 8–9**). We also discuss our recommendation to repeal the defence of compulsion (**Recommendation 7**). We intend our recommendations to:

- enhance understanding of the important role of duress in excusing behaviour arising from fear and desperation, including by DFV victim-survivors who experience coercive control
- extend the scope of the defence to support access to justice and ensure consistency across jurisdictions
- simplify and clarify the legal framework, by repealing compulsion and making other consequential amendments to the Criminal Code.

6.2. Duress arises where a person commits an offence because their will is overborne by a credible threat to them or another person and the only way the threat can be avoided is by committing an offence. Although the defendant's physical conduct is voluntary, their decision to act is not.[1] The defence recognises that people should not be expected to sacrifice themselves in response to a credible threat and that self-preservation responses can be reasonable. This essential rationale of the duress defence aligns with the contemporary understanding of how coercive control removes a victim-survivor's agency and capacity to act voluntarily.[2]

6.3. In Queensland, sections 31(1)(c) and 31(1)(d) of the Criminal Code capture the concept of duress under a title of compulsion. In this chapter, we refer to section 31(1)(c) as compulsion and section 31(1)(d) as duress.

6.4. This chapter has three sections. The first section explains our recommended reforms to duress and compulsion. The second section discusses the key justifications for our reforms. We conclude by consider the human rights implications of our reforms.

Our reforms explained

Expanding and clarifying duress

6.5. We recommend legislative reform to repeal section 31(1)(d) and replace it with a new defence of duress (**Recommendations 8 – 11**). The new defence is broader as it:

- applies to threats of harm or detriment, instead of being limited to threats of serious harm or detriment
- can apply to cases where GBH or intent to cause GBH is an element
- can apply to murder where there is a threat of death or serious harm
- narrows the exclusion of the defence in cases of unlawful associations to create a closer connection between the association and alleged offence.

6.6. Expanding duress does not change the culpability of the primary offender (the person who exercised duress).

6.7. The new defence is contained in our Draft Bill.[3] It is based on the Victorian defence and is similar to the defence in the Commonwealth Criminal Code.[4] It has three elements:

- the defendant reasonably believes that a threat of harm or detriment has been made that will be carried out unless an offence is committed ('threat element')
- the defendant reasonably believes that doing the act or making the omission is the only reasonable way that the threat can be avoided ('necessity element'), and
- the act or omission is a reasonable response to the threat ('proportionality element').

6.8. The defence requires the defendant's belief in both the threat and the necessity to respond to be reasonable. It differs from self-defence which relies on a person's subjective belief in the necessity to use force. This reflects the different policy intent behind duress and self-defence.[5] Self-defence involves the use of reasonable force to protect oneself or another, while duress arises where a person's will is overborne in response to a credible threat. The victim in duress cases may be an innocent third party, whereas the victim in self-defence cases will usually have created the circumstances giving rise to the necessity. The scope of duress is also broader, applying as a defence to all criminal offences, while self-defence is limited to offences involving the use of force, justifying a different approach.

Reasonable belief

6.9. Our recommended new duress defence would preserve the focus on the defendant's 'reasonable belief', which is used in the Victorian and Commonwealth duress provisions.[6] The High Court has explained:

> Reasonable belief is a familiar concept in the context of criminal responsibility in the Criminal Code and at common law … [T]he jury are required to consider two questions. The first is an inquiry as to the state of the accused's mind. The second is an objective question … 'exclusively concerned with the jury's view of the grounds, whether they constitute reasonable grounds'.[7]

6.10. In Queensland and the Commonwealth, 'reasonable belief' for the duress provision has been held to require:[8]

- an actual belief held by the accused
- 'which must be objectively justifiable, taking into account the objective circumstances of the accused, but not the personal characteristics of the accused, or the circumstances as the accused perceived them to be'.[9]

6.11. A requirement that a belief must be reasonable protects against irrational beliefs excusing otherwise criminal conduct. This objective component anchors duress in community standards as determined by the jury.

6.12. A less objective approach has been taken in Victoria, where 'reasonable belief' has been held to mean 'whether a reasonable person possessing any personal characteristics of the accused that might have affected the accused's appreciation of the circumstances might have held the relevant belief'.[10]

6.13. We recognise that these jurisdictional differences are due to contextual provisions in the Victorian legislation, including provisions regarding evidence of domestic violence and the relevance of intoxication.[11] Our legislative reforms aim to preserve the current Queensland and Commonwealth interpretation.

6.14. At common law, expert evidence regarding the effect of 'battered woman syndrome' is relevant to subjective and objective assessments in duress.[12] By extension, this would apply to expert evidence of the effect of social entrapment in DFV relationships.

The threat element

6.15. Our recommended new duress defence expands the scope of the existing defence to include 'threats of harm or detriment', instead of the current requirement for 'threats of serious harm or detriment'.

6.16. It introduces a requirement of reasonableness to the belief that threats have been made and will be carried out.

6.17. 'Harm' is not defined because the common meaning is sufficient.

6.18. We recommend retaining the definition of 'detriment' in section 1 of the Criminal Code, which includes detriment to property. Referring to detriment is important in the DFV context, to ensure that threats to damage property, often a feature of coercive control, can satisfy the threat element.

6.19. The defence should continue to require an operative threat.[13] This would maintain the current interpretation that includes implied and unstated threats and threats arising from extraneous circumstances and past conduct.

The necessity element

6.20. We recommend changing the tense of the necessity element to active tense to direct attention to the defendant's mindset and intention at the time of the relevant act.[14] The defendant:

- must reasonably believe that the act or omission is 'the only reasonable way' to avoid the threatened harm, rather than the current requirement that they are 'unable otherwise' to avoid carrying out the threat[15]
- is not required to exhaust unreasonable methods of retreat.

The proportionality element

6.21. Our recommended defence requires that the defendant's response is 'reasonable', rather than 'reasonably proportionate'. This remains an objective test,[16] consistent with the current third element of duress.[17]

6.22. The reasonableness of the defendant's response is closely linked to the requirement that their conduct was the only reasonable way to avoid the threatened harm, both of which require proportionality.[18]

Duress and murder

6.23. Where duress is raised as a defence to murder, a higher threshold should apply to reflect the seriousness of this offence (**Recommendation 9**).

6.24. The use of lethal force should be proportionate to the threat. This requires that the defendant feared death or 'serious harm'. In the QLRC Draft Bill 'serious harm' is defined to mean harm, including the cumulative effect of harm, that:

- endangers, or is likely to endanger, a person's life, or
- is, or is likely to be, significant and longstanding.

6.25. This is the same threshold and definition we recommend for self-defence.[19] 'Harm' is not defined and its ordinary meaning is expansive. 'Serious harm' is defined broadly and inclusively in a way that can include the cumulative effects of harm, psychological harm and fear of sexual assault.

Duress and unlawful associations

6.26. Duress is not currently available if a person has voluntarily entered into an unlawful association where threats of serious harm or detriment are likely to be made.[20]

6.27. **Recommendation 10** would narrow this, so that duress is excluded where:

- the relationship was entered into for the purpose of carrying out unlawful conduct of the same kind as that demanded
- the person was involved in the unlawful association at the relevant time
- the threat of violence came from people within the unlawful association.[21]

'I didn't sign up for this'

A young person joins a group as a street level drug dealer. Suddenly, the leader of the group holds them at gunpoint and tells them they must participate in a major bank robbery, otherwise they will be shot.

As duress is presently framed, the person would likely not be able to use the defence if they are charged with robbery. Under the reformulated exclusion, they may have access to the defence because the nature of the offending they are asked to commit is different to their expectation. The other elements of duress would still need to be considered for the defence to apply.

Duress and intoxication

6.28. **Recommendation 11** is for legislative reform to make explicit how the defence of duress applies when a defendant is intoxicated, so that:

- voluntary intoxication is:
  - relevant to the defendant's belief for the threat and necessity elements
  - irrelevant to the reasonableness of that belief
  - irrelevant to the proportionality element
- involuntary intoxication is relevant to all elements of the test for duress.

6.29. This is consistent with our approach to self-defence and intoxication (**Recommendation 3**). However, for voluntary intoxication, it operates differently between the defences because there are differences in the elements for self-defence and duress. For self-defence, the defendant's relevant belief is that it is necessary to use force for a defensive purpose. The reasonableness of their conduct must be assessed by considering their subjective belief. While the test does not require the belief to be reasonable, in cases of voluntary intoxication the reasonableness of the defendant's response is assessed from the perspective of a sober person who holds that subjective belief. For duress, the relevant belief is that a threat of harm or detriment has been made that will be carried out unless an offence is committed and it must be reasonable. This approach to voluntary intoxication and duress retains the current approach regarding the relevance of intoxication to assessing 'reasonable belief'[22] and is generally consistent with other jurisdictions where the laws prescribe the relevance of intoxication to duress or defences generally.[23]

Compulsion and consequential amendments

Repealing compulsion

6.30. We recommend repealing compulsion (**Recommendation 7**). Clause 5(2) of the QLRC Draft Bill gives effect to this reform.[24]

Consequential amendments to section 31

6.31. Sections 31(1)(a) and (b) contain two defences relating to lawful authority. Those defences are outside the scope of our review.

6.32. Due to our recommended reforms to sections 31(1)(c) and (d), we make the following suggestions to reform section 31:

- Retain the exclusion of specific offences in section 31(2), which the High Court has found equally applies to sections 31(1)(a) and (b).[25]
- Remove the unlawful association exclusion in section 31(2). This exclusion explicitly references 'threats'. We consider that it does not apply to sections 31(1)(a) and (b) and is not relevant once sections 31(1)(c) and (d) are repealed.
- Change the title of section 31 from 'Justification and excuse — compulsion' to 'Execution of law and obedience to orders'. This would more accurately reflect the amended section 31 and the proper construction of the defences as justifications, not excuses.

Consequential amendments to section 25

6.33. Section 25 of the Criminal Code outlines the defence of extraordinary emergency. The application of this defence is subject to express provisions relating to 'acts done upon compulsion or provocation or in self-defence'. The Queensland Court of Appeal has interpreted this to mean that, where those provisions dealing with the specified defences arise on the evidence, section 25 is not available.[26]

6.34. Our reforms to compulsion and duress require that section 25 is amended to refer to the new defence of duress.[27]

The case for reform

6.35. This section outlines the key arguments justifying our recommended reforms. There are three overarching arguments:

- Duress is an important defence with a sound policy rationale and legal basis. It has an important role in excusing criminal behaviour in circumstances where a person is compelled to act from fear. Reforms are required to enable it to work effectively and achieve just outcomes, including in DFV contexts.
- In its current form, there are barriers to accessing duress in meritorious cases. Reforms are required to the scope and application of the defence to improve access to the defence and increase consistency across jurisdictions.
- Our reform to repeal compulsion would simplify and clarify the law, removing a redundant defence.

Duress is an important defence with an appropriate rationale

6.36. This section discusses the rationale for duress. In the context of contemporary understanding of the nature and prevalence of coercive control and its effects on DFV victim-survivors, the defence of duress is critical yet under-utilised. We recommend retaining and enhancing this defence.

The role of duress

6.37. Duress can be justified having regard to fundamental principles of legal responsibility as well as contemporary community attitudes and standards. Duress arises because the defendant 'faces a moral dilemma': to commit an offence — usually against a person with 'no responsibility for the circumstances'[28] — or to suffer harm.[29] It is based on the need 'to act in self-protection or to protect others from harm', similar to self-defence.[30]

6.38. As an excuse rather than a justification, duress recognises that the defendant's actions were unlawful but that they were not morally nor criminally responsible because of the extreme circumstances they faced.[31] It acknowledges that the defendant could not reasonably have been expected to act otherwise and is a 'merciful concession to human frailty'.[32]

6.39. In circumstances of duress, although a defendant is acting with intent to commit the physical act, their will is overborne by fear and motivated by self-preservation or preservation of others. Committing the offence is not a real choice.[33] The criminal law is based on fundamental assumptions of free will and individual choice and the defence of duress reflects these values.[34]

6.40. Yeo expressed the essence of duress as follows:

> Once a person is under the influence of a threat, whatever he or she does depends on what the threatener demands. The crime demanded might be trivial or serious but it has no necessary connection with the type of threat confronting the accused. Policy reasons would, however, insist on a requirement that the accused's response was reasonably appropriate to the threat.[35]

Evolution of duress in Queensland

6.41. Duress was included in the Criminal Code when it came into force in 1901 and the defence is understood to have been recognised at common law prior to its codification.[36]

6.42. Duress has been previously reviewed and reformed in Queensland.[37] In September 2000, it was amended in response to recommendations of the Taskforce on Women and the Criminal Code.[38] That Taskforce identified that female DFV victim-survivors faced many of the same issues in accessing defences of duress and self-defence. The reforms, based on the Model Criminal Code, included removing the immediacy requirement and expanding the defence to apply to a wider range of threats, including to property. The exclusions in section 31(2) of the Criminal Code were retained, reflecting the majority view of that Taskforce that duress should be excluded in cases of murder.[39]

Duress is an important but under-utilised defence in circumstances of coercive control

6.43. The Taskforce on Women and the Criminal Code recognised the relevance of duress for DFV victim-survivors who offend.[40] The understanding of DFV, including coercive control, has

continued to develop since that review. Chapter 3 discusses this contemporary understanding and the relevance of considering the criminal law through a social entrapment lens.[41] This is particularly relevant to understanding how coercive control can drive offending.

6.44. Coercive control can give rise to a feeling of helplessness and entrapment, where 'the victim is placed in a position akin to a hostage'.[42] The Women's Safety and Justice Taskforce noted that the leniency afforded to hostages or kidnappees who offend to survive should be extended to DFV victim-survivors who offend in the context of coercive control.[43]

6.45. Other defences such as self-defence may be relied on by DFV victim-survivors who offend in the context of coercive control. However, duress has been under-utilised because of the misalignment of the defence with our developing understanding of the realities in which people legitimately act under duress, including in DFV contexts. Where a DFV victim-survivor commits offences against an innocent third party, duress is often the appropriate defence. There are strong policy reasons for ensuring that:

- true drivers of criminal offending are appropriately identified in each case
- criminal justice responses are just, both in sentencing outcomes and characterisation of the offender's culpability.

6.46. The next section considers common law developments in the interpretation of duress in DFV cases, barriers DFV victim-survivors face in accessing the defence and how our recommended reforms address these barriers.

The case law on duress in the DFV context is developing

6.47. Recent decisions reflect courts' evolving understanding of the relevance of the DFV context for duress. Relevant findings include:

- expert evidence of 'battered woman syndrome' is relevant to both objective and subjective limbs of the defence:
  - it is relevant to the subjective element of whether the defendant's will was actually overborne
  - it is relevant to the objective element because it assists the court to assess whether a woman of 'reasonable firmness' would succumb to the pressure and why they would participate rather than escape[44]
- expert evidence can be important to establish the reasonable basis for the defendant's actions[45]
- the threat element covers:
  - threats of future harm, provided the threat is 'operative', or 'a continuing or ever present threat which is subsisting' in overpowering the defendant's will at the time of the relevant actions[46]
  - implied and unstated threats, recognising that 'pervasive violence, intimidation, control and sexual abuse' can constitute an implied threat of serious violence or more severe sexual assaults[47]
- the necessity element should be assessed by reference to:
  - the defendant's subjective belief
  - whether the belief was held on reasonable grounds, based on what the defendant knew or reasonably believed to be the facts at the relevant time

- whether the defendant reasonably believed that the offending was the only way to escape the threat.[48]

6.48. The High Court decision in R v Rowan reflects a move away from requiring the relevant threat to be individualised and localised, to understanding that the threat can be implied or unstated.[49] It also reflects understanding of the relevance of surrounding circumstances, including past conduct of the person exerting duress.[50] These developments are consistent with the developing understanding of coercive control.

Barriers for DFV victim-survivors who offend

6.49. Despite these developments in the common law, DFV victim-survivors continue to face barriers to accessing the defence of duress. These barriers can prevent them from seeking to rely on the defence and can affect criminal justice processes and outcomes. They include:

- the requirement that the relevant threat was imminent
- the required seriousness threshold for the relevant threat
- the need to show reasonable grounds for why there was no reasonable alternative to offending
- lack of understanding of how coercive control affects filicide cases, where a DFV victim-survivor is liable for criminal negligence based on their failure to provide medical attention to their child.

6.50. Traditional understandings of threats constituting duress focus on concepts such as imminence and immediacy. They focus on 'standover' situations involving specific and tangible threats, such as a gun to a person's head, rather than patterns of coercion and control.[51] Queensland's current duress provision no longer has an immediacy requirement. Recent common law developments in Australia (discussed above) and comparative jurisdictions have challenged traditional concepts of imminence.[52] However, this concept still shapes perceptions and interpretations of the defence.

6.51. The current defence does not properly reflect the nature of threats that arise in the context of a relationship characterised by coercive control, limiting its access to DFV victim-survivors.[53] The immediacy requirement fails to recognise that DFV is 'typically entrenched, unpredictable and random … to a woman whose self esteem has been demolished by past violence, the fear of violence may be ever present and overpowering'.[54]

6.52. Traditional understandings of threats constituting duress also often fail to capture the breadth of abuse perpetrated in circumstances of coercive control. The requirement that the threat be of serious harm or detriment, regardless of the offence committed, can exclude actions responding to the cumulative effect of psychological, sexual and financial abuse where each incident, when considered in isolation, does not meet that threshold.[55]

6.53. A relevant consideration for the necessity element is whether the defendant sought police assistance.[56] The courts have strictly interpreted this requirement, emphasising the need for people to report threats to appropriate authorities where there is a realistic opportunity to do so rather than engaging in criminal offending.[57] While the High Court has accepted that failure to report the threat to police does not necessarily prevent access to duress, 'an unparticularised concern that police protection may not be a guarantee of safety cannot, without more, supply reasonable grounds for a belief that there is no option other than to break the law in order to escape the execution of a threat'.[58]

6.54. The failure to seek assistance is often used as evidence that the defendant did not exhaust reasonable alternatives, denying access to the defence. While this is understandable on public

policy grounds, it fails to reflect the DFV context and creates barriers for DFV victim-survivors, who may:

- have negative experiences engaging with the police or other authorities, including when seeking to report coercive control
- fear triggering punitive responses from the State, such as child safety responses
- fear retaliatory violence from their abuser.[59]

6.55. Cultural barriers can compound these issues.[60]

6.56. The reasonableness requirement can support victim-survivors to raise arguments and lead expert evidence of the relevance of coercive control to their decision not to seek assistance.[61] One Supreme Court Judge we interviewed provided the following example of this:

> But the argument [by the Crown] was that … she could have hopped on a bus, [gone] to Sydney and just got off at the next police station and reported all of this. She wasn't under duress. She could have arrived at Sydney and gone to the police … [She] could have run away at any time. That was the argument. It completely misunderstands the degree to which her will had been suborned by this point and I won't tell you the trauma she suffered out of respect for her… But I had no doubt that she was just barely functioning … psychiatrists agreed.[62]

6.57. Duress is not currently accessible to DFV victim-survivors who commit filicide in the context of coercive control because it is excluded as a defence in murder cases. Two cases in our women who kill research (Research Project 4), summarised below, involved women who failed to obtain medical attention for their child in circumstances where their abusive partner told them not to.[63] Viewed through a social entrapment lens, the women's conduct could be excused by the defence of duress. In these cases, the women's abusive partners were also sentenced for the offending.

Filicide under coercive control — R v Leask (Qld)

Leask was 21 years old at the time of the offence. Cataldo, Leask's partner at the time and the father of their baby, was emotionally and physically abusive towards Leask for their entire relationship. Cataldo inflicted injuries on the baby, including skull fractures resulting in brain damage, fractures to four ribs and her right arm. Leask did not inflict any of the injuries and was not present when they were inflicted.

Leask heard the baby scream and noticed she was crying out in pain. She tried to obtain medical assistance immediately, and again in the following days, but was 'prevailed on' by Cataldo not to do so. Eventually, she drove the baby to the hospital where the baby later died. Leask pleaded guilty to manslaughter.

The sentencing judge accepted that Leask was at all relevant times 'an especially vulnerable person and in fear of Cataldo'. She suffered from an eyesight impairment and believed Cataldo would take the child and gain custody because of her impairment if she did not comply with his demands.

Filicide under coercive control — R v Lee (Qld)

Lee was 26 years old and had a 22-month-old baby, Mason. Lee had cognitive impairment and endured significant violence during her childhood and in other relationships. Her partner, O'Sullivan, inflicted significant domestic abuse towards Lee during their relationship, including regularly taking Mason and refusing to let Lee see him, and threatening to kill Mason if Lee left O'Sullivan. In the coronial inquest, this was noted as a tool of control used by Sullivan to prevent Lee from leaving him. One day, O'Sullivan punched Mason in the abdomen, resulting in injuries that led to blood poisoning. Lee was not present at the time and did not know about the incident. Mason was not taken to a doctor and died four days later. Lee and O'Sullivan were charged with manslaughter as well as cruelty to a child after previously failing to take Mason to hospital for other injuries.

In dismissing an appeal by the prosecution against Lee's sentence, the Court noted:

In this case, the unchallenged evidence proved that Lee was simply unable to protect her son against O'Sullivan. While she was sometimes moved to recover her son from O'Sullivan's custody, his dominance over her meant that she could do nothing without his permission and he refused to give her his permission. An appeal by her to police for assistance when she was in constant fear of physical retribution was out of the question for her.

6.58. The duty to protect presumes the defendant has the capacity to positively protect their child. For some women, what is labelled a failure to protect may actually represent a survival strategy. As Midson states, '[s]ome women know only too well that interfering with an intimate partner during a violent episode may have engendered only more violence toward herself and her children'.[64]

How our reforms address existing barriers

6.59. Our recommended reforms address the barriers that DFV victim-survivors face in accessing duress in the following ways:

- They ensure the appropriate availability of the defence in response to threats of harm and detriment, and as a defence to murder, where serious harm is threatened.
- By focusing on the defendant's reasonable belief,[65] they strike the appropriate balance between considering the defendant's subjective experiences, including reasons they may not have exhausted 'reasonable' methods of retreat, and community standards of reasonableness.[66] This is important as duress excuses criminal offending, often against an innocent third party. It also enables consideration of relevant expert evidence of DFV.[67]
- Expanding duress so that it is available as a defence to murder supports proportionate responses to threats of death or serious harm and reflects how coercive control is a lethality risk indicator.[68]

6.60. Our practice and procedure reforms to improve access to relevant DFV evidence (**Recommendations 23, 26, 29**) and to increase understanding of the effect of DFV on criminal offending (**Recommendations 31, 33**) support our legislative reforms for duress. Ensuring that a DFV victim-survivor can access relevant domestic violence evidence to support assertions of duress, combined with improved education and training of lawyers and the judiciary, would support just outcomes. It would help to avoid situations such as in R v Lee,

discussed above, where the sentencing judge labelled Lee's offending as more serious, in one respect, than O'Sullivan's. This was due to her role as primary caregiver, despite the significant control O'Sullivan exercised over Lee, her intellectual impairment and her lack of knowledge of the assault. The Court of Appeal characterised the conduct differently, and in our view, appropriately:

> A mother's neglect of her child, which results in her child's death, is an appalling offence. However, manslaughter constituted by neglect, even when it is the terrible neglect in this case, is not to be compared with an unlawful killing of a child by a deliberate violent act.[69]

Reforms to duress promote access to justice

6.61. This section discusses how our reforms to duress increase access to justice for all defendants. We consider how the defence has traditionally been limited in scope due to concerns about the sanctity of life and appropriately criminalising activity undertaken by unlawful association. We also consider how, by promoting consistency with other defences within the Criminal Code and with the approach taken in other jurisdictions, our reforms would increase access to justice.

Expanding duress to apply to all offences, including murder

6.62. Expanding duress to apply to all offences, with appropriate limitations in cases of murder and unlawful associations, promotes access to justice. It does not affect the culpability of the primary offender who exercised duress. Instead, it recognises that involuntariness and inaccessible alternatives underpin the defence. The nature of the crime committed does not change the fact that a defendant's will is overborne. The Model Criminal Code Officers' Committee regarded the exclusion of duress as a defence to murder as an 'artificial' limitation for this reason.[70] Many academics have also expressed this view,[71] and many stakeholders also supported removing the current exclusion.[72]

6.63. The rationale for the limitation is that the law must uphold the sanctity of life and that a person should be prepared to give their life, rather than to take the life of an innocent third party.[73] However, there is no consensus that it is always morally wrong to kill in response to duress. Shaffer gives the example of a mother who kills due to a credible threat to kill her children, suggesting that the mother, acting in protection of her children, is arguably acting in a manner consistent with her duty to her children.[74] If it can be accepted that a person who kills under duress to protect others should not be treated as a murderer, an inflexible rule preventing a jury's proper consideration of the circumstances to decide a person's culpability is inherently flawed.

6.64. While the criminal law, and specifically the rationale for duress, recognises appropriate concessions to human frailty, the exclusion is unduly harsh and requires a standard akin to heroism.[75] As the Law Commission of England and Wales expressed, '[t]he law must recognise that the instinct and perhaps the duty of self-preservation is powerful and natural'.[76] The defence should be applicable where a reasonable person would have broken the law in the same circumstances.[77]

6.65. The current exclusion also creates legal inconsistency and arbitrariness within the Criminal Code. While duress is explicitly excluded from cases of murder, GBH and offences where intent to cause GBH is an element,[78] it is available for manslaughter[79] and, arguably, for dangerous driving causing death[80] and attempted murder.[81] This means that where a defendant argues that a partial defence or lack of intent reduces their culpability from murder to manslaughter, they can argue they should be acquitted of manslaughter because duress applies.[82]

6.66. This legal inconsistency is compounded because other defences, including extraordinary emergency, are available for all offences.[83] For this reason, the Law Reform Commission of Western Australia considered the exclusion of certain offences to be 'illogical'.[84] There is no reason to differentiate duress and no grounds to suggest the risk of misuse is greater than for other defences.[85]

6.67. The definition of murder has expanded since duress was most recently amended, with the 2019 inclusion of death 'caused by an act done, or omission made, with reckless indifference to human life'.[86] This amendment reflects the policy position that 'a person who foresees the probability of death is just as blameworthy as the person who intends to kill'.[87] Intention to kill or do GBH is not an element but the defendant must be subjectively 'aware of the probability that the act or omission would cause death'.[88] One Supreme Court Judge we interviewed considered the appropriate scope of duress in the context of this amendment and said:

> I don't think you can have one without the other. You can't extend the definition without also extending the protection.[89]

6.68. The breadth of the accessorial liability provisions is also relevant. One Magistrate we interviewed provided the following example of this, based on a case they were involved in as a practitioner:

> One of my clients closed the curtains in a room where his co-offender then gave a woman a deliberate overdose of heroin which killed her and he was clearly under enormous duress. And yet, because it was murder, duress wouldn't have given him a defence. [90]

6.69. As discussed above, excluding duress from applying as a defence to murder and GBH limits access to justice for DFV victim-survivors and fails to reflect the lethality risk associated with a history of DFV in the relationship. In their submission, Dioso-Villa and Nash note: 'Women should not be denied a full acquittal simply because their defensive actions also reflect elements of coercion or compulsion'.[91]

6.70. In the cases of filicide discussed above, both women pleaded guilty to manslaughter in circumstances involving duress. It is difficult to reconcile why a DFV victim-survivor who fails to seek medical care due to coercive control exerted by the abuser who inflicted the child's injuries should be guilty of manslaughter.

6.71. The case of R v Maygar, Woodman and WT below, demonstrates the injustice of the exclusion of duress in murder cases.[92]

Murder committed while being held hostage — R v Maygar, Woodman and WT (Qld)

Maygar and Woodman killed victim W in the garage of a unit in Toowoomba. They then returned to the unit, told the other occupants of the murder and violently held them all hostage. The other occupants included WT (a 16-year-old boy), a mother and her infant.

Maygar and Woodman engaged in a series of violent acts, including seriously assaulting, raping and killing hostages in the presence of the others and threatening to kill them all. After being hit over the head with a metal pole multiple times and threatened with death, WT told Myangar and Woodman he would 'prove' himself. He assaulted another hostage who they had already seriously assaulted and killed another hostage.

Maygar and Woodman eventually left and WT took the remaining hostages to a nearby house, where he helped them to call the police and the infant's father.

WT told the police that, if he had not done what he did, he feared Maygar and Woodman would have killed him. He told them he could have escaped out of the window at one point but did not because he did not want other hostages to get hurt.

It was accepted at sentence that WT was either actually compelled, or honestly and reasonably believed he was compelled, to act as he did. The Court recognised that WT was 'acting under extreme compulsion, and fear of death' when offending. One judge stated: 'It is, I think, possible to conceive of a rational system of criminal law under which a person acting under such compulsion as WT did might not be regarded as criminally responsible at all for his actions.'

6.72. Overall, the circumstances in which duress may be invoked in murder cases are rare and serious. The reformed duress provision, by incorporating reasonableness and a further limitation of responding to a threat of serious harm in murder cases, achieves the appropriate balance between protecting the sanctity of life and acknowledging the involuntariness of a person acting under duress. Several Australian jurisdictions do not have any limitation on the offences to which duress applies, including the Commonwealth, Victoria, Western Australia and the ACT.[93] Our recommended reforms would increase consistency with these jurisdictions.

Unlawful associations

6.73. Section 31(2) of the Criminal Code currently excludes reliance on duress for those who engage in unlawful associations or conspiracies. Duress is not available to a person who joins an unlawful association aware that there is a risk they may be coerced by someone in the association to commit a criminal offence.[94] The provision does not expressly contemplate a situation where a person retreats from the unlawful association or declines to further participate, or if there has been a substantial break between the association and offending.[95] It also does not expressly consider the nature of the illegal act and whether it is of the same kind as that in which the defendant agreed to participate. In this way, the exclusion is too broad. It is wider than in Victoria, the ACT and the Commonwealth Criminal Code.[96]

6.74. The policy reason behind this exclusion is that 'the law … must discourage association with known criminals'.[97] The fact that the defendant has, by voluntarily choosing to engage in an unlawful association, willingly placed themselves in an 'uncontrollable position' justifies the exclusion of duress.[98]

6.75. However, recognising that the law should operate fairly and deliver just outcomes, this exclusion should be construed to allow flexibility for 'the jury to apply its sense of justice to the facts and to determine, applying the community's standards of fairness and common sense', in deciding whether the defendant can access the defence.[99] The current exclusion 'has a capacity to operate harshly and to produce unjust results,' because it precludes defendants who should have known there was a risk of being subjected to **any** compulsion by threats of violence from accessing the defence.[100]

Preventing just outcomes

A practical example of where the current duress provision would operate harshly is where a defendant decides they no longer wish to participate in the illegal activity, expresses this and is violently threatened by the other participants. If they drive away from the situation dangerously while being pursued by the other participants, any illegal activity engaged in during that escape may also fall within the exclusion, preventing access to the defence.

6.76. Based on s 10.2(3) of the Commonwealth Criminal Code,[101] we recommend a tighter connection between the offending and the unlawful association:

- Using the phrase 'for the purpose of' requires a closer connection between the offending and general conduct in the unlawful association. It requires the defendant and the person applying the threat to have a shared purpose.[102]
- Using the term, 'associating' establishes a temporal link so that a person would need to be actively engaging in the association while offending.[103]

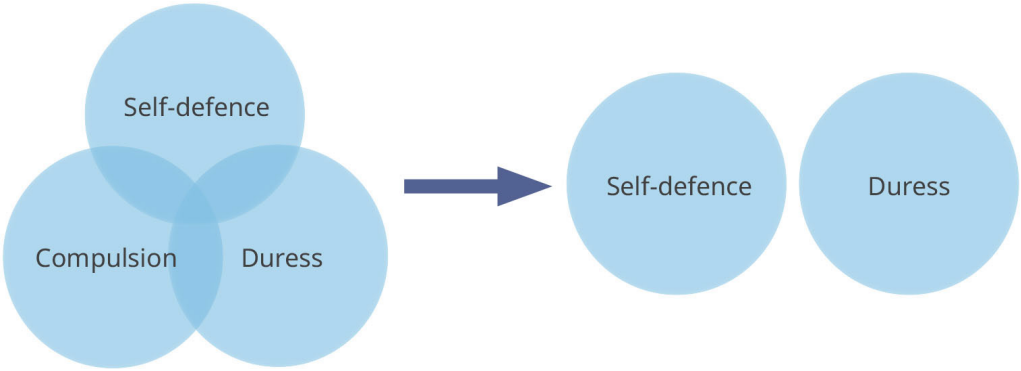
6.77. We do not consider it necessary to add an additional element requiring that the person was voluntarily associating 'for the purpose of carrying out unlawful conduct in circumstances where it is likely that such threats would be made', as recommended by the Law Reform Commission of Western Australia.[104] The additional element is too wide and carries the same problems as the present wording of the exclusion. Requiring all core elements of duress, including the stricter threat element, to be satisfied if duress is raised addresses these concerns.

Simplifying and clarifying the law

6.78. In this section, we discuss how our reforms would simplify and clarify the law. We approach this consideration in two ways. First, we consider how our reforms simplify and clarify duress. We then consider the role of the reformed defences of self-defence and duress in the broader defences framework, focusing on their interaction with compulsion. We draw on our identification of the relationship between our recommended reforms (see Chapter 2).[105] We highlight current difficulties with the defence of compulsion, including in its interactions with self-defence and duress, before considering its redundancy in the context of the reforms to these defences.

6.79. Defences under the Criminal Code should have distinct purposes. Overlap creates challenges for defendants developing a defence and difficulties for the decision-maker in determining criminally responsibility. **Figure 6.1**, below, shows how our reforms remove the overlap between the defences.

Figure 6.1: Resolving overlaps between self-defence, compulsion and duress



Simplifying and clarifying duress

6.80. Our reforms to duress simplify and clarify the defence by:

- removing limitations on the nature of the threat that are unnecessary in most cases given the existence of a proportionality element
- providing a definition for 'serious harm' that provides greater legal certainty
- removing arbitrary exclusions of duress from specific offences that operate inconsistently
- using simpler and clearer language and structure that is consistent with the language and structure used for the recommended self-defence provision.

Evading under duress

A person drives erratically away from police attempting to apprehend people in the vehicle because another person in the car threatens them with physical harm unless they do so.

The driver would likely have been protected by compulsion but not duress unless the physical harm threatened was 'serious'. Our recommended duress provision does not require a specific level of seriousness as a threshold to accessing the defence unless the offence committed is murder. Thus, the driver could argue that the reformed duress provision applies. The other elements of duress would still need to be considered for the defence to apply.

Repealing compulsion

6.81. Compulsion provides an excuse where a person commits a criminal act to resist actual or threatened unlawful violence to themselves or another person in their presence.[106]

6.82. Our recommendation to repeal compulsion (**Recommendation 7**) reflects our finding that, in the context of our other proposed reforms, compulsion would be redundant. To retain compulsion would create complexity and duplication in the law without tangible benefit.

6.83. In their current form, self-defence and compulsion are both relevant where a person is responding to actual or threatened violence.[107] This is illustrated in R v Breen, discussed below.[108]

Compulsion and self-defence: two sides of the same coin — R v Breen (Qld)

Breen was convicted after trial of AOBH while armed. Breen gave evidence that the victim rushed at him angrily with his fists clenched, so he defended himself by striking the victim with a star picket, after which the victim further assaulted him by threatening him with a sharp stick. The victim gave evidence that he did not rush at Breen, did not have his fists up and only picked up the stick to defend himself after being hit several times by Breen with the star picket.

Self-defence was the only defence relied upon at trial, but Breen argued on appeal that other defences, including compulsion, should have been left for the jury. The Court held that, because the factual issues to be resolved for compulsion and self-defence were the same, and the jury was satisfied that the prosecution had disproven self-defence, the jury would have been equally satisfied that the prosecution had disproved the elements of compulsion. Although both defences should have been left, there was no miscarriage of justice in not doing so and the appeal was dismissed.

6.84. Despite their similarities, the elements and scope of the current defences of compulsion, duress and self-defence vary. Key differences include:

- Self-defence requires proof of an assault, but compulsion and duress do not.[109]
- Self-defence differs if the defendant provoked the assault,[110] but compulsion and duress do not.
- Self-defence only applies to offences against the person,[111] but compulsion can also apply to non-violent offences such as property or drug offences.[112]
- Self-defence only applies where the complainant or deceased was the primary instigator, but compulsion and duress can apply where the complainant was an innocent third party.
- Where the defendant is acting under compulsion due to violence threatened to another person, the protected person must be in the presence of the defendant for compulsion to apply.[113] This is not required if the defendant is aiding in defence of another under section 273 of the Criminal Code.
- Compulsion may apply where the threat is not sufficient for duress to apply (cases of harm, rather than serious harm or detriment).
- The defences contain different limitations.[114]

6.85. Previous reviews have considered the overlap between self-defence and compulsion and recommended repealing compulsion.[115] The Criminal Code Review Committee stated that compulsion 'has little practical operation and its relationship to the self-defence provisions is obscure. It could be deleted without loss to the Code'.[116] Some legal professionals we interviewed also noted that the similarity between the two defences can complicate jury directions when both defences are raised.[117]

6.86. Compulsion is rarely used in practice.[118] One Crown Prosecutor we interviewed stated:

> I remember opening in a trial — it was either AOBH or GBH in the District Court — and talking to the jury in my opening about compulsion and the judge stopped me and said, 'What are you talking about?'. The judge had never heard of it. By the end of the trial, the judge was saying to the jury, 'this is the number one defence

and really important for you to consider that'. So the judge was on the ride during the trial as well. [119]

6.87. Our recommended reforms to self-defence remove the assault element and the distinction between provoked and unprovoked assaults (**Recommendation 1**). This makes compulsion redundant in cases where the action taken by the defendant is an offence against the person.

6.88. By changing the threat element for duress to cover a threat of harm or detriment, duress would cover cases where compulsion currently applies.[120] This maintains the breadth of the current duress provision in applying to a broad range of threats including threats to damage property,[121] but is expanded by not requiring those threats to be of a 'serious' nature except in murder cases.

Human rights considerations

6.89. **Recommendations 7–11** engage several human rights of defendants and victims. We assess our recommendations as compatible with human rights and, where rights are limited, we consider these limitations to be reasonable and demonstrably justifiable.

6.90. Threats of harm engage a person's right to liberty and security of person and the right to protection from torture and cruel, inhuman and degrading treatment. A threat to a person's or someone else's liberty and security may override a person's autonomy to act. Coercion of this kind by a public official can amount to torture, depending on the severity of the threat.[122] However, this cannot justify their uninhibited use of force against an innocent third party, as this would limit that third party's freedom from liberty, security and cruel treatment. For this reason, the defence of duress necessarily limits rights held by defendants and victims.

6.91. A Canadian case found that punishing a person under a disproportionate test for duress can limit rights to liberty, security, life and can cause harm by brandishing a person with the stigma of criminal liability. It struck down unduly strict requirements of immediacy and presence in the defence of duress on this basis.[123]

6.92. **Recommendations 7–9** do not arbitrarily limit the rights to life and liberty and security of the defendant as they do not restrict the threat element (except in murder cases) or require immediacy and presence. In considering the equivalent rights held by the innocent third party, the requirement for objectivity in assessing duress — including a reasonable belief that there is no reasonable way to escape the threat, the higher threat threshold for murder and the proportionality requirement — means that the limitation is not arbitrary. For the same reasons, the recommendations are fair and balanced. They achieve the aim of balancing important competing considerations in the least restrictive way and give effect to the fundamental principle that committing crimes requires moral voluntariness which is not present when a person is under duress.

6.93. **Recommendations 8–9** promote the right to recognition and equality before the law of DFV victim-survivors who offend by modernising the defence of duress and removing barriers to accessing it typically experienced by victim-survivors. In doing so, they also promote the right to protection of families and children by ensuring that the test for duress is capable of capturing criminal activity engaged in as a result of threats to families and children.

6.94. **Recommendation 10** ensures the law does not encourage voluntary exposure to criminal activity and criminal associations and prevents people who engage in those organisations from using it as a shield for criminal responsibility. This limits the rights of people who enter unlawful associations to equal protection under the law and to associate freely. However, the purpose of the unlawful association — illegal activity — provides the justification for this limitation.[124] It is also achieved in the least restrictive way by requiring a close temporal and

conduct nexus. Accordingly, we consider the limitation of these rights to be reasonable, demonstrably justifiable and consistent with a free and democratic society based on dignity, equality and freedom.

6.95. **Recommendation 11** is compatible with human rights. We discuss the human rights implications of this recommendation in the context of reforms to self-defence in Chapter 5.[125]

References

1 Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 184.

2 Chapter 3, 'DFV is complex, multifaceted and gendered'.

3 Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cl 6.

4 Crimes Act 1958 (Vic) s 322O; Criminal Code (Cth) s 10.2.

5 Compare 'The role of duress' with Chapter 4, 'Introduction'.

6 Crimes Act 1958 (Vic) s 322O; Criminal Code (Cth) s 10.2. It is also used in the current Queensland provision: Criminal Code (Qld) s 31(1)(d)(i),(ii).

7 Taiapa v The Queen (2009) 240 CLR 95, 105 [29].

8 R v Smith [2005] 2 Qd R 69, 76 [32]; R v Lentini [2018] QCA 168, [41]; Oblach v The Queen (2005) 65 NSWLR 75, 84–5 [55]–[60], 90–91 [88]–[93]; Morris v The Queen (2006) 201 FLR 325, 351 [137]. Compare Director of Public Prosecutions (Vic) v Parker (2016) 258 A Crim R 527, 544–5 [54]–[59].

9 Troy Anderson, Commonwealth Criminal Law (Federation Press, 3rd ed, 2022) 70. This is distinct from a 'reasonable person' test: Oblach v The Queen (2005) 65 NSWLR 75, 90 [87]; R v Julian (1998) 100 A Crim R 430, 434.

10 Troy Anderson, Commonwealth Criminal Law (Federation Press, 3rd ed, 2022) 69, discussing Director of Public Prosecutions (Vic) v Parker (2016) 258 A Crim R 527.

11 Director of Public Prosecutions (Vic) v Parker (2016) 258 A Crim R 527, 540–2 [40]–[46].

12 R v Runjanjic & Kontinnen (1991) 56 SASR 114, 119–122. See also Osland v The Queen (1998) 197 CLR 316, 337–8 [55]–[58], 377–8 [169].

13 R v Rowan (A Pseudonym) (2024) 278 CLR 470, 489–90 [52]–[53]; Morris v The Queen (2006) 201 FLR 325, 352 [143]; R v Lentini [2018] QCA 168, [41].

14 Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cl 6.

15 Criminal Code (Qld) s 31(1)(d)(ii).

16 Director of Public Prosecutions (Vic) v Parker (2016) A Crim R 527, 543 [49].

17 Criminal Code (Qld) s 31(1)(d)(iii).

18 Morris v The Queen (2006) 201 FLR 325, 353 [150]. See also discussion in Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 189.

19 Chapter 5, 'Self-defence and defence of another in murder cases'; Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cl 11.

20 Criminal Code (Qld) s 31(2).

21 Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cl 6. Regarding the third dot point: R v Pain (2022) 12 QR 417, 426 [21].

22 R v O'Loughlin [2011] QCA 123, [33]; R v Rad [2018] QCA 103, [40].

23 Criminal Code (Cth) s 8.4; Criminal Code 2002 (ACT) s 33; Criminal Code (NT) s 43AU; Crimes Act 1958 (Vic) s 322T.

24 Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cl 5(2), which repeals s 31(1)(c) of the Criminal Code (Qld).

25 Pickering v The Queen (2017) 260 CLR 151, 160 [24], 165–6 [40]–[46].

26 R v Smith [2005] 2 Qd R 69, 74 [20].

27 As 'acts done upon compulsion' has been interpreted to refer exclusively to ss 31(1)(c) and (d) only, s 25 should not need to include reference to execution of law and obedience to orders: R v Smith [2005] 2 Qd R 69, 74 [20].

28 Victorian Law Reform Commission, Defences to Homicide (Final Report, October 2004) 120–1.

29 Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 184 citing Law Reform Commission of Ireland, Duress and Necessity (Consultation Paper No 39, 2006) [1.02].

30 Victorian Law Reform Commission, Defences to Homicide (Final Report, October 2004) 59. The Victorian Law Reform Commission considered that excessive self-defence and necessity (known as extraordinary emergency in Queensland) also have the same basis.

31 The distinction between justifications and excuses is important. Justifications legitimise conduct with the effect no offence was committed. Excuses recognise that actions were unlawful but that the defendant is not morally nor criminally responsible because of the extreme circumstances they faced. Self-defence is a justification while duress is an excuse: R v Rowan (A Pseudonym) (2024) 278 CLR 470, 497 [75]–[76]. See also Victorian Law Reform Commission, Defences to Homicide (Final Report, October 2004) 120–1; Shevan (Jennifer) Nouri, 'Critiquing the Defence of Compulsion As It Applies to Women in Abusive Relationships' (2015) 21 Auckland University Law Review 168, 171.

32 R v Rowan (A Pseudonym) (2024) 278 CLR 470, 500 [82].

33 Law Reform Commission of Western Australia, A Review of the Law of Homicide (Final Report No 97, September 2007) 184; Shevan (Jennifer) Nouri, 'Critiquing the Defence of Compulsion as It Applies to Women in Abusive Relationships' (2015) 21 Auckland University Law Review 168, 170.

34 R v Rowan (A Pseudonym) (2024) 278 CLR 470, 493 [65] citing R v Howe [1987] 1 AC 417, 443.

35 Stanley Yeo, 'Private Defence, Duress and Necessity' (1991) 15 Criminal Law Journal 139, 143.

36 Criminal Code (Qld), as enacted s 31(4); Samuel Griffith, Draft Criminal Code 1897 cl 33(4).

37 Criminal Code Review Committee, Final Report of the Criminal Code Committee to the Attorney-General (Final Report, June 1992) 187; Criminal Code Advisory Working Group, Report of the Criminal Code Advisory Working Group to the Attorney-General (Report, July 1996) 25–6. Both recommended removing the presence requirement and expanding the defence so it applied where the threat is made to another person to compel the defendant.

38 Explanatory Notes, Criminal Law Amendment Bill 2000 (Qld) 1, 7–8.

39 Taskforce on Women and the Criminal Code, Report of the Taskforce on Women and the Criminal Code (Report, February 2000) 164–5, 170.

40 Taskforce on Women and the Criminal Code, Report of the Taskforce on Women and the Criminal Code (Report, February 2000) 164–6, 170.

41 Chapter 3, 'DFV shapes behaviour in specific ways'.

42 Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 260.

43 Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 260.

44 R v Runjanjic & Kontinnen (1991) 56 SASR 114, 114, 119–22.

45 R v Lentini [2018] QCA 168, [31].

46 R v Lentini [2018] QCA 168, [41]; R v Rowan (A Pseudonym) (2024) 278 CLR 470, 490 [52].

47 R v Rowan (A Pseudonym) (2024) 278 CLR 470, 492 [58]–[59], 493 [62].

48 R v Lentini [2018] QCA 168, [42]–[45].

49 R v Rowan (A Pseudonym) (2024) 278 CLR 470.

50 Compare Shevan (Jennifer) Nouri, 'Critiquing the Defence of Compulsion As It Applies to Women in Abusive Relationships' (2015) 21 Auckland University Law Review 168, 175; Anna Dombroski, 'Slipping Through the Cracks: How the Distinction Between Compulsion and Duress of Circumstances Fails Victims of Intimate Partner Violence Who Offend' (2023) 54 Victoria University of Wellington Law Review 455, 466.

51 Shevan (Jennifer) Nouri, 'Critiquing the Defence of Compulsion As It Applies to Women in Abusive Relationships' (2015) 21 Auckland University Law Review 168, 169.

52 Regarding the UK, see Amy Elkington, 'Allowing A Defence to Those Who Commit Crime Under Coercive Control' (2022) 86(5) The Journal of Criminal Law 295, 299.

53 South Australian Law Reform Institute, The Provoking Operation of Provocation: Stage 2 (Report No 11, April 2018) 150; Anna Dombroski, 'Slipping Through the Cracks: How the Distinction Between Compulsion and Duress of Circumstances Fails Victims of Intimate Partner Violence Who Offend' (2023) 54 Victoria University of Wellington Law Review 455, 466–7.

54 Janet Loveless, 'Domestic Violence, Coercion and Duress' (2010) 2 Criminal Law Review 93, 98.

55 Discussing the threshold of death or serious harm, see South Australian Law Reform Institute, The Provoking Operation of Provocation: Stage 2 (Report No 11, April 2018) 152, 159; Centre for Women's

Justice, Double Standard: Ending the Unjust Criminalisation of Victims of Violence Against Women and Girls (Report, 2022) 76.

56 Criminal Code (Qld) s 31(1)(d)(ii); Taiapa v The Queen (2009) 240 CLR 95, 107–10 [35]–[40].

57 Morris v The Queen (2006) 201 FLR 325, 346–7 [112]. See also discussion in Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 188–9.

58 Taiapa v The Queen (2009) 240 CLR 95, 107 [35], 110 [40].

59 South Australian Law Reform Institute, The Provoking Operation of Provocation: Stage 2 (Report No 11, April 2018) 151–2; Susie Hulley, 'Defending "Co-Offending" Women: Recognising Domestic Abuse and Coercive Control in "Joint Enterprise" Cases Involving Women and Their Intimate Partners' (2021) 60(4) The Howard Journal 580, 591–2, 595.

60 Shevan (Jennifer) Nouri, 'Critiquing the Defence of Compulsion As It Applies to Women in Abusive Relationships' (2015) 21 Auckland University Law Review 168, 185.

61 Patricia Easteal, Kate Hughes, and Jacki Easter, 'Defences: Battered Women and Duress' (1993) 18(3) Alternative Law Journal 139, 139–40. This was attempted in R v Lentini [2018] QCA 168.

62 QLRC, Legal Profession Interviews (Research Project 5, 2025); Supreme Court Judge, Interview 7.

63 QLRC, Women Who Kill (Research Project 4, 2025); Transcript of Proceedings, R v Leask (Supreme Court of Queensland at Brisbane, Burns J, 4 April 2017); Transcript of Proceedings, R v Lee (Supreme Court of Queensland at Brisbane, Dalton J, 20 February 2019); R v O'Sullivan and Lee; ex Parte Attorney-General (2019) 3 QR 196; Inquest into the Death of Mason Jet Lee (Coroner's Court of Queensland, Deputy State Coroner Jane Bentley, 2 June 2020).

64 Brenda Midson, 'The Helpless Protecting the Vulnerable? Defending Coerced Mothers Charged with Failure to Protect' (2014) 45(2) Victoria University of Wellington Law Review 297, 311.

65 See discussion in 'Reasonable belief' section above.

66 There are slight differences to the necessity element in the Crimes Act 1958 (Vic) s 322O(1)(a)(ii); Criminal Code (Cth) s 10.2(2)(b). Victoria utilises the same wording as contained in our reformed duress provision, whereas the wording in the Commonwealth provision is: 'there is no reasonable way that the threat can be rendered ineffective'. There is some ambiguity in this provision because it fails to capture that there may be a 'reasonable way' to render the threat ineffective, and that is compliance with the direction to commit an offence. Thus, the Victorian version of the necessity element is preferred.

67 Note that some academics have argued that this should be entirely subjective because, '[i]f the belief is genuinely held, it should not matter whether or not it is, in fact, correct; the effect on the defendant will be the same': Shevan (Jennifer) Nouri, 'Critiquing the Defence of Compulsion As It Applies to Women in Abusive Relationships' (2015) 21 Auckland University Law Review 168, 183. Similarly, see also Stanley Yeo, 'Private Defence, Duress and Necessity' (1991) 15 Criminal Law Journal 139, 143.

68 QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 27.

69 R v O'Sullivan and Lee; Ex parte Attorney-General (2019) 3 QR 196, 249 [174].

70 Model Criminal Code Officers Committee, Model Criminal Code: Chapters 1 and 2 — General Principles of Criminal Responsibility (Report, December 1992) 65.

71 Victorian Law Reform Commission, Defences to Homicide (Final Report, October 2004) 114.

72 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 16.

73 Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 193–4; South Australian Law Reform Institute, The Provoking Operation of Provocation: Stage 2 (Report No 11, April 2018) 164–5.

74 Martha Shaffer, 'Coerced into Crime: Battered Women and the Defence of Duress' (1999) 4 Canadian Criminal Law Review 271, 326–7. See also Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 193–4.

75 Kenneth Arenson, 'Expanding the Defences to Murder: A More Fair and Logical Approach' (2001) 5 Flinders Journal of Law Reform 129, 138–39; Bar Association of Queensland, Submission 42.

76 Law Commission of England and Wales, Criminal Law Report on Defences of General Application (Report No 83, July 1977) 7.

77 Martha Shaffer, 'Coerced into Crime: Battered Women and the Defence of Duress' (1999) 4 Canadian Criminal Law Review 271, 327.

78 Criminal Code (Qld) s 31(2).

79 Pickering v The Queen (2017) 260 CLR 151, 161–2 [25]–[32], 165–6 [44].

80 R v Pickering [2016] QCA 124, [19], fn 6. Although this case was successfully appealed (Pickering v The Queen (2017) 260 CLR 151) this point was not discussed on appeal.

81 The High Court has made clear that the only offences to which the exclusion applied were those specified in s 31(2), otherwise s 31(1) may be available "in relation to any other offence that is charged": Pickering v The Queen (2017) 260 CLR 151, 160 [24], 163 [36], 165–6 [40]–[46] (emphasis added). The common law position is that the defence does apply to attempted murder: R v Qaumi & Ors (No 64) [2016] NSWSC 1269, [44]. Perhaps for this reason, the Criminal Code Committee in 1992 recommended expressly including attempted murder in the list of offences to which compulsion did not apply: Criminal Code Review Committee, Final Report of the Criminal Code Committee to the Attorney-General (Final Report, June 1992) 51.

82 QLRC, Legal Profession Interviews (Research Project 5, 2025); Crown Prosecutor, Interviews 4, 6, discussing this in respect of compulsion. An example is R v TAZ; R v SED [2023] QCA 137; R v TAZ; R v SED [2023] QSC 292.

83 Criminal Code (Qld) s 25.

84 Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 184, 189.

85 Kenneth Arenson, 'Expanding the Defences to Murder: A More Fair and Logical Approach' (2001) 5 Flinders Journal of Law Reform 129, 140; South Australian Law Reform Institute, The Provoking Operation of Provocation: Stage 2 (Report No 11, April 2018) 167.

86 Criminal Code (Qld) s 302(1)(aa), introduced by the Criminal Code and Other Legislation Amendment Act 2019 (Qld) s 3.

87 Explanatory Notes, Criminal Code and Other Legislation Amendment Bill 2019 (Qld) 2; Queensland, Parliamentary Debates, Legislative Assembly, 30 April 2019, 1241.

88 R v Struhs [2025] QSC 10, [124].

89 QLRC, Legal Profession Interviews (Research Project 5, 2025); Supreme Court Judge, Interview 7.

90 QLRC, Legal Profession Interviews (Research Project 5, 2025); Magistrate, Interview 3.

91 Rachel Dioso-Villa and Caitlin Nash, Submission 38.

92 R v Maygar; Ex parte Attorney-General; R v WT; Ex parte Attorney-General [2007] QCA 310.

93 Criminal Code (Cth) s 10.2; Crimes Act 1958 (Vic) s 322O; Criminal Code (WA) s 32; Criminal Code 2002 (ACT) s 40.

94 R v Sharp (1987) 85 Cr App R 207; R v Shepherd (1988) 86 Cr App R 47, as cited in Soraya Ryan et al, Carter's Criminal Law of Queensland (LexisNexis, 26th ed, 2024) vol 1, 175–6 [s 31.30]; R v Pain (2022) 12 QR 417, 426 [21].

95 Compare the discussion of the Model Criminal Code, see Model Criminal Code Officers Committee, Model Criminal Code: Chapters 1 and 2 — General Principles of Criminal Responsibility (Report, December 1992) 67.

96 Attorney-General's Department (Cth), The Commonwealth Criminal Code: A Guide for Practitioners (Guide, March 2002) 225.

97 R v Hasan [2005] 4 ER 685, 702–3 [38].

98 Daniel Pascoe, 'The Voluntary Exposure Restriction to the Defence of Duress in Australia: A Critical Analysis' (2016) 4 City University of Hong Kong Law Journal 21, 30.

99 R v Qaumi & Ors (No 64) [2016] NSWSC 1269, [73].

100 R v Qaumi & Ors (No 64) [2016] NSWSC 1269, [70]–[71], where Hamill J discussed the interpretation of the exclusion in common law (not Queensland).

101 Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cl 6. See also Crimes Act 1958 (Vic) s 322O(3), where the same wording is used as Criminal Code (Cth) except 'for the purpose of carrying out violent conduct' (emphasis added).

102 Attorney-General's Department (Cth), The Commonwealth Criminal Code: A Guide for Practitioners (Guide, March 2002) 225.

103 Model Criminal Code Officers Committee, Model Criminal Code: Chapters 1 and 2 — General Principles of Criminal Responsibility (Report, December 1992) 67.

104 Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 199, fn 177. See also Daniel Pascoe, 'The Voluntary Exposure Restriction to the Defence of Duress in Australia: A Critical Analysis' (2016) 4 City University of Hong Kong Law Journal 21, 36, 43.

105 Chapter 2, 'Defensive conduct reforms'.

106 Criminal Code (Qld) s 31(1)(c).

107 RS O'Regan, 'Self-Defence in the Griffith Code' (1979) 3 Criminal Law Journal 336, 351.

108 R v Breen [2024] QCA 168.

109 R v Breen [2024] QCA 168, [61].

110 Criminal Code (Qld) ss 271–272.

111 The self-defence provisions are in Criminal Code (Qld) pt 5 ch 26. The chapter relates to 'assaults and violence against the person generally' including justifications and excuses.

112 R v Pickering [2016] QCA 124, [19], fn 6. Although this case was successfully appealed (Pickering v The Queen (2017) 260 CLR 151) this point was not discussed on appeal.

113 It is unclear why this requirement remained when the Criminal Code Advisory Working Group recommended it be removed from the duress provision: Criminal Code Advisory Working Group, Report of the Criminal Code Advisory Working Group to the Attorney-General (Report, July 1996) 25–6. It has been criticised in academia for acting as an unnecessary limitation and preventing DFV victim-survivors from accessing the defence: see, for example, Martha Shaffer, 'Coerced into Crime: Battered Women and the Defence of Duress' (1999) 4 Canadian Criminal Law Review 271, 281–3, 288, 305–6.

114 Compulsion is excluded where certain offences are charged and if the offending occurred in the context of unlawful associations or conspiracy: Criminal Code (Qld) s 31(2). These limitations do not exist for self-defence.

115 Criminal Code Review Committee, Final Report of the Criminal Code Committee to the Attorney-General (Final Report, June 1992) 186; Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 173.

116 Criminal Code Review Committee, Final Report of the Criminal Code Committee to the Attorney-General (Final Report, June 1992) 186. However, this recommendation was not adopted by the Queensland Government and the Criminal Code Advisory Working Group that reconsidered amendments to the Criminal Code did not recommend repealing s 31(1)(c): Criminal Code Advisory Working Group, Report of the Criminal Code Advisory Working Group to the Attorney-General (Report, July 1996) 25–6.

117 QLRC, Legal Profession Interviews (Research Project 5, 2025); District Court Judge, Interviews 2, 3, 6; Defence Counsel, Interviews 2, 9; Crown Prosecutor, Interviews 3, 4, 6; Supreme Court Judge, Interviews 4, 5.

118 QLRC, Legal Profession Interviews (Research Project 5, 2025); Defence Counsel, Interview 9; Magistrate, Interview 1; Crown Prosecutor, Interviews 1, 2, 6.

119 QLRC, Legal Profession Interviews (Research Project 5, 2025); Crown Prosecutor, Interview 6.

120 In consultations with legal practitioners, we heard that duress provisions in both the Crimes Act 1958 (Vic) and the Criminal Code (Cth) were sufficiently broad to capture compulsion.

121 Criminal Code (Qld) ss 1 (definition of 'detriment'), 31(1)(d)(i).

122 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) art 1(1). Depending on the severity, it may instead amount to cruel, inhuman or degrading treatment: Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 134.

123 R v Ruzic [2001] 1 SCR 687, 716 [47], 719–20 [55], 733–6 [86]–[93].

124 R (Countryside Alliance) v Attorney General [2008] 1 AC 719, [58].

125 Chapter 5, 'Human rights considerations'.

PART 4

Provoked conduct reforms

CHAPTER 7

Recasting provocation

Contents

Recommendations

R12 The defences of provocation to assault (section 269), killing on provocation (section 304) and prevention of repetition of insult (section 270) should be repealed.

R13 The Penalties and Sentences Act 1992 should be amended to require that provocation of an offender by their victim must be considered by the court in sentencing.

R14 To promote awareness and effective and just implementation of the reform:

(a) The Government should develop and implement an education campaign that includes material that is culturally sensitive and suitable for persons with impaired capacity.

(b) The Queensland Police Commissioner should amend the Queensland Police Service Operational Procedures Manual and the Director of Public Prosecutions should update the Director's Guidelines to require police and prosecutors to consider the extent, if any, to which an incident was the result of provocation when determining if a charge or prosecution is in the public interest.

(QLRC Draft Bill cl 11, 14)

Introduction

7.1. This chapter discusses our recommendations for reforming three defences in the Criminal Code that are based on the concept of provocation ('provocation defences'):

- the partial defence to murder of killing on provocation (section 304)
- provocation to assault (sections 268, 269)
- prevention of repetition of insult (section 270).[1]

7.2. The provocation defences reduce or remove a person's criminal responsibility for the use of force in response to provocative acts or statements by another. Given their shared rationale, conceptual basis and critiques, we consider their reform together.

The provocation defences

The partial defence of killing on provocation reduces criminal liability from murder to manslaughter where a person is provoked to act without self-control, 'in the heat of passion'.[1]

Provocation is a complete defence to offences containing assault as an element, including common assault, assault occasioning bodily harm and serious assault.[1] It does not apply to homicide[1] or to GBH, wounding, choking, suffocation or strangulation in a domestic setting.[1] It applies where a person is provoked to lose self-control and use violence 'on the sudden and before there is time for [their] passion to cool'.[1] It only applies where the force is proportionate to the provocation and not intended or likely to cause death or GBH.

Prevention of repetition of insult is a complete defence to a wide range of offences, including manslaughter,[1] assault offences and verbal and other repeated forms of abuse. While it can overlap with provocation to assault, prevention of repetition of insult has a broader scope. It applies where a person responds with 'reasonably necessary' force, which is not intended or likely to cause death or GBH, to prevent repeated acts of insult which could amount to provocation for an assault.[1] It also does not require a loss of self-control or sudden use of force.

7.3. We recommend the following set of reforms:

- simple legislative reform to repeal the three provocation defences
- amendments to the Penalties and Sentences Act and legislative sentencing guidelines for assault to recognise provocation as a relevant mitigating factor in sentencing
- an education campaign, accessible to diverse and disadvantaged communities, to promote awareness and understanding of the law reforms
- amendments to the OPM and the Director's Guidelines to require police and prosecutors to consider provocation when determining if a charge or prosecution is in the public interest.

7.4. Our reforms respond to recognised problems with the principled basis and practical operation of the defences.

7.5. Provocation justifies or excuses violence as 'a concession to human frailty', recognising that a person's loss of self-control is less blameworthy than deliberate or calculated violence.[2] The defences are not consistent with modern community attitudes and standards or scientific understanding of human behaviour. Most people do not consider that violence should be justified or excused in these circumstances, particularly violence resulting in death. Scientific, medical and psychological evidence does not support retaining defences justified on this basis. The defences can promote victim-blaming by directing the focus of an investigation and ensuing trial on the behaviour of the victim, rather than the defendant.

7.6. The defences operate in a gendered way. They excuse patterns of behaviour associated with male violence and power, both within and beyond the DFV context.[3] Men rely on provocation as a defence in circumstances where they assault or kill their intimate partner motivated by anger, jealousy or as part of a pattern of coercive control in the DFV context. This can result in substantially unjust outcomes.

7.7. The defences are complex and inconsistent. They rely on different definitions of provocation.[4] Their core elements can conflict and be difficult to reconcile. This can result in inconsistent and adverse outcomes. Their complexity can result in lengthy jury directions. Attempted reforms of the partial defence have not achieved their intended purpose and have increased the complexity of the legal framework.[5]

7.8. While killing on provocation does not remove criminal liability, it can be relevant to a defendant's culpability. At common law, it is recognised as a mitigating factor in sentencing.[6] Our reforms support this recognition, ensuring through legislative reform the relevance of provocation as a contextual factor that should be considered in sentencing, including where lethal force has been used in response to provocation.

7.9. Our reforms align with other jurisdictions, which have repealed the defences for reasons which include our rationale for reform.[7]

7.10. This chapter has four sections. The first section briefly explains our legislative reforms and related supportive measures. The second section discusses our rationale for reform. We then consider the human rights implications of reform, including how our reforms address the potential for diverse communities to be disproportionately affected by our reforms. This chapter concludes by exploring implementation considerations, including the relevance of related reforms and measures to avoid unintended consequences and support improved decision-making about charging and prosecution.

Our reforms explained

Legislative reforms

7.11. We recommend legislative reform repealing the following provisions of the Criminal Code (**Recommendation 12**):

- section 268 – Provocation
- section 269 – Defence of provocation
- section 270 – Prevention of repetition of insult
- section 304 – Killing on provocation.

7.12. On repeal, the provocation defences in sections 269, 270 and 304 would not be available to excuse violent responses to acts of provocation.

7.13. Section 268 explains provocation. Its relevance is limited to sections 269 and 270, so their repeal would make it redundant.[8] We recommend its repeal on this basis.

7.14. We also recommend legislative reform to the Penalties and Sentences Act to include provocation as a relevant mitigating factor in sentencing for an offence (**Recommendation 13**). The Penalties and Sentences Act currently requires a judge to consider the offender's culpability for the offence.[9] Queensland courts currently recognise provocation as a mitigating factor in sentencing for offences other than murder.[10] Legislative reform would clarify the common law position.

7.15. We recommend that, in cases of homicide, provocation should be a sentencing consideration rather than a partial defence reducing murder to manslaughter. There is no mechanism in the current legal framework for judges to reflect contextual factors in sentencing for murder. We discuss sentencing for murder in Chapter 8.

7.16. Our recommendation that provocation can be reflected in sentencing for murder is contingent on reform to the Penalties and Sentences Act to allow the court discretion to consider the nature and seriousness of the provocation as a factor affecting the relative seriousness of the offence in setting the non-parole period for murder (**Recommendation 15**).

7.17. Collectively, these reforms would enable sentencing courts to consider provocation, along with other relevant factors including the individual circumstances of the offence and the offender,

in determining the appropriate sentence. This would support sentencing outcomes that reflect the circumstances of the offence and the offender's culpability in cases involving provocation.

Education and capacity building

7.18. We recognise the impact that repealing the provocation defences would have. The provocation defences have been a long-standing part of Queensland law and their repeal would set higher standards for community behaviour. We also recognise the potential for their repeal to disproportionately affect certain communities unless the legislative reform is accompanied by supportive measures.

7.19. Education and collaboration are key to effective implementation of these changes to Queensland's laws. We recommend that the Government develop and implement an education campaign about the legislative reforms (**Recommendation 14(a)**). This is critical to promoting awareness and ensuring just implementation of the reforms.

7.20. The Government should ensure that relevant Departments coordinate and consult with peak bodies and service providers to develop and deliver an appropriately comprehensive education campaign.

7.21. The education campaign should explain the details of the reforms. It must be widely available, including in schools. The education materials must be appropriately developed with and accessible for people from diverse communities, including Aboriginal peoples and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds and people with disability. Ensuring targeted and accessible information is available is critical to safeguarding against adverse implications of reform for diverse communities.

Charging and prosecution decision-making

7.22. We recommend reforms to guidelines to require police and prosecutors to consider the extent to which an assault was the result of provocation when determining if a charge or prosecution is in the public interest and what the appropriate charge should be. To achieve this, the:

- Queensland Police Commissioner should amend the OPM
- Director of Public Prosecutions should update the Director's Guidelines (**Recommendation 14(b)**).

7.23. Before taking action in relation to an offence, police are currently required under the OPM to be satisfied that an offence has been committed, all elements of the charge can be proven, any relevant defences can be excluded and there is sufficient admissible evidence to substantiate the charge that can be presented to the court when necessary.[11] Before commencing proceedings they must consider whether any diversionary options are appropriate.[12]

7.24. The Director's Guidelines set out a two-step test for deciding whether to prosecute:

- is there sufficient evidence?
- does the public interest require a prosecution?[13]

7.25. The prosecutor exercises discretion to decide whether to bring a charge.

7.26. The prosecutor considers all relevant admissible evidence, including potential available defences, in deciding whether there is a reasonable prospect of conviction before a jury or Magistrate. In the current legal framework, this includes any evidence of provocation.

7.27. If this is established, the public interest in prosecution of the relevant charge is then considered. The Director's Guidelines state:

> [A] prosecution process should be initiated … wherever it appears to be in the public interest. … If it is not in the interests of the public that a prosecution should be initiated or continued then it should not be pursued. The scarce resources available for prosecution should be used to pursue, with appropriate vigour, cases worthy of prosecution and not wasted pursuing inappropriate cases.[14]

7.28. The OPM references and replicates this guidance.[15]

7.29. Both the Director's Guidelines and the OPM provide a non-exhaustive list of factors to consider when evaluating the sufficiency of evidence and the public interest.[16]

7.30. The potential availability of defences, including provocation, is not only relevant in decisions to prosecute. It can also be relevant in case conferencing about potential resolution of matters. Stakeholders told us that in the current legal framework, criminal defences, particularly provocation defences, are used in case conferencing to support withdrawal of charges. Our legislative reforms repealing the provocation defences would alter their relevance in this context.

7.31. To address the potential implications of this, the Director's Guidelines and the OPM should be amended to require police and prosecutors to consider the context of the offending relevant to the accused's culpability in deciding if prosecution is in the public interest. This should explicitly require that police and prosecutors consider circumstances of provocation.

7.32. One factor currently included in the non-exhaustive list of factors to consider as part of the public interest test is 'the degree of culpability of the alleged offender in connection with the offence'. [17] This could be amended to read: 'the degree of culpability of the alleged offender in connection with the offence, including the extent to which the offence was the result of provocation'.

Case for reform

7.33. This section considers the key arguments justifying our recommended reforms. There are five overarching arguments:

- criminal law defences should reflect current community standards and understanding of human behaviour and the provocation defences do not
- the provocation defences operate in a gendered way and can be relied on to inappropriately justify male violence
- the defences are not working well in practice due to their complexity and lack of clarity
- provocation is more appropriately considered in sentencing, where the contextual circumstances can be properly reflected
- our reforms to repeal the provocation defences and enhance consideration of provocation in sentencing are consistent with other jurisdictions, both in their underlying rationale and in the form of the reforms.

7.34. The reforms we propose in **Recommendations 12–13**:

- reflect current community standards and attitudes
- align with our guiding principles for reform
- are evidence-based, reflecting current understanding of scientific, medical and psychological understanding of human behaviour
- are compatible with human rights

- are consistent with laws in other jurisdictions.

7.35. We draw on a broad range of evidence to justify our reforms, including insights from our consultations, interviews, focus group and written submissions, our original research findings and our doctrinal and academic research.

Defences should reflect current community standards and understanding of human behaviour

The provocation defences are based on a dated rationale

7.36. Provocation is not a defence to assault at common law.[18] It was introduced into Queensland's criminal law by Sir Samuel Griffith. In an explanatory letter to the Attorney-General accompanying the draft Criminal Code, he wrote:

> I have ventured to submit a rule … which is not to be found in the Draft Code of 1879, nor so far as I know in a concrete form in any English book.
>
> …
>
> **There is no doubt that in actual life some such rule as that stated [in section 269] is assumed to exist, although it is probably not recognised by law.** The subject of provocation as reducing the guilt of homicide committed under its influence from murder to manslaughter is covered by authority. But I apprehend that it is of at least equal importance as applied to other cases of personal violence.[19]

7.37. Sir Samuel Griffith emphasised that the defence should reflect jurors' 'sense of right' or justice:

> It is conceived that the two … sections **express what is in common life assumed to be a natural rule of action.** It is submitted that the rule of law may with safety, and under the conditions stated in … [section 269], be made to **accord with the rules of life, so that juries may not be forced to strain their consciences in order to avoid giving verdicts in accordance with law, but repugnant to their sense of right.**[20]

7.38. Under Sir Samuel Griffith's rationale, some acts or insults are so provocative to an ordinary person that it is natural and instinctive for them to lose control and lash out. Their actions are not a premeditated, considered act but an impulsive response to offensive or insulting conduct. In these circumstances, the community would expect that the person's violent reaction should be excused because it would be unjust to hold them responsible.

7.39. A more contemporary rationale for the complete defences is that they are a concession to human frailty. Schloenhardt and Gluer explain:

> Provocation makes concession for a person's responses to offensive conduct by another, which may cause outbursts of anger or other emotions such as fear or panic. These emotions, if they arise unpremeditated can cause a loss of self-control, which in turn, may lead to violent reactions by the accused against the provocateur.[21]

7.40. This rationale is based on the idea that a person acting under provocation has impaired judgment and that the victim has brought the assault on themselves by their provocative act or insult, so that the violent response is less blameworthy and more deserving of a defence.[22] As Schloenhardt and Gluer state, defences based on provocation are difficult to reconcile with the purpose of the criminal law to 'protect physical integrity, condemn violence, and encourage resilience against offensive conduct'.[23]

7.41. In 1998, the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, who were tasked with developing a national criminal code, expressed a lack of support for defences based on provocation. The Committee recommended abolition of the partial defence of provocation and against introducing a complete defence of provocation to non-fatal offences against the person.[24] In noting that there was 'no support' for the complete defence, they stated that provocation:

> seemingly lacks any coherent rationale except for the general idea that a person who loses self-control is somehow less blameworthy than one who does not. Closely examined, that rationale is, as a general proposition, very hard to defend.[25]

7.42. The Model Criminal Code Officers Committee stated that the defence is 'misleading' as it directs focus on only one of the factors that precipitated the violence, where there may be multiple.[26] They considered it more appropriate that provocation is considered at sentencing, when it can be considered together with other relevant factors.[27]

7.43. The Queensland Taskforce on Women and the Criminal Code, established in 1998 to report and make recommendations on the operation of the Criminal Code as it impacts on women, described provocation as an 'ancient doctrine' having its genesis in drunken brawls and duels.[28]

Current community attitudes do not support provocation

7.44. Community attitudes evolve. To understand current community attitudes to provocation as the basis for a criminal law defence, we included scenarios in which the provocation defences could be raised in our community attitudes research (Research Report 1), which we discuss in Research Report 1.[29]

7.45. This research provides important insights into contemporary community attitudes about violent responses to provocative conduct. It shows that the defences are not reflective of contemporary community values. This research indicated a lack of support for defences grounded in provocation where:

- the provocation consists of 'words alone' (key finding 3)
- the defendant was motivated by anger, jealousy or control, as opposed to fear for their life (key finding 8)
- an assault risked or caused significant injury (key finding 3).[30]

7.46. We discuss these findings further below. **Figure 7.1**, below, provides quotes from participants in our community attitude research (Research Report 1).

Figure 7.1: Community attitudes about provocation

7.47. In addition to our community attitudes survey, we also conducted consultations with stakeholders and community members across Queensland, received written submissions from interested people, organisations and peak bodies representing the views of a significant membership base and interviewed legal professionals to gain insight into their perspectives and experiences (Research Project 5).[31]

7.48. Stakeholder feedback on the provocation defences provided through submissions, consultations and interviews also reflects the view that the rationale for provocation is not consistent with modern attitudes and values. Background Paper 4 discusses this feedback in detail.[32]

7.49. In the context of the partial defence of killing on provocation, many stakeholders supported repealing the partial defence. The leading justification was that provocation does not justify killing. Other stakeholders considered the partial defence inconsistent with contemporary understandings of DFV, that it condones gendered violence[33] and that it can potentially excuse violence based on a person's LGBTQIA+ status.[34] However, some stakeholders opposed repealing the partial defence, noting that there would always be contextual circumstances of provocation that could reduce the moral culpability of the killing.[35] Some stakeholders who supported retaining the defence indicated support for provocation being a mitigating factor at sentence instead.[36] Some stakeholders considered repeal or reform of the partial defence as dependent on other criminal law reforms, notably reforms to the mandatory penalty for murder.[37]

7.50. Many stakeholders expressed the view that provocation is not consistent with contemporary community attitudes and standards or with principles of criminal responsibility and human rights.[38] Lelliott and Wallis expressed concern about the normative effect of the provocation

defences and their inappropriateness in modern society.[39] They noted that other defences, such as self-defence and duress, may be available to a defendant that has been provoked to respond in a particular way but that, where the circumstances fall outside those defences, the defendant is culpable.[40]

7.51. The Australian National University Law Reform and Social Justice Research Hub expressed similar sentiments, stating:

> By allowing perpetrators to argue that their loss of control was justified by the victim's words or actions, the law perpetuates the idea that mere emotions – particularly jealousy, possessiveness, or humiliation – can reduce culpability for homicide. … [T]he fundamental flaw in provocation as a defence [is] it shifts attention away from the perpetrator's actions and instead scrutinises the victim.[41]

7.52. Duffy noted the lack of alignment between the partial defence of provocation and contemporary values, submitting:

> Australian society has developed a decreasing tolerance for those who respond with violence to the words and actions of others. … In Queensland in 2025, the provocation defence simply does not align with community views about appropriate responses to provocative words or conduct. … Simply put, an ordinary person does not lose their self-control, and kill their provocateur with the intention to kill or commit GBH. That response would be quite extraordinary, and modern-day Queenslanders expect more self-control from individuals who have been subject to serious provocation.[42]

7.53. Some stakeholders considered that recent amendments limiting the defence indicate the attitudinal and policy shift away from accepting provocation as justifying reduced culpability.

7.54. Many stakeholders also expressed a strong view that the complete defences are not appropriate for similar reasons.

7.55. Duffy noted that Australian society has 'decreasing tolerance for those who respond with violence to the words and actions of others'.[43] Lelliott and Wallis extended their concern to the normative effect of the complete defences, stating:

> Simply put, a defence of provocation communicates to the community that it is justifiable to attack and harm others if they cause anger, distress, or offence. It holds that in such cases liability for a potentially serious violent offence can be avoided and that any moral culpability or blameworthiness of an accused falls below the threshold that attracts the sanction of the criminal law. In modern society this position is fundamentally wrong.[44]

7.56. The provocation defences also do not align with recent Queensland reforms about the use of violence. These reforms are predicated on the unacceptability of violence and the notion of individual responsibility. In 2014 a new offence of unlawful striking causing death, particularly targeting 'coward punches', was created in the Criminal Code.[45] In introducing the offence, the then Attorney-General recognised that the policy intent of the reforms included aligning the law with current community standards, stating:

> Too many Queenslanders have suffered the devastating effects of drug and alcohol related violence and coward-punch incidents. It is time that the minority of people who think that it is okay to get drunk and throw a punch take responsibility for their actions and understand that their actions are not tolerated by the Queensland community.[46]

7.57. Associated measures, such as the 'One Punch Can Kill' campaign, recognise the law's normative role in shaping standards of behaviour.[47] The aim of the campaign is 'to shift cultural attitudes and change individual's behaviours to prevent senseless violence in the community'.[48] In contrast to the concept of provocation, the campaign is 'focused on educating men and women in self-control … seeking to promote respect, restraint and responsibility'.[49]

Current medical and scientific evidence does not support provocation

7.58. Legal notions of loss of self-control are inconsistent with current scientific understanding.

7.59. The Law Commission of England and Wales stated that 'the requirement of loss of self-control was a judicially invented concept, lacking sharpness or a clear foundation in psychology'.[50] They cited evidence from psychiatrists that:

> Those who give vent to anger by 'losing self-control' to the point of killing another person generally do so in circumstances in which they can afford to do so. An angry strong man can afford to lose his self-control with someone who provokes him, if that person is physically smaller and weaker. An angry person is much less likely to 'lose self-control' and attack another person in circumstances in which he or she is likely to come off worse by doing so.[51]

7.60. Academic research has found that the law's concept of loss of self-control mischaracterises the relationship between emotions and their effects on action. Sorial's research found that psychologists generally agree that emotions always involve an element of choice, with resorting to violence also a choice.[52] She states:

> Emotions do not undermine reason in the ways offenders describe (and courts sometimes accept); nor do they compel people to act in ways they cannot control. As such, the idea of 'loss of self-control' is an inaccurate and misleading description of the psychological mechanisms at play in cases of emotionally motivated killing, where there may not be any 'loss of self-control' as such.[53]

7.61. The concept of loss of self-control is also inconsistent with the evidence-base of DFV 'perpetrator intervention' programs which encourage participants who have used violence in domestic relationships to identify the choices they make which culminate in their use of violence.[54]

The defences are gendered

7.62. The provocation defences operate in a gendered way, excusing types of violence traditionally associated with men and more likely to be relevant to men, given that they are more likely to respond to provocation with violence than women.

7.63. The gendered nature of the defences was recognised by the Taskforce. The Taskforce stated:

> [The defences] must evolve beyond outdated, gendered understandings about the types of behaviour that cause fear and create an imminent threat to safety. These provisions require review not only to ensure that they reflect the impact of domestic violence on victims but also to ensure that they do not reinforce stereotypes that inappropriately reduce the culpability of perpetrators.[55]

7.64. Gendered differences in attitudes to provocation were evident from our community attitudes survey:

- In a scenario involving two men fighting in a park, female participants were more likely than male participants to say that the person using violence should be found guilty of assault.[56]
- In a scenario involving infidelity in a relationship, the majority of survey participants who thought the defence of provocation to assault should apply were men.[57]
- In a scenario involving a person assaulting someone heckling them, female survey participants were more likely than males to believe that the person using violence should be found guilty of assault.[58]

7.65. The Australian National University Law Reform and Social Justice Research Hub submitted that provocation reflects male responses to conflict and is structurally biased against women. Their submission quotes the Victorian Law Reform Commission:

> The association of provocation with typical male responses is said to make it a defence which is more suited to men than to women, even taking into account changes that have occurred over the past 50 years. A sudden violent loss of self-control in response to a particular triggering act is seen to be the archetypal male response to provocative conduct. Despite changes that have been made over time, this test remains very difficult for women to use.[59]

7.66. The Taskforce on Women and the Criminal Code noted that gender bias is inherent in provocation in the following ways:

- It is based on the male view of the world, anticipating and excusing quick, unthinking responses that are often outside the standard behaviour patterns of women.[60]
- It excuses certain types of violent conduct more likely to be engaged in by men than women. The Taskforce on Women and the Criminal Code quoted Chief Justice Gleeson who seemed to agree with the 'common criticism … that the law's concession to human frailty was very much, in its practical application, a concession to male frailty'.[61]
- The proportionality requirement and limitation of the complete defence of provocation to assault-based offences may fail to excuse responses to provocation by women. Women are more likely to use a knife, rather than a fist, and therefore be charged with wounding because of the power imbalance that typically exists between heterosexual couples.[62]

7.67. In supporting repeal of both the complete and partial defences of provocation, the Australian National University Law Reform and Social Justice Research Hub said that provocation has 'long been criticised for excusing male violence against women, particularly in cases of DFV or homicide'.[63]

The defences are not working well in practice

The provocation defences are complex and lack clarity

7.68. The complexity of the provocation defences is widely recognised, with the Model Criminal Code Officers Committee referring to the 'great legal complexities and ambiguities' of the defence.[64] Complexities arise both in the interactions between the defences, due to differences in definition, elements and scope, and within each defence.

7.69. Different definitions of provocation apply to the different defences. The partial defence relies on the common law definition of provocation with some statutory limitations. The common law test contains both subjective and objective components.[65] There is no requirement that the provoking conduct is inherently wrongful. Legislative attempts to limit the broad scope of this common law definition have altered the application to non-physical forms of conduct and reversed the onus of proof. These amendments have increased its complexity[66] and failed to properly address the underlying policy concerns.[67]

7.70. The Queensland Law Society stated in its submission:

> Attempts over the years to improve section 304 and limit its applicability have resulted in a provision that contains a number of exclusions and exceptions to those exclusions, complicating the provision and directions to juries but not ultimately achieving the desired legislative outcome.[68]

7.71. The Bar Association of Queensland similarly submitted that 'the way in which the various amendments have been drafted over time has increased rather than reduced the complexity' of section 304.[69] Duffy also submitted that the amendments to section 304 'have increased the complexity of the provision, without increasing confidence in the operation of the provision'.[70]

7.72. Provocation to assault relies on the statutory definition of provocation in section 268, which requires that the provoking act is 'wrongful'[71] and provides that a lawful act cannot give rise to provocation.[72] At the heart of the complexity of the defence of provocation to assault is the intrinsic contradiction in requiring both a loss of control and a proportionate response.[73]

7.73. The defence of provocation to assault has a narrow application and is confined to offences of which assault is an element. This means it does not apply to offences such as wounding, GBH and choking, suffocation or strangulation in a domestic setting.[74] It also does not apply to unlawful homicide.[75]

7.74. This narrow application can create inconsistencies in its availability for non-lethal violence. Lelliott and Wallis submitted that the narrow application of the defence 'makes very little sense' and is a reason for its repeal:

> The majority of non-fatal offences against the person do not have 'assault' as an element. It is also not the case that assault-based offences are generally less serious (and which could justify limiting provocation to them). Some 'non-assault-based' offences are minor and a handful attract lower penalties than s 339 and s 340 (assault occasioning bodily harm and serious assaults). For example, that provocation may be a defence to assault occasioning bodily harm (s 339) but not to wounding (s 323) is incoherent in the broader context of the Code.[76]

7.75. The Bar Association of Queensland took a different view. It supported expanding the defence by 'removing its restriction to offences in which assault is an element'.[77]

7.76. The defence of prevention of repetition of insult relies on the same statutory definition of provocation as the defence of provocation to assault. Unlike the defence of provocation to assault, prevention of repetition of insult does not require:

- assault as an element so applies to a broader range of offences, including manslaughter or wounding
- a loss of self-control or use of force 'on the sudden' and before there is time for the defendant's passion to cool.

7.77. These differences can be a source of confusion and complexity at trial, where both defences may be raised in respect of the same conduct or where judges have to explain the defences available on different charges.[78] In a trial involving both a charge of AOBH and a charge of GBH, for example, a judge may need to explain that both defences are available for the first charge but only prevention of repetition of insult is available on the second charge. One District Court Judge we interviewed stated:

> [This] inconsistency creates difficulties in understanding, I think. Because it leads to the obvious question, why does it apply in that one or not in that one?[79]

7.78. In trials where both defences are raised, the jury must be directed on each defence. This may create complexity and confusion. The same District Court Judge also told us:

> And what's more difficult is when you have to direct about provocation and prevention of repetition of insult, you know, which are basically the same thing. … [I]t makes [your] summing up much longer. It means, you know, I'm going to tell you all of this stuff about provocation. And once you've thought about all that and decided that, you know, that's been excluded, then you've got to go and look at

> prevention of repetition of insult, which I know sounds like the same thing, but … it's different.[80]

7.79. The Benchbook jury directions for each defence exceed five pages,[81] making jury directions where both defences may be relevant lengthy and complex.

Provocation is not effective in the DFV context

7.80. Evidence suggests that the provocation defences do not work well for DFV victim-survivors and that the defences can be misused by DFV perpetrators.[82]

7.81. Many stakeholders consider the defences should not be available in the DFV context, raising concerns they can be used by perpetrators while not being available for retaliatory violence by the person most in need of protection.[83]

7.82. The Red Rose Foundation told us of 'the need to prioritise victim-survivor safety and prevent perpetrators from exploiting the defence to excuse DFV-related assaults'.[84] They stated:

> Provocation has historically allowed DFV perpetrators to avoid accountability by framing their violent reactions as justified responses to minor provocations (e.g., verbal disagreements or attempts to leave the relationship). This reinforces harmful stereotypes that blame victims for their abuse.[85]

7.83. In relation to prevention of repetition of insult, the Red Rose Foundation said it was concerned about the defence being misused in the DFV context. It said the defence 'risks enabling DFV perpetrators to excuse controlling or retaliatory violence under the guise of "preventing insults", particularly where coercive control exists'.[86]

7.84. Recent reforms to the partial defence to murder of killing on provocation have not achieved their intended purpose.[87] Our homicide cases research (Research Project 6) demonstrates that men continue to rely on provocation as a defence in circumstances where they have killed their intimate partner or in the broader context of DFV, arguing victims contribute to their own victimisation.[88] The reversal of the onus of proof has allowed the alleged provocative act to be framed narrowly by the defendant rather than be considered in the full circumstances of the offence.[89]

7.85. The Australian National University Law Reform and Social Justice Research Hub said that the High Court's interpretation of the amended partial defence in Peniamina[90] 'has limited its effectiveness' and 'demonstrates the inefficacy of section 304(3) in combatting the gendered issues with the provocation defence'.[91] This case is discussed below.

Peniamina v The Queen[1]

Peniamina brutally killed his wife, with whom he had four children. He was ultimately convicted of manslaughter on retrial, after successfully appealing his murder conviction to the High Court.

Peniamina thought his wife was having an affair with another man. He was aware his wife was texting another man and on the day he killed his wife, he spoke to the other man and became upset. He left the house and, on his return home, confronted his wife. He punched her, causing her mouth to bleed, and she fled to the kitchen. He followed her and found her holding a knife. When he attempted to disarm her, she pulled the knife away, cutting his hand. He then stabbed her to the point he broke the knife in her. When she fled outside, where she collapsed on the ground, he followed her and ultimately bashed her to death with a concrete bollard.

At trial, Peniamina argued that the cut to his hand was the act of provocation that caused him to lose control.

The High Court held that provocation should have been left for the jury without reference to the exclusionary provision because the cut to Peniamina's hand was the act of provocation. At the retrial, the only issue was whether Peniamina had proved the defence applied. The jury deliberated for three days but could not reach a unanimous verdict on murder. By majority verdict of 11–1, they found Peniamina guilty of manslaughter and he was sentenced to 16 years imprisonment.

7.86. Our community attitudes research (Research Report 1) revealed strong support for repeal of the defence of provocation to assault. In a DFV assault scenario involving provocation, almost all respondents thought there should be no defence.[92] Over 95% of respondents opposed a defence regardless of either the victim's conduct or degree of injury.[93] The community did not support a defence if there was risk of significant injury or where the defendant's conduct was motivated by anger, jealousy or a desire for control.[94]

7.87. The Queensland Law Society submitted:

> [The] partial defence is still available to perpetrators of DFV in a way that is no longer in line with community attitudes or current understandings of the dynamics of DFV.[95]

Provocation is not effective in other contexts

7.88. For people from diverse communities, including those over-represented in the criminal justice system and who may have experienced overt racism and vilification, there is little evidence to show that the defences reduce prosecution rates or provide a successful defence.

7.89. Our community attitudes research (Research Report 1) found that, where provocative conduct constituted verbal insults or harassment in a public setting, Aboriginal peoples and Torres Strait Islander peoples were more likely than non-Indigenous Queenslanders to understand the use of violence as a reaction to that provocative conduct.[96] One explanation for this is that Aboriginal peoples and Torres Strait Islander peoples' 'heightened vulnerability to mistreatment may have influenced their views of situations involving harassment and violence'.[97] We have carefully explored potential disproportionate outcomes of reform for these groups.

7.90. In our Consultation Paper we suggested that repealing the defence of provocation to assault might improperly increase the criminalisation of Aboriginal peoples and Torres Strait Islander peoples in circumstances where they should have access to a defence, and where they are significantly over-represented in our criminal justice system.[98]

7.91. Submissions from the Aboriginal and Torres Strait Islander Legal Service, Legal Aid Queensland and the Bar Association of Queensland similarly expressed concerns that repealing the defences may disproportionately impact Aboriginal peoples and Torres Strait Islander peoples and exacerbate their over-criminalisation.[99] The Queensland Council of Social Service told us it could not support reform that would increase the criminalisation of Aboriginal peoples and Torres Strait Islander peoples.[100]

7.92. Legal Aid Queensland told us that if the defences were no longer available in DFV situations it may particularly impact Aboriginal and Torres Strait Islander women who 'are more likely to use violence to protect themselves'.[101] The Aboriginal and Torres Strait Islander Legal Service noted that Aboriginal and Torres Strait Islander women are misidentified as perpetrators of DFV.[102] They highlighted the disproportionate risk of victimisation, stating:

> Consideration of cultural context is particularly important noting the fact that Aboriginal and Torres Strait Islander women and men are at a far greater risk of being a victim of domestic violence than non-Indigenous men and women.[103]

7.93. Legal practitioners we consulted provided limited examples of Aboriginal peoples and Torres Strait Islander peoples relying successfully on provocation to assault, including an Aboriginal defendant who responded to racial harassment and abuse.

7.94. Some stakeholders we consulted supported retaining provocation as a defence to assault for Aboriginal peoples and Torres Strait Islander peoples reacting with violence to racial harassment or vilification. They recognised that the defence may be particularly relevant in cases where provocative words or acts are used to disparage an Elder or deceased family member. At a regional consultation we were told that saving face is very important for Aboriginal peoples and Torres Strait Islander peoples in an Aboriginal community. However, some Aboriginal organisations told us that there is a need for people to restrain themselves when provoked by racial taunts.

7.95. Access to justice issues and barriers to accessing defences limit the effectiveness of provocation as a defence to assault for Aboriginal peoples and Torres Strait Islander peoples. There is no statistical evidence that the defence is routinely used. Legal practitioners representing Aboriginal and Torres Strait Islander clients told us that it is rare for cases to go to trial and for the defence to be raised. The Australian Law Reform Commission has previously identified reasons for this, highlighting that Aboriginal people and Torres Strait Islander people often struggle to access culturally appropriate legal advice and face significant pressures to plead guilty, compounded where the person is held on remand before trial.[104]

7.96. There is no evidence that repeal of the equivalent defence of provocation to assault in the Northern Territory in 2006 increased criminalisation of Aboriginal peoples and Torres Strait Islander peoples. Northern Territory correctional service statistics, related to all offenders not just Aboriginal peoples and Torres Strait Islander peoples, indicates that, since repeal of the defence in 2006, there has been no noticeable increase in rates of imprisonment. From 2005 to 2009, the percentage of prisoners held in custody for assault remained between 39% to 42%.[105] The number of offenders charged with assault in the Northern Territory in the years following repeal did increase but not dramatically and not at a greater rate than in other jurisdictions, including Queensland.[106]

7.97. Further, there is no evidence that the proportion of Aboriginal peoples and Torres Strait Islander peoples in custody in the Northern Territory increased following repeal of the

defence. Between 2004 to 2008, the proportion of Aboriginal peoples and Torres Strait Islander peoples in prisons fluctuated between 81% to 84%.[107] In 2020, they made up 84% of the prison population.[108]

7.98. The provocation defences may also be relevant for people from culturally and linguistically diverse backgrounds who have experienced ongoing racial harassment or vilification and respond to a racial insult.[109] Stakeholders in a regional consultation told us that the emotions of refugees may be affected because of trauma.

7.99. LGBTQIA+ people continue to experience stigma and discrimination. The LGBTI Legal Service submission discussed the 'gay panic defence'.[110] This is when the sexuality or gender identity of the victim provokes the offender to use violence after an unwanted sexual advance.

7.100. In 2017, unwanted sexual advances were made a categorical exclusion to the partial defence.[111] This reform was in response to cases such as Green v The Queen,[112] where a persistent and unwanted 'homosexual advance' was sufficient to raise the partial defence. The explanatory notes to the amending legislation state that 'the proposed amendment reflects changes in community expectations that such conduct should not be able to establish a partial defence of provocation to murder'.[113]

7.101. Without entirely excluding the 'gay panic' defence, these reforms have complicated the law and jury directions.[114] Repealing the provocation defences would clarify that an unwanted sexual advance from an LGBTQIA+ person is not sufficient to provoke killing or assault. Repeal would, however, make the defence unavailable in circumstances where a member of the LGBTQIA+ community is provoked to violence by homophobic, transphobic or other forms of abuse.

7.102. Legal Aid Queensland identified the relevance of provocation defences to a defendant child or young adult in circumstances where that person:

> has impaired impulse and emotional control, whether partially because of the effect of their prejudicial upbringing (including neglect or abuse), because of their age having regard to general development of a human brain, or impacted by an organic cognitive impairment.[115]

7.103. One legal practitioner we interviewed similarly referred to the importance of provocation defences being available to children:

> I think it's particularly important for people who will, because of the development of their frontal lobe … still be impulsive, who will not have the same ability to control their actions.[116]

7.104. In summing up a case where a juvenile killed her abusive partner in an Aboriginal community, one Supreme Court Judge emphasised the role of socialisation in shaping powers of self-control:

> Of provocation, it was submitted it's not a perfect world. People do lose control. Humans are frail beings. The human condition is something that varies. Not all of us are blessed with the upbringing that leaves us with high powers of self-control.[117]

7.105. The Bar Association of Queensland referred to the 'important safety net' provided by the provocation defence to 'marginalised members of society whose unique life experiences may render them vulnerable to losing self-control' in response to provocative conduct, including 'youth, [people with] mental health concerns … [or] a history of trauma caused by racism or sexual or physical abuse'.[118]

7.106. The Bar Association of Queensland submitted that the absence of the provocation defence would 'disadvantage vulnerable members of the community'.[119] It singled out 'victims of

domestic violence and people with disadvantaged or impaired socialisation because of their low socioeconomic upbringing or race', people with 'disorders that impair impulse control' such as people with post-traumatic stress disorder, and people with an 'intellectual impairment because of an acquired brain injury or alcohol foetal syndrome' as community members who may be disproportionately impacted.[120]

7.107. We acknowledge these concerns. There is, however, little evidence the defence provides protection in practice. We consider that the risks for vulnerable members of the community can be addressed by improving the exercise of police and prosecutorial discretion about decisions whether to charge and by clarifying the relevance of provocation as a sentencing consideration. Factors which make a person vulnerable to reacting to provocative conduct with violence can be considered by police and prosecutors in deciding whether to charge a person or to continue with a prosecution. These same factors can also be considered in determining a sentence that is appropriate in all the circumstances.

7.108. We therefore recommend that the defence of provocation to assault be repealed. Accompanying supportive measures, and our reforms to self-defence, would mitigate adverse impacts for vulnerable communities.

Provocation should be a sentencing consideration

7.109. Provocation can be relevant to an offender's culpability. The common law already recognises that a person who responds to provocation with violence may be less culpable than a person who acts in the same way in the absence of provocation.[121]

7.110. In relation to killing on provocation, the Model Criminal Code Officers Committee has acknowledged that provocation may reduce a defendant's culpability:

> Because provoked killers intend to cause death, the fault element is not negatived. The most that can be said for these persons is that they kill in circumstances which diminishes the quality of their fault element. This, however, is not true for many hot-blooded killers; some, perhaps even most, are morally just as culpable as their cold-blooded counterparts.[122]

7.111. Rather than providing a defence of provocation, the Model Criminal Code Officers Committee said that provocation should be considered at sentencing, where differences in culpability can be 'reflected … in the severity of the punishment'.[123]

7.112. Some stakeholders submitted that provocation should be a factor considered at sentencing rather than providing a defence.[124] For example, Duffy stated:

> [A] person who kills another in a partial state of loss of self-control, caused by sudden provocation, may be less morally blameworthy than a person who kills another without provocation. Depending on the context, that distinction may be finely drawn, but in other circumstances, the experience of provocation quite demonstrably impacts on the culpability of a defendant.
>
> Provocation should be a factor (along with other mitigating and aggravating factors) that is considered when a defendant is being sentenced for murder. … An assessment of how provocation has impacted on the culpability of an offender is best conducted by a sentencing judge.[125]

7.113. A Crown prosecutor we interviewed highlighted that provocation is already a factor that may be relevant to consider at sentencing for other related offences:

> Take grievous bodily harm, for example, provocative conduct by the victim in advance of GBH is always relevant at sentence. It is a thing that will ordinarily mitigate what you did because you had a reason for it. It wasn't just a callous,

> cold-blooded attack. You … in a factual sense were provoked. As a result, you get a … lesser penalty, so the same can apply for any assault case.[126]

7.114. In 2005, following abolition of the partial defence and the introduction of provocation as a sentencing consideration in Victoria, the Victorian Sentencing Advisory Council emphasised that 'it is imperative that the problems and flaws of the pre-existing law not be transferred from the substantive criminal law into the law of sentencing'.[127] Underlying gendered assumptions and justifications for violence based on anger, jealousy and control, particularly in the context of DFV, should not be mitigating factors on sentencing.

7.115. The Victorian Sentencing Advisory Council stated that, in exercising sentencing discretion:

> The court should consider the extent to which the victim's actions gave the offender a justifiable sense of being wronged and the relationship, or proportionality, between the offence and the provocation.[128]

7.116. This highlights that not all situations of violence induced by provocative conduct should be considered mitigating factors. The Victorian Sentencing Advisory Council adopted the view of the Victorian Law Reform Commission, arguing that 'conduct that arises out of the victim exercising his or her right to equality, such as the right to personal autonomy' is not justifiable.[129] Sentencing precedents from Victoria have been mixed. Some judges have recognised separation or infidelity as a provocation,[130] while others have made clear that it is not.[131] Others have gone further and condemned male offenders' violence towards their intimate partners.[132]

Consistency with other jurisdictions

7.117. Repeal of the complete defences of provocation to assault and prevention of repetition is consistent with all other Australian jurisdictions except Western Australia, a Griffith Code jurisdiction.[133] The Law Reform Commission of Western Australia's 2007 review of the provocation defences noted similar criticisms of the defence to those we have identified, including its lack of a consistent rationale, that it condones violence, its gender-bias and its inherent conflicts.[134] That Commission recommended repeal of the partial defence of provocation, subject to further holistic consideration of the defences and consultation on the practical implications of repeal.[135]

7.118. The Northern Territory repealed the complete defence of provocation in 2006 when it amended the Criminal Code (NT) to align with the Model Criminal Code.[136]

7.119. Legislative recognition of provocation as a mitigating factor in sentencing is consistent with NSW and the ACT.[137] The Northern Territory and Victoria both have provisions that require the court to have regard to the extent to which an offender is to blame for the offence[138] and the offender's culpability and degree of responsibility for the offence.[139] Provocation is recognised as a mitigating factor in sentencing at common law in several interstate jurisdictions.[140]

Human rights considerations

7.120. By repealing the provocation defences, **Recommendations 12–14** are compatible with human rights.

7.121. Violence affects a person's right to feel safe and can engage their right to life,[141] equality[142] and privacy.[143] It can also amount to torture, or cruel, inhuman or degrading treatment. Provocation is not a legitimate justification for limiting these rights.[144]

7.122. The Human Rights Committee has described the right to life as 'a fundamental right, the effective protection of which is the prerequisite for the enjoyment of all other human rights'.[145] No one should be arbitrarily deprived of their life. Killing a person because of a loss of self-control in response to provocation does not meet the criteria for justified use of lethal force and amounts to an arbitrary deprivation of life.[146]

7.123. The gendered operation of the provocation defences is incompatible with the right to recognition and equality before the law. At international law, the elimination of gender-based discrimination 'is an integral part of efforts towards the elimination of all forms of violence against women'.[147] It specifically recognises that provocation cannot be invoked by perpetrators of violence against women to escape criminal responsibility.[148]

7.124. There are particularly compelling arguments for repealing the provocation defences when considering their operation in the DFV context. In its submission, the Queensland Human Rights Commission quoted the Special Rapporteur on torture, who emphasised that:

> Domestic violence degrades, humiliates, coerces, brutalizes and otherwise violates the physical, mental and emotional integrity of persons who are often subjected to controlling and disempowering situations or environments.[149]

7.125. In the context of DFV, by excusing a person's use of violence, the defences are incompatible with the right to protection from torture and cruel, inhuman, or degrading treatment.

7.126. The right to freedom of expression[150] includes holding and expressing opinions without interference, including unpleasant, unpopular or disturbing opinions.[151] This supports the freedom to make provocative statements without attack, or fear of attack. A person's right to freedom of expression should not unjustifiably limit another person's right to be free from discrimination.[152] Racial discrimination and harassment directed towards diverse communities which amounts to vilification, hate speech or racial hatred is not recognised as freedom of expression and unjustifiably limits the right to be free from discrimination.[153]

7.127. We recognise the potential for our reforms to disproportionately impact people from diverse communities, including Aboriginal peoples and Torres Strait Islander peoples, further limiting their right to recognition and equality before the law. It may also impact their cultural rights.[154] The Queensland Human Rights Commission expressed concerns about repeal of the defence on this basis.[155]

7.128. We have carefully considered the necessity of repeal in achieving our policy intent through this lens. We consider that repeal is justified and that any limitation on human rights would be reasonable and justifiable on the basis that our related recommendations would mitigate any such limitations. These recommendations include:

- that provocation is considered as a mitigating factor in sentencing
- that police and prosecutors must consider circumstances of provocation in deciding if a charge or prosecution is in the public interest
- an education campaign to promote public awareness and understanding of the reforms, ensuring targeted and accessible education for diverse and disadvantaged communities
- practice and procedure reforms to address access to justice issues for Aboriginal peoples and Torres Strait Islander peoples, which we discuss in Part 7.

Implications of reform

7.129. In this section, we discuss implications of our provocation defence reforms. We consider the relevance of our related reforms in ensuring appropriate protection for vulnerable defendants. We consider how provocation would remain relevant to criminal justice outcomes, both in plea negotiations and in sentencing.

7.130. There is a strong connection between the criminal defences. Our reforms would change both the availability of individual defences and their combined application.

7.131. Repeal of the provocation defences would not leave deserving defendants without a defence. As Lelliott and Wallis note in their submission, '[p]roperly drawn defences of self-defence and duress obviate any need for a particular defence of provocation'.[156] Our reforms to self-defence and duress would achieve this.

7.132. Where a person is provoked by a violent act or threat of harm, the complete defence of self-defence or defence of another may be raised. This may be relevant in situations where racial, homophobic, or transphobic abuse is accompanied by threats of harm. Duffy's submission noted that:

> If a person responds with lethal force to another person who has assaulted them leading to apprehension of death or grievous bodily harm, then the appropriate excuse for a defendant to rely upon is self-defence.[157]

7.133. Our reforms to expand and modernise self-defence, the partial defence of killing for preservation in an abusive domestic relationship and duress would, in concert, appropriately respond to defensive conduct. DFV victim-survivors provoked to use retaliatory violence would be able to raise self-defence, making it more readily accessible to women experiencing DFV. This is a preferable defence in these circumstances because, unlike the partial provocation defence, it would result in an acquittal if successfully raised.

7.134. Our reforms would also safeguard the defences, preventing their gendered application and misuse by DFV perpetrators.

7.135. Legal Aid Queensland raised the concern that, in the absence of sentencing discretion for murder, the partial defence can lead to 'just outcomes' by reducing what would otherwise be a conviction for murder to manslaughter, where there is sentencing discretion to reflect moral culpability. They gave the example of 'a child or young person [who] kills in anger against a background of childhood deprivation' and 'vulnerable victim-survivors [of DFV] who kill their abusers'.[158] This reinforces the need for consideration of our recommendations as a package of related reforms.

7.136. Recognising provocation as a mitigating factor in sentencing, for murder and for offences involving assault, would ensure just outcomes in appropriate cases.

7.137. Our reforms to the Director's Guidelines and the OPM would ensure provocation remains relevant to the practical resolution of appropriate matters. This would address concerns we heard from stakeholders that the provocation defences can be relevant to decisions to withdraw charges, and that its repeal may undermine this.[159]

7.138. In the absence of the complete and partial defences, police and prosecutors would still be able to consider the nature and gravity of the provocation and the extent to which it contributed to the offending in exercising their discretion about whether it would be against the public interest to charge a person or to continue with proceedings. Together with our practice and procedure reforms, we anticipate that our reforms would increase just outcomes.

References

1 Criminal Code (Qld) ss 268, 269, 270, 304.

2 R v Chhay (1994) 72 A Crim R 1, 11; Parker v The Queen (1963) 111 CLR 610, 651–2; McGhee v The Queen (1995) 183 CLR 82, 90, 103, 106.

3 Taskforce on Women and the Criminal Code, Report of the Taskforce on Women and the Criminal Code (Report, February 2000) 175–80.

4 The Criminal Code (Qld) s 268 defines provocation for the purposes of provocation to assault and prevention of repetition of insult. It requires a wrongful act or insult by the victim that was serious enough to cause an ordinary person to lose self-control and assault the victim. The common law definition of provocation applies to killing on provocation. This means conduct will not amount to provocation unless it was serious enough to cause an ordinary person to lose self-control. The Criminal Code (Qld) s 304 also qualifies the meaning of provocation for the partial defence by excluding some types of conduct other than in exceptional circumstances.

5 Peter Davis, 'Ongoing Issues with the Defence of Provocation' (Conference Paper, Country Special Professional Development Conference, 25 February 2023) 5, 7–8, 10–11, 14.

6 See R v Campbell [2016] QCA 42 for a discussion of the use of provocation as a mitigating factor at sentence in Queensland (in particular [14] per McMurdo P and [31]–[38] per Morrison JA).

7 South Australia abolished the common law defence of provocation in 2021 under the Criminal Law Consolidation Act 1935 (SA) s 14B. Tasmania abolished the partial defence of provocation in s 160 of the Criminal Code (Tas) in 2003 under the Criminal Code Amendment (Abolition of Defence of Provocation) Act 2003 (Tas) s 4(b). Victoria abolished the partial defence of provocation in 2005 under the Crimes Act 1958 (Vic) s 3B. Western Australia abolished the partial defence of killing on provocation in the Criminal Code (WA) s 281 in 2008 under the Criminal Law Amendment (Homicide) Act 2008 (WA) s 12. New Zealand abolished the partial defence of provocation in the Crimes Act 1961 (NZ) s 169 in 2009 under theCrimes (Provocation Repeal) Amendment Act 2009 (NZ) s 4. The Northern Territory repealed its defence that was equivalent to provocation to assault (Criminal Code (NT) s 34) in 2006 under the Criminal Reform Amendment Act (No 2) 2006 (NT) s 8.

8 Criminal Code (Qld) s 25 (the defence of extraordinary emergency) refers to acts done upon provocation. To ensure consistency, a consequential amendment to remove this reference would be needed.

9 Penalties and Sentences Act 1992 (Qld) s 9(2)(d).

10 See R v Campbell [2016] QCA 42 for a discussion of the use of provocation as a mitigating factor at sentence in Queensland (in particular [14] per McMurdo P and [31]–[38] per Morrison JA).

11 Queensland Police Service, Operational Procedures Manual (Issue 108, 1 October 2025) [3.1.1].

12 Queensland Police Service, Operational Procedures Manual (Issue 108, 1 October 2025) [3.4.3].

13 Office of the Director of Public Prosecutions (Qld), Director's Guidelines (30 June 2024) [4].

14 Office of the Director of Public Prosecutions (Qld), Director's Guidelines (30 June 2024) [4].

15 The ODPP Director's Guidelines are referenced and incorporated in the OPM at [3.4.3].

16 Office of the Director of Public Prosecutions (Qld), Director's Guidelines (30 June 2024) [4]. Queensland Police Service, 'Operational Procedures Manual' (Issue 108, 1 October 2025) [3.4.3].

17 Office of the Director of Public Prosecutions (Qld), Director's Guidelines (30 June 2024) [4]. Queensland Police Service, 'Operational Procedures Manual' (Issue 108, 1 October 2025) [3.4.3].

18 McGhee v The Queen (1995) 183 CLR 82, 97; R v Johnson [1964] Qd R 1, 4.

19 Letter dated 29 October 1897, reported in R v Foxcroft [1911] 5 QJP 129, 131 (emphasis added).

20 Sir Samuel Griffith made short notes about the sections proposed in the margin of the draft Criminal Code, as reported in R v Foxcroft [1911] 5 QJP 129. Emphasis added.

21 Andreas Schloenhardt and Eloise Gluer, 'Provocation and Assault: Retain, Reform, Or Repeal Ss 268 and 269 of Queensland's Criminal Code?' (2013) 33 Queensland Lawyer 251, 253.

22 Andreas Schloenhardt and Eloise Gluer, 'Provocation and Assault: Retain, Reform, Or Repeal Ss 268 and 269 of Queensland's Criminal Code?' (2013) 33 Queensland Lawyer 251, 253–4.

23 Andreas Schloenhardt and Eloise Gluer, 'Provocation and Assault: Retain, Reform, Or Repeal Ss 268 and 269 of Queensland's Criminal Code?' (2013) 33 Queensland Lawyer 251, 259.

[24] Model Criminal Code Officers Committee, Model Criminal Code Chapter 5 — Non Fatal Offences Against the Person (Report, September 1998) 141.

[25] Model Criminal Code Officers Committee, Model Criminal Code Chapter 5 — Non Fatal Offences Against the Person (Report, September 1998) 141.

[26] Model Criminal Code Officers Committee, Model Criminal Code Chapter 5 — Non Fatal Offences Against the Person (Report, September 1998) 141.

[27] Model Criminal Code Officers Committee, Model Criminal Code Chapter 5 — Non Fatal Offences Against the Person (Report, September 1998) 141.

[28] Taskforce on Women and the Criminal Code, Report of the Taskforce on Women and the Criminal Code (Report, February 2000) 179.

[29] QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024).

[30] QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) xvi.

[31] QLRC, Legal Profession Interviews (Research Project 5, 2025).

[32] QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025). In particular, see pages: 25–7, 30–3.

[33] Respect Inc, Submission 14; Australian National University Law Reform and Social Justice Research Hub, Submission 16; Queensland Council of Social Services, Submission 28.

[34] Zoe Rathus, Submission 29; see also LGBTI Legal Service, Submission 15; Queensland Law Society, Submission 30.

[35] Legal Aid Queensland, Submission 31; Bar Association of Queensland, Submission 42; Magistrate, Interview 2; Defence Counsel, Interview 8.

[36] James Duffy, Submission 44; Queensland Law Society, Submission 30; see also Rachel Dioso-Villa and Caitlin Nash, Submission 38.

[37] QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 22.

[38] Kelley Burton, Submission 12; Joseph Lelliott and Rebecca Wallis, Submission 22; Queensland Human Rights Commission, Submission 41; James Duffy, Submission 44.

[39] Joseph Lelliott and Rebecca Wallis, Submission 22.

[40] Joseph Lelliott and Rebecca Wallis, Submission 22.

[41] Australian National University Law Reform and Social Justice Research Hub, Submission 16.

[42] James Duffy, Submission 44.

[43] James Duffy, Submission 44.

[44] Joseph Lelliott and Rebecca Wallis, Submission 22.

[45] Safe Night Out Legislation Amendment Bill 2014 (Qld) s 14, inserting Criminal Code (Qld) s 314A; Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014 (Qld) 1.

[46] Queensland, Parliamentary Debates, Legislative Assembly, 26 August 2014, 2658.

[47] 'Our Story', One Punch Can Kill (Web Page, 2025) <https://onepunchcankill.org.au/about/>; 'Together We Can Prevent One-Punch Violence in the Community', One Punch Can Kill (Web Page, 2025) <https://onepunchcankill.org.au/programs/>.

[48] 'Our Story', One Punch Can Kill (Web Page, 2025) <https://onepunchcankill.org.au/about/>.

[49] 'Our Story', One Punch Can Kill (Web Page, 2025) <https://onepunchcankill.org.au/about/>.

[50] Law Commission of England and Wales, Partial Defences to Murder (Final Report, 6 August 2004) 36 [3.30].

[51] Law Commission of England and Wales, Partial Defences to Murder (Final Report, 6 August 2004) 36 [3.28].

[52] Sarah Sorial, 'Anger, Provocation and Loss of Self-Control: What Does "Losing It" Really Mean?' (2019) 13(2) Criminal Law and Philosophy 247, 258, 261, 265.

[53] Sarah Sorial, 'Anger, Provocation and Loss of Self-Control: What Does "Losing It" Really Mean?' (2019) 13(2) Criminal Law and Philosophy 247, 248.

[54] 'Perpetrator Intervention Services Requirements' (Web Page, 14 April 2025) <https://www.families.qld.gov.au/our-work/domestic-family-sexual-violence/for-service-providers/funding-investment/perpetrator-intervention-services-requirements>.

55 Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 1, 40.

56 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 35.

57 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 43.

58 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 45.

59 Australian National University Law Reform and Social Justice Research Hub, Submission 16 quoting Victorian Law Reform Commission, Defences to Homicide (Final Report, October 2004), 27–8.

60 Taskforce on Women and the Criminal Code, Report of the Taskforce on Women and the Criminal Code (Report, February 2000) 176.

61 Taskforce on Women and the Criminal Code, Report of the Taskforce on Women and the Criminal Code (Report, February 2000) 179 citing R v Chhay (1994) 72 A Crim R 1, 11.

62 Taskforce on Women and the Criminal Code, Report of the Taskforce on Women and the Criminal Code (Report, February 2000) 196.

63 Australian National University Law Reform and Social Justice Research Hub, Submission 16.

64 Model Criminal Code Officers Committee, Model Criminal Code Chapter 5 — Non Fatal Offences Against the Person (Report, September 1998) 141.

65 R v Stingel (1990) 171 CLR 312, 326, 331.

66 Peter Davis, 'Ongoing Issues with the Defence of Provocation' (Conference Paper, Country Special Professional Development Conference, 25 February 2023) 11.

67 QLRC, Review of Particular Criminal Defences: Equality and Integrity — Reforming Criminal Defences in Queensland (Consultation Paper, February 2025) [205] 41–2; Andreas Schloenhardt, Joseph Lelliott and Carl Tessmann, Criminal Law in Queensland: Principles, Offences, and Defences (Thomson Reuters, 2nd ed, 2023) 475–6 citing Women's Safety and Justice Taskforce, Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System (Report No 2, 2022) vol 2, 261, 322–3; Peter Davis, 'Ongoing Issues with the Defence of Provocation' (Conference Paper, Country Special Professional Development Conference, 25 February 2023) 11.

68 Queensland Law Society, Submission 30.

69 Bar Association of Queensland, Submission 42.

70 James Duffy, Submission 44.

71 Criminal Code (Qld) s 268(1).

72 Criminal Code (Qld) s 268(3).

73 Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 210–16, 222.

74 Criminal Code (Qld) ss 320, 323, 315A.

75 Criminal Code (Qld) ss 300, 302–303.

76 Joseph Lelliott and Rebecca Wallis, Submission 22.

77 Bar Association of Queensland, Submission 42.

78 QLRC, Legal Profession Interviews (Research Project 5) District Court Judge, Interview 5; Magistrate, Interview 1; Crown Prosecutor, Interview 1.

79 QLRC, Legal Profession Interviews (Research Project 5) District Court Judge, Interview 5.

80 QLRC, Legal Profession Interviews (Research Project 5) District Court Judge, Interview 5.

81 Queensland Courts, 91. Provocation: Ss 268, 269 (Supreme and District Courts Criminal Directions Benchbook, December 2024); Queensland Courts, 92. Prevention of Repetition of Insult: S 270 (Supreme and District Courts Criminal Directions Benchbook, December 2024); Queensland Courts, 98. Provocation: s 304 (for offences post 4 April 2011) (Supreme and District Courts Criminal Directions Benchbook, March 2025).

82 QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 33–4 [143]–[147].

83 Australian National University Law Reform and Social Justice Research Hub, Submission 16; Zoe Rathus, Submission 29; Red Rose Foundation, Submission 33; Women's Legal Service Queensland, Submission 37.

84 Red Rose Foundation, Submission 33.

85 Red Rose Foundation, Submission 33.

86 Red Rose Foundation, Submission 33.

87 For example, this is evidenced in the reading down of exclusionary provisions in Queensland in Peniamina v The Queen (2020) 271 CLR 568 and through the introduction of defensive homicide in Victoria, its failure and subsequent repeal.

88 QLRC, Homicide Cases (Research Project 6, 2025). Roughly equal numbers of men were sentenced on the basis of provocation in DFV and non-DFV-related matters between 2010 and 2024.

89 For example, in R v Kelsey (unreported) the alleged provocation was a verbal rant by the defendant's wife (s 304(2)). See Transcript of Proceedings, R v Kelsey (Supreme Court of Queensland at Brisbane, Crowley J, 1 March 2024). In Peniamina v The Queen (2020) 271 CLR 568 and R v Pilcher (unreported) the alleged provocation related to the defendants' wife arming themselves with a knife to defend themselves from the defendant and both were convicted of manslaughter (s 304[3]). See, Transcript of Proceedings, R v Pilcher (Supreme Court of Queensland at Townsville, North J, 9 December 2020). In R v Walker-Ely [2025] QCA 183 the defendant was intoxicated. The alleged provocation was attempted rape and threats to kill. The jury found the defendant guilty. The extreme nature of the attack was argued to demonstrate loss of control. Walker-Ely appealed his conviction and the appeal was allowed on the grounds that the Crown prosecutor incorrectly explained the proportionality test: R v Walker-Ely [2025] QCA 183.

90 Peniamina v The Queen (2020) 271 CLR 568.

91 Australian National University Law Reform and Social Justice Research Hub, Submission 16.

92 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 91.

93 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 91.

94 Key findings 3 and 8 in: QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 41–2, 102–4, 110–12.

95 Queensland Law Society, Submission 30.

96 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 104.

97 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 105.

98 QLRC, Review of Particular Criminal Defences: Equality and Integrity — Reforming Criminal Defences in Queensland (Consultation Paper, February 2025) 59.

99 Aboriginal and Torres Strait Islander Legal Service, Submission 25; Legal Aid Queensland, Submission 31; Bar Association of Queensland, Submission 42.

100 Queensland Council of Social Services, Submission 28.

101 Legal Aid Queensland, Submission 31.

102 Aboriginal and Torres Strait Islander Legal Service, Submission 25.

103 Aboriginal and Torres Strait Islander Legal Service, Submission 25.

104 Australian Law Reform Commission, Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (Final Report No 133, December 2017) 149–61, 325–8, 450–1.

105 Northern Territory Department of Justice, Correctional Services Statistical Summary 2004–2005 (Report, 2005), 3; Northern Territory Department of Justice, Correctional Services Annual Statistics 2005–2006 (Report, 2006), 3; Northern Territory Department of Justice, Correctional Services Annual Statistics 2006–2007 (Report, 2007), 3; Northern Territory Department of Justice, Correctional Services Annual Statistics 2007–2008 (Report, 2008), 4; Northern Territory Department of Justice, Correctional Services Annual Statistics 2008–2009 (Report, 2009), 4.

106 'Recorded Crime – Offenders', Australian Bureau of Statistics (Web Page, 7 August 2025) <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders>.

107 '4517.0 - Prisoners in Australia, 2005', Australian Bureau of Statistics (Web Page, 15 December 2005) <https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4517.0Main+Features12005?OpenDocument=>.

108 Productivity Commission, Australia's Prison Dilemma (Research Paper, October 2021) 31–3.

109 QLRC, Legal Profession Interviews (Research Project 5, 2025) Defence Counsel, Interview 9.

110 LGBTI Legal Service, Submission 15.

111 Criminal Code (Qld) 304(4); Criminal Law Amendment Act 2017 (Qld) s 10.

112 Green v The Queen (1997) 191 CLR 334.

113 Explanatory Notes, Criminal Law Amendment Bill 2016 (Qld) 4.

114 This is because section 304(4) of the Criminal Code 'creates an exception and then an exception to the exception' by stating that the defence of killing on provocation will not apply if the provocation is based on an unwanted sexual advance, other than in circumstances of an 'exceptional character'. Also, the definition of 'unwanted sexual advance' in section 304(11) of the Criminal Code requires a jury to consider if any touching was 'only minor touching': Peter Davis, 'Ongoing Issues with the Defence of Provocation' (Conference Paper, Country Special Professional Development Conference, 25 February 2023) 8.

115 Legal Aid Queensland, Submission 31.

116 QLRC, Legal Profession Interviews (Research Project 5, 2025) Defence Counsel, Interview 8.

117 Transcript of Proceedings, R v A Juvenile (Supreme Court of Queensland at Mount Isa, Henry J, 23 November 2023).

118 Bar Association of Queensland, Submission 42.

119 Bar Association of Queensland, Submission 42.

120 Bar Association of Queensland, Submission 42.

121 R v Campbell [2016] QCA 42; VA v The Queen (2011) 37 VR 452, 34–6; R v Alexander (1994) 78 A Crim R 144.

122 Model Criminal Code Officers, Chapter 5: Fatal Offences Against the Person (Discussion Paper, June 1998) 105.

123 Model Criminal Code Officers, Chapter 5: Fatal Offences Against the Person (Discussion Paper, June 1998) 105.

124 Kelley Burton, Submission 12; Australian National University Law Reform and Social Justice Research Hub, Submission 16; Joseph Lelliott and Rebecca Wallis, Submission 22; James Duffy, Submission 44.

125 James Duffy, Submission 44.

126 QLRC, Legal Profession Insights (Research Project 5, 2025) Crown Prosecutor, Interview 1.

127 Felicity Stewart and Arie Freiberg, 'Provocation in Sentencing: A Culpability-Based Framework' (Research Report, Victorian Sentencing Advisory Council, July 2009) vii.

128 Felicity Stewart and Arie Freiberg, 'Provocation in Sentencing: A Culpability-Based Framework' (Research Report, Victorian Sentencing Advisory Council, July 2009) 4.

129 Felicity Stewart and Arie Freiberg, 'Provocation in Sentencing: A Culpability-Based Framework' (Research Report, Victorian Sentencing Advisory Council, July 2009) 4.

130 Danielle Tyson and Bronwyn Naylor, 'Chapter 2 Reforming Defences to Murder: An Australian Case Study' in Contesting Femicide: Feminism and the Power of Law Revisited (Routledge, 2018) 34.

131 R v Piper [2008] VSC 569, [26], [28], [39]; Danielle Tyson and Bronwyn Naylor, 'Chapter 2 Reforming Defences to Murder: An Australian Case Study' in Contesting Femicide: Feminism and the Power of Law Revisited (Routledge, 2018) 35.

132 Danielle Tyson and Bronwyn Naylor, 'Chapter 2 Reforming Defences to Murder: An Australian Case Study' in Contesting Femicide: Feminism and the Power of Law Revisited (Routledge, 2018) 35.

133 Criminal Code (WA) ss 245–247.

134 Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 210–16, 222.

135 See recommendation 29 in: Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 222.

136 Criminal Reform Amendment Act (No 2) 2006 (NT) s 8.

137 Crimes (Sentencing Procedure) Act 1999 (NSW) ss 21A(1)(b), (3)(c); Crimes (Sentencing) Act 2005 (ACT) s 33(1)(q).

138 Sentencing Act 1995 (NT) s 5(2)(c).

139 Sentencing Act 1991 (Vic) s 5(2)(d).

140 For example, in relation to NSW, see R v Engert (1995) 84 A Crim R 67, 68, 71; Cioban v The Queen (2003) 139 A Crim R 265. In relation to Victoria, see Va v The Queen (2011) 37 VR 452, [33] 459, [42] 461–2; R v Pearce (1983) 9 A Crim R 146, 150. In relation to Tasmania, see Tyne v Tasmania (2005) 15 Tas R 221, 229 [28]. In New Zealand, see Hamidzadeh v The Queen [2013] 1 NZLR 369, 382–3 [62].

141 Human Rights Act 2019 (Qld) s 16.

142 Human Rights Act 2019 (Qld) s 15.

143 Human Rights Act 2019 (Qld) s 25.

144 Queensland Human Rights Commission, Submission 41.

145 Human Rights Committee, General Comment No. 36: Article 6: Right to Life, UN Doc CCPR/C/GC/36 (3 September 2019) [2]. The right to life is recognised under the International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 6.

146 Queensland Human Rights Commission, Submission 41; Human Rights Committee, General Comment No. 36: Article 6: Right to Life, UN Doc CCPR/C/GC/36 (3 September 2019) [10]–[12].

147 United Nations General Assembly, Resolution Adopted by the General Assembly: Strengthening Crime Prevention and Criminal Justice Responses to Violence Against Women, UN Doc A/RES/65/228 (31 March 2011) 1.

148 United Nations General Assembly, Resolution Adopted by the General Assembly: Strengthening Crime Prevention and Criminal Justice Responses to Violence Against Women, UN Doc A/RES/65/228 (31 March 2011) <https://documents.un.org/doc/undoc/gen/n10/526/22/pdf/n1052622.pdf> [15(d)] 10.

149 Queensland Human Rights Commission, Submission 41.

150 Human Rights Act 2019 (Qld) s 21.

151 'Right to Freedom of Expression', Queensland Human Rights Commission <https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-freedom-of-expression>.

152 Human Rights Act 2019 (Qld) ss 15, 21.

153 Frank La Rue, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, 17th Sess, UN Doc A/HRC/17/27 (16 May 2011) [25]. The ALRC has noted that vilification can be considered a form of discrimination, including under the Racial Discrimination Act 1975 (Cth) s 18C. See Australian Law Reform Commission, Maximising the Realisation of Human Rights: Religious Educational Institutions and Anti-Discrimination Laws (Final Report No 142, December 2023) 35 [1.30].

154 Human Rights Act 2019 (Qld) ss 15, 27, 28.

155 Queensland Human Rights Commission, Submission 41.

156 Joseph Lelliott and Rebecca Wallis, Submission 22.

157 James Duffy, Submission 44.

158 Legal Aid Queensland, Submission 31.

159 Bar Association of Queensland, Submission 42.

PART 5

Sentencing for murder reforms

CHAPTER 8

Sentencing for murder

Contents

Recommendation

R15 The court should have some discretion to set a non-parole period for murder to reflect contextual factors and to impose a just, evidence-informed sentence. To give effect to this:

(a) the minimum non-parole periods for murder (section 305; Corrective Services Act 2006 section 181) should be repealed and replaced with standard non-parole periods of equivalent lengths that represent the objective seriousness of the offence in the middle range, and

(b) the court should have discretion to set the length of the non-parole period based on the circumstances of the offence and offender.

Based on these reforms, the mandatory sentence of life imprisonment for murder should not be removed.

(QLRC Draft Bill cl 16, 21–30)

Introduction

8.1. This chapter discusses our recommendation about the mandatory penalty of life imprisonment for murder. Our recommendation recognises the sanctity of human life and the unique seriousness of the offence of murder. It also recognises the importance of just, evidence-based sentencing outcomes and a modern, clear and simple legal framework. We intend our reforms to achieve this by:

- retaining the mandatory penalty of life imprisonment
- replacing the current minimum non-parole periods with standard non-parole periods that give the court discretion to consider relevant contextual factors in sentencing.

8.2. Fair and modern sentencing laws must properly punish and denounce those who commit murder, enhance community safety and protection, deter the offender and others in the community from offending and rehabilitate offenders. They should also recognise individual culpability in a way that achieves consistency and equality in sentencing outcomes. This requires sentencing laws to respond to the most serious types of offending, including those perpetrated in the DFV context, as well as those where there are mitigating circumstances.

The offence of murder

Murder is considered the most serious criminal offence. The Criminal Code defines murder as unlawfully causing the death of another:

- with intent to kill or do grievous bodily harm
- with reckless indifference to human life
- by an act likely to endanger human life in the prosecution of an unlawful purpose
- with intent to do grievous bodily harm to facilitate the commission of certain crimes or to facilitate the flight of an offender after committing or attempting to commit certain crimes
- by administering a stupefying or overpowering thing to facilitate the commission of certain crimes or to facilitate the flight of an offender after committing or attempting to commit certain crimes, or
- by wilfully stopping breath.[1]

8.3. In Queensland, an offender who commits murder is subject to a sentencing framework with two mandatory components:

- life imprisonment or an indefinite sentence,[2] which cannot be mitigated or reduced[3]
- a minimum non-parole period that an offender must serve before being eligible to apply for parole. Currently, the minimum non-parole periods are:
  - 30 years for an offender who commits multiple murders or has a previous conviction for murder
  - 25 years for the murder of a police officer
  - 20 years for any other murder.[4]

Indefinite sentences

An indefinite sentence is one where the offender is unable to apply for parole and instead the court periodically reviews the sentence. They are extremely rare and do not form part of our terms of reference. For these reasons, we focus on the mandatory life imprisonment component.

8.4. These mandatory sentencing components mean that, when sentencing for murder, the court cannot order a sentence that is less than life imprisonment or a non-parole period below 20 years.

Key terms and concepts used in sentencing

- **Aggravating circumstances** are facts that increase the culpability of the offending, resulting in a harsher penalty.
- **Mitigating circumstances** are those that reduce the culpability of the offending, resulting in a lower penalty.
- **Life imprisonment and parole:** An offender sentenced to life imprisonment must remain in prison at least until they have served their non-parole period. After serving the non-parole period, the offender is eligible to apply for parole.[5] Parole Board Queensland determines applications for parole.[6] If an offender is granted parole, they serve the remainder of their sentence in the community, subject to conditions and supervision by Queensland Corrective Services. Violation of these conditions or supervision can result in the offender being returned to prison.[7] An offender serving life imprisonment who is granted parole remains subject to conditions and supervision for the remainder of their natural life (unless they are returned to prison).
- **Exceptional circumstances parole:** Prisoners in custody may, before their parole eligibility date, apply for exceptional circumstances parole.[8] Parole Board Queensland will assess the application and determine if the prisoner should be released on parole.[9] Exceptional circumstances parole is extremely rare. In 2023–24, only one offender received exceptional circumstances parole.[10] Depending on the circumstances, an offender suffering from a medical condition, such as a terminal illness, may be granted exceptional circumstances parole.[11]

8.5. Murder is the only offence in Queensland where legislation prescribes both the sentence and the time served in custody for first time offenders.[12] For all other criminal offences, including manslaughter, the court has discretion and considers many relevant factors to determine a just sentence.[13] Relevant factors include the circumstances of the offending and offender, legislated sentencing purposes (see **Figure 8.1**), sentencing principles, aggravating and mitigating features and other legislative guidance.

8.6. The legislated sentencing purposes are:

- just punishment
- rehabilitation of the offender
- deterrence (general and specific)
- recognition of the harm done to the victim
- denunciation
- community protection.[14]

Figure 8.1: Sentencing purposes

8.7. The legislated sentencing purposes incorporate common law sentencing principles, as follows:

- proportionality — the sentence must correspond to the circumstances and seriousness of the offending[15]
- parity — people who are involved in the same criminal conduct or activity should receive a similar sentence, unless there are factors that justify a different sentence[16]

- totality — where a person is sentenced for more than one offence, or is already subject to a sentence, the total sentence should reflect their overall criminality and not have a 'crushing' effect.[17]

8.8. Under the current law, the only way to apply those sentencing purposes and principles in sentencing an offender for murder is to extend the length of the non-parole period, if there are sufficient aggravating circumstances. Relevant factors in deciding whether an extension is warranted include:

- just and adequate punishment (especially when murder is accompanied by other serious offending)[18]
- protection of the community[19]
- denunciation on behalf of the community and vindication of the victim and their family[20]
- the offender's criminal history, lack of remorse and prospects of rehabilitation.[21]

8.9. Queensland's minimum non-parole periods for murder are lengthy. Sentencing judges rarely increase the minimum non-parole periods, even where there are significant aggravating circumstances.[22] This means that offenders can receive the same sentence despite having significantly different culpability. Consequently, current sentencing laws for murder may fail to achieve sentencing purposes and can result in substantially unjust outcomes.

8.10. The partial defences that reduce murder to manslaughter are an important safety net. When a partial defence is successfully raised or when an offender relies on a partial defence to negotiate a plea, the defendant is convicted of manslaughter, instead of murder. The court will then impose a just sentence that takes into account the circumstances of the offending and the offender and relevant sentencing purposes and principles. Stakeholders recognised the important role of partial defences in their submissions.[23] For example, Lelliott and Wallis commented:

> Partial defences ameliorate the harshness of the mandatory life sentence by allowing for a finding of manslaughter over murder, which then allows for discretion to be exercised at sentence.[24]

8.11. While partial defences can mitigate potential injustice in a mandatory sentencing regime, the interaction between sentencing and partial defences can be opaque and create unnecessary complexity in the legal framework. Partial defences can lead to unjust outcomes that do not appropriately reflect the offending, either in the nature of the offence or in the sentence. There are also substantial problems with the rationale and operation of the current partial defences in Queensland, which justifies their repeal or reform (**Recommendations 6, 12**).

8.12. Further, the partial defences apply in limited circumstances. They do not capture all of the factors that affect an offender's culpability. The expansion of murder to include reckless indifference in 2019 widened the degree of culpability caught by the offence. An offender who commits murder with reckless indifference to human life may be less culpable than another who does so intending to cause death. This difference in mental intent cannot be reflected in the sentence imposed, other than by extending the non-parole period for cases involving an intention to cause death.

8.13. This chapter is in three sections. We begin by explaining our recommended legislative reforms to replace the minimum non-parole periods for murder with standard non-parole periods to allow the court limited discretion to set the period an offender must remain in custody before being eligible to apply for parole. We explain how our reforms otherwise preserve the current sentencing framework, including the mandatory sentence of life imprisonment, the parole process once an offender becomes eligible to apply for parole, the serious violent offences

scheme, parole eligibility for sentences of life imprisonment other than murder and the serious organised crime circumstance of aggravation.

8.14. In the second section, we discuss the rationale for our reforms, which is to ensure sentencing appropriately reflects the context, supports community protection, supports an efficient and effective criminal justice system and balances consistency and individual justice.

8.15. We conclude by considering the human rights implications of our recommended reforms.

Our reforms explained

8.16. The Criminal Code, the Penalties and Sentences Act and the Corrective Services Act prescribe the current sentencing framework for murder. We recommend the following reforms:

- replacing the current minimum non-parole periods for murder with standard non-parole periods of equivalent length:
  - 30 years for an offender who commits multiple murders or has a previous conviction for murder
  - 25 years for the murder of a police officer or
  - 20 years for any other murder.[25]
- introducing a provision that the non-parole periods represent the 'objective seriousness of the offence in the middle range'.[26]

The sentencing framework

Different Acts and rules govern sentencing in Queensland. They include:

- the Criminal Code, Penalties and Sentences Act, Corrective Services Act
- maximum penalties and targeted sentencing rules.

The Queensland Sentencing Advisory Council's Queensland Sentencing Guide explains this framework.

8.17. **Recommendation 15** is that the sentencing judge must consider the standard non-parole period as a relevant factor in determining how long an offender should remain in custody before being eligible to apply for parole. Eligibility to apply for parole does not entitle the offender to parole. This would enable the court to consider factors relevant to the offence and the offender in sentencing, using the relevant standard non-parole period as the median, or objective middle ground. Our recommended approach is based on the NSW model.[27]

8.18. Other Australian jurisdictions with standard non-parole periods require the court to apply the standard period unless a statutory test is met. This may be where there are 'exceptional circumstances'.[28] Where this threshold is met, the court considers relevant factors in deciding the appropriate sentence. This is not our recommended approach.

8.19. Standard non-parole periods are not intended to be a starting point or create a two-stage sentencing process. They are a factor to be taken into account in sentencing, as emphasised by the High Court in respect of the NSW standard non-parole period scheme.[29]

8.20. Our reforms would give the sentencing court discretion to fix a non-parole period that it considers just in all the circumstances. In determining the appropriate period in each case, the court would be guided by all of the usual factors relevant to sentencing.

8.21. We recommend maintaining the current non-parole periods of 20, 25 and 30 years respectively. These periods would reflect the seriousness of the offence in the specified circumstances. Unlike the current framework, they would not mandate the non-parole period,

giving a sentencing judge the discretion to fix a non-parole period above or below the applicable standard.

8.22. Our recommended legislative reforms do not affect the mandatory penalty of life imprisonment for murder. All persons convicted of murder in Queensland would continue to be sentenced to life imprisonment, that could not be mitigated in any circumstances. Consistent with the current framework, once released from custody an offender would be subject to parole and at risk of returning to custody if they breach the conditions of parole for the remainder of their life.

Targeted sentencing regimes

8.23. Two targeted sentencing regimes in Queensland may potentially interact with our recommended sentencing framework and have implications for our reforms. These are the serious violent offences scheme and serious organised crime aggravating circumstances. Our reforms do not address these potential implications as they are beyond the scope of our review.

Serious violent offences scheme

8.24. Our reforms do not amend or impact the serious violent offences scheme. Our terms of reference exclude it from our review.

Serious violent offences scheme

The serious violence offence scheme was introduced in 1997 following a Government election commitment.[30]

Key reasons for establishing the scheme were:

- appropriate punishment
- deterrence
- community protection.[31]

If an offender commits an offence listed under the scheme,[32] the sentencing court may make a serious violence offence declaration. A declaration requires that the offender serve 80% of the head sentence or 15 years in custody, whichever is lower.[33]

Declarations are mandatory if a custodial term over 10 years is imposed,[34] otherwise they are discretionary.[35]

8.25. Many offences related to unlawful killing are subject to this scheme, including manslaughter, attempted murder and conspiring to murder.[36] Due to its unique sentencing regime, murder is not listed as a serious violent offence and is therefore not covered.[37]

8.26. We recognise that it may be anomalous to have a standard non-parole period scheme for murder and the serious violent offences scheme for other similar offences.

Serious organised crime

8.27. In response to a taskforce review of serious organised crime legislation, the Government introduced a 'serious organised crime' circumstance of aggravation in 2016.[38]

8.28. A circumstance of aggravation is a fact that, along with the elements of the offence, must be proved by the prosecution.[39] If established, the offender is liable to a greater punishment.[40]

8.29. An offender will be guilty of murder with the serious organised crime circumstance of aggravation if they participate in a criminal organisation and commit murder in circumstances where they know, or ought reasonably have known, that:

- the offence was at the direction of the criminal organisation
- the offence was committed in association with a criminal organisation or
- the offence was committed for the benefit of a criminal organisation.[41]

8.30. Due to the fixed penalty of life imprisonment for murder, an offender who commits murder with the serious organised crime circumstance of aggravation receives a seven year extension of their non-parole period.[42] This extension cannot be mitigated or reduced.[43] It is only excluded if the offender cooperates with law enforcement agencies about a major criminal offence.[44] We are unaware of any convictions for murder with the serious organised crime circumstance of aggravation.

8.31. Our sentencing reforms would allow for judicial discretion in setting the appropriate non-parole period to reflect the circumstances of the offending and the offender. We do not intend to alter the position for offenders convicted of murder with the serious organised crime circumstance of aggravation.

8.32. Our recommended reforms would apply so that, if an offender is convicted of murder with the serious organised crime circumstance of aggravation, the offender would serve the combined total of:

- the non-parole period set by the court
- the seven year extension.

Case for reform

8.33. This part considers the four key arguments justifying our recommended reforms. **Recommendation 15**:

- supports just outcomes
- promotes equal justice in sentencing
- protects the community
- improves the criminal justice system.

Supporting just outcomes

8.34. As noted above, a primary aim of sentencing law is to achieve just outcomes. Minimum non-parole periods can limit this.

8.35. Standard non-parole periods allow the court to take into account the circumstances of the offence and the offender when setting the non-parole period. Each set of circumstances is discussed below.

Reflecting the circumstances of the offending

8.36. Like other criminal offences, murder can occur in a variety of different circumstances. It has been described as:

> [A] conceptual and legal category of human behaviour embracing a wide range of different types of conduct with different levels of moral and social culpability.[45]

8.37. As a uniquely serious crime, murder should only cover unlawful killings with a high degree of culpability.[46] This is not achieved in practice. The definition of murder has been broadened and reflects a variety of circumstances. This results in varying degrees of culpability being captured by the offence of murder.

8.38. There are several types of conduct that may be categorised as murder but may occur in circumstances where the offender's blameworthiness is reduced. They are discussed below.

Domestic and family violence

8.39. DFV has a significant lethality indicator.[47] There is a broad range of circumstances in which murder occurs in the DFV context. A DFV abuser may kill their partner in the most heinous circumstances. A DFV victim-survivor may kill their long-term abusive partner. The mandatory sentencing regime fails to adequately reflect the significance of DFV in both circumstances.

8.40. Committing any offence in the context of DFV is usually regarded as an aggravating factor on sentence,[48] unless the offender was a victim of DFV and this contributed to their offending.[49] As we discuss in Research Report 2, DFV perpetrators who commit murder very rarely have their non-parole period extended beyond the minimum.[50] They do not receive a greater sentence than any other person convicted of murder. This is illustrated by the below examples, where none of the offenders received an extended non-parole period.

The offender brutally killed his partner and burnt her remains in a car. He thought she was having an affair and was going to leave him. There was a history of domestic violence.	The offender killed his ex-partner in a premeditated killing after their relationship broke down. He broke into her home at night and cut her throat. A domestic violence order had been taken out.	The offender murdered his ex-girlfriend after discovering she had started a new relationship. He stabbed her 21 times.

8.41. The mandatory sentencing regime generates the inverse problem when a DFV victim-survivor kills their abusive partner. While these circumstances are recognised as mitigating factors,[51] they cannot be reflected as such in sentencing because of the mandatory sentencing regime for murder.

8.42. The Victorian decision in Payne v The King, [52] below, demonstrates how a DFV victim-survivor who kills their abusive partner may nonetheless be found guilty of murder.

Killing by a victim of domestic violence: Payne v The King (Vic)

Payne was subjected to significant physical, sexual and emotional abuse by her husband. On two occasions, she fled the family home due to violence inflicted by him. During a period of separation, her husband began an intimate relationship with a woman 36 years his junior who had intellectual disability and acquired brain injury. When Payne returned to the family home, both she and the woman lived with her husband and were subjected to escalating violence. This continued for almost eight years.

One day, Payne added crushed temazepam tablets to biscuits that she gave to her husband. When he fell unconscious, Payne wrapped his body in a blanket and put him in an unused freezer on the back veranda. His body was discovered several days later and Payne was charged with and found guilty of murder.

In reducing her sentence on appeal, the court made the following observations about the case:

The applicant was 41 years old at the time of the offending. She had endured upwards of ten years of intolerable and seemingly escalating emotional and physical torment at the hands of the deceased. Her situation was, the judge found, inescapable. Having lost her thirties in this way, she now stands to lose her forties and more as a result of the offence she committed. That is no small thing, especially given that she will be separated from her children. These exceptional circumstances are a sure foundation for a proper exercise of mercy, and for an assessment of the applicant's reduced moral culpability for her offending.

Mercy

8.43. As a general principle, the prosecution does not need to establish an offender's motive for committing murder.[53] However, a motive may be an aggravating or mitigating factor at sentencing.[54]

8.44. Actions may meet the legal definition of murder even when the offender has a compassionate intention to relieve the suffering of the deceased. This type of murder is commonly described as a 'mercy killing'. An offender who acts out of compassion has different moral culpability to an offender who kills out of jealousy or revenge.[55] These different motivations cannot be reflected in Queensland's current sentencing framework.

8.45. Due to the mandatory sentencing regime for murder, there is limited scope to reflect an offender's motive in their sentence. An aggravating motive may be reflected by increasing the non-parole period. In contrast, a compassionate motive, while not justifying or excusing the unlawful homicide, cannot be reflected by reducing the non-parole period.

8.46. In cases of mercy killings, the prosecution may elect not to proceed on murder or may indict a different charge, such as aiding suicide[56] or manslaughter.[57] The ODPP considers the sufficiency of the evidence, including available defences, and the public interest in indicting the appropriate charge.[58] For matters indicted as murder, our recommendation would provide additional discretion about how long the offender should serve in custody before being eligible to apply for parole. That discretionary decision is transparent and subject to appellate court review.

8.47. In the New Zealand case of R v Salter,[59] the court was able to reflect the individual circumstances in fixing a just penalty. This could not be achieved under the current Queensland framework.

Mercy killing — R v Salter (New Zealand)

An 80-year-old man, Salter, pleaded guilty to murdering his wife of 60 years who had been suffering with Alzheimer's disease. Salter made a mutual agreement with his wife to end their lives on multiple occasions. His wife non-verbally responded in agreement and he strangled her with a necktie. After unsuccessfully trying to then take his own life, Salter called the police.

Salter expressed profound regret and remorse about the offending. He believed his wife did not deserve the outcome and demonstrated self-disgust. He pleaded guilty at the earliest opportunity.

While recognising Salter's premeditation and the vulnerability of the victim, the sentencing judge considered that this was not an appropriate case to impose the usual sentence for murder.

Salter was sentenced to four years' imprisonment and was eligible to apply for parole after serving one-third of that sentence.

In Queensland, Salter would be sentenced to mandatory life imprisonment, with a minimum non-parole period of 20 years.

Co-offenders

8.48. A person may be criminally liable for an offence without physically committing the crime. This occurs when a person:

- enables, aids, counsels or procures another person to commit murder,[60] or
- agrees to undertake an unlawful purpose, during which murder is committed and was a probable consequence.[61]

8.49. If two or more offenders are convicted of committing the same crime, the parity principle usually requires that they are treated alike, unless there are relevant differences.[62] This concept was recently explained by Justice Applegarth, in R v Smith,[63] as follows:

> If other things are equal, persons who have been parties to the same offence or have committed offences arising out of the same criminal enterprise should receive the same sentence. Other things, however, are rarely equal. Matters such as age, background, criminal history, general character and the part that each offender played in the relevant criminal conduct or enterprise have to be taken into account.
>
> In the case of co-offenders, different sentences may reflect their different circumstances or their different roles in the relevant criminal activity. An appeal court will not intervene when the disparity in sentence is justified by relevant differences.[64]

8.50. Under the current mandatory sentencing regime, these relevant differences cannot be taken into account and reflected by reducing an offender's non-parole period.

8.51. The Northern Territory case of Grieve illustrates this point.[65]

Co-offenders with differing roles: R v Malyschko & Grieve (NT)

Grieve was a 19-year-old man whose mother had been subjected to DFV by the deceased, Niceforo. Grieve's friend, Malyschko, asked Grieve to help him kill Niceforo. Grieve initially agreed and introduced Malyschko to Halfpenny to assist with the murder.

Grieve withdrew from the agreement at the last minute and Malyschko and Halfpenny carried out the murder without him. Grieve was not physically present at the time of the murder but was convicted of murder on the basis of party liability. He was sentenced to mandatory life imprisonment with a 20-year non-parole period.

In setting the mandatory sentence, Justice Mildren said:

> I take no pleasure in this outcome. It is the fault of mandatory minimum sentencing provisions which inevitably bring about injustice…Legislation of this kind is unprincipled and morally insensible; it cannot encompass the factual and moral distinctions between crimes essential to a just and rational sentencing policy.

Grieve was later released by the Administrator of the Northern Territory after spending 12 years in custody.

Other types of conduct categorised as murder

8.52. There are other types of conduct that may be categorised as murder which may occur in circumstances where the offender has reduced culpability.

8.53. A person who kills with reckless indifference or intent to cause GBH, rather than death, may have comparatively reduced culpability. Under the current law, this cannot be reflected in sentencing.

8.54. Where a person responds to provocation with lethal force, they may be able to rely on the partial defence of killing on provocation. In Chapter 7, we discuss our recommendation to repeal this partial defence (**Recommendation 12**). We recognise that being provoked may affect the offender's culpability and recommend making provocation of an offender by their victim a factor that must be considered by the court in sentencing (**Recommendation 13**).

Reflecting the circumstances of the offender

8.55. As well as reflecting the circumstances of the offending, standard sentencing processes consider the circumstances of the offender. These are characteristics of the offender that may aggravate or mitigate the criminal conduct. Common offender circumstances that are taken into account in sentencing include:

- criminal history[66]
- age[67]
- mental capacity[68]
- psychiatric or physical illness[69]
- social background and upbringing.[70]

8.56. The mandatory sentencing regime for murder limits the ability of a sentencing court to properly reflect mitigating circumstances unique to an offender. Because the non-parole period cannot be set below the applicable minimum, these factors are either not considered or only considered briefly. For other offences, these factors are routinely taken into account by a sentencing court in determining the appropriate sentence.

8.57. For offenders who have a relevant circumstance, this can result in a disproportionately heavy sentence. An offender with impaired mental capacity who cannot access diminished responsibility[71] cannot have that recognised in their sentence. The current mandatory sentencing regime for murder effectively treats them the same as a person without impaired capacity, contrary to how the law treats other offenders.

Promoting equal justice in sentencing

8.58. As well as achieving individual justice, it is important that sentencing promotes equal justice through consistency.

8.59. In sentencing, there are two different concepts of consistency:

- Consistent **application of legal principles**, that may not necessarily result in numerically equivalent outcomes.[72]
- Consistency of **outcomes** — that similar cases should receive similar punishments.[73]

8.60. Inconsistency in outcome is regarded as unfair and representing unequal treatment under the law, which may erode public confidence in sentencing.[74]

8.61. Under mandatory sentencing regimes, if a person commits murder, they are certain to receive life imprisonment and at least a 20-year non-parole period.[75] While this creates consistency in outcomes, it curtails the ability for a judge to impose a just sentence. Mandatory sentencing regimes effectively treat all cases as alike, even if there are material differences that justify differential treatment and outcome.

8.62. A standard non-parole period would promote consistency in sentencing outcomes while allowing for individualised outcomes. Our recommended legislative reforms would require a sentencing court to consider the relevant standard non-parole period when determining the appropriate sentence.[76]

8.63. Our proposed reform to the standard non-parole period is similar to the scheme in NSW,[77] which has a standard non-parole period of 20 years for murder.[78] Statistics demonstrate that, between 2015 and 2018, the mean non-parole period for murder was 18.9 years, close to the legislated standard.[79]

Protecting the community

8.64. Community protection is a factor relied on to support retaining a mandatory sentencing regime for murder. Our reforms protect the community and facilitate just outcomes. In this section we discuss community protection through three distinct but interrelated lenses:

- imprisonment
- deterrence
- rehabilitation.

8.65. Our reforms protect the community by retaining the mandatory sentence of life imprisonment and do not diminish deterrence or rehabilitation.

Imprisonment and parole

8.66. Imprisoning an offender is the primary way the criminal justice system protects the community.[80] Our murder sentencing reforms would not change the current legal position that an offender who commits murder always receives life imprisonment.[81] Retaining the mandatory sentence of life imprisonment reflects the unique and serious nature of murder.

8.67. An offender serving life imprisonment only becomes eligible to apply for parole after the expiration of their non-parole period.[82] They are not entitled to release on parole.[83] Some higher-risk offenders are subject to the 'no body, no parole' or restricted prisoner schemes, which restricts their ability to apply for parole.

The 'no body, no parole' scheme

The 'no body, no parole' scheme was introduced in 2017 and reformed in 2021.[84] The primary objective of the scheme is to incentivise homicide offenders to cooperate about the location of their victim's remains, thereby offering some comfort and certainty to the victim's family.[85] If the scheme applies[86] and an offender does not cooperate, a no cooperation declaration may be made by Parole Board Queensland,[87] precluding the offender from applying for and being granted parole.[88] Of the offenders subject to this scheme, around 47% have had a no cooperation declaration made, precluding them from obtaining parole.[89]

The restricted prisoners scheme

The restricted prisoners scheme was introduced in 2021.[90] It aims to limit the re-traumatisation of victims' families when homicide offenders are eligible to, or do, apply for parole.[91] An offender is a restricted prisoner if they murder a child or commit multiple murders.[92] The President of Parole Board Queensland may make a restricted prisoner declaration if satisfied it is in the public interest to do so.[93] A declaration prohibits the offender from applying for and being granted parole.[94] Each declaration may be made for a term up to 10 years.[95] Of the decided applications for restricted prisoners applications, around 75% are subject to successful declarations prohibiting those prisoners from applying for parole.[96]

8.68. The independent Parole Board Queensland determines applications for parole.[97] The Board considers an array of factors and assesses whether the offender should be released on parole.[98] The Board's paramount consideration is community safety.[99]

8.69. If the offender is granted parole by Parole Board Queensland, they must abide by conditions and supervision requirements.[100] Any violations may result in the offender returning to custody.[101] As murder carries life imprisonment, the offender is on parole for the remainder of their life.

8.70. Retaining a mandatory penalty of life imprisonment protects the community by ensuring that offenders are managed by Parole Board Queensland and Queensland Corrective Services for their life. Only offenders who are assessed as being suitable are released.

8.71. Introducing discretion in fixing the non-parole period does not detract from community safety. In appropriate cases, an offender may serve less time in custody before being eligible for parole. This does not mean the offender would be automatically released on parole. They would be subject to assessment by Parole Board Queensland and management by Queensland Corrective Services.

8.72. In jurisdictions that have greater flexibility in setting the non-parole period, most murder cases still attract lengthy non-parole periods. For example, in NSW, between 1 April 2015 and 31

March 2018, the range of non-parole periods for murder was 8.5 to 33.7 years, with a mean of 18.9 years.[102] Similarly, in Victoria, between 2017 and 2022, the range of non-parole periods for murder was 9 to 46 years, with a median of 18 years.[103]

Deterring future offending

8.73. Deterrence in the criminal law refers to discouraging both the specific offender and others from committing the particular offence.[104] As murder involves the taking of a human life, there is emphasis on general deterrence.

8.74. It is difficult to ascertain the effectiveness of deterrence as a sentencing purpose. Research suggests that the certainty of apprehension and criminal sanction are generally better deterrents than any increase in the penalties for crime.[105]

8.75. Other Australian jurisdictions with more flexible murder sentencing regimes provide insight into the relevance of mandatory sentencing in deterring offending. NSW[106] and Victoria[107] both permit the sentencing court to fix an appropriate sentence and non-parole period, with legislative guidance. Murder rates per 100,000 people in those jurisdictions are not higher than Queensland,[108] suggesting the different sentencing structure does not impact deterrence.

Rehabilitating offenders

8.76. A purpose of sentencing is to provide conditions that will assist the rehabilitation of the offender.[109] The current sentencing framework for murder does not provide judges with discretion to consider relevant contextual factors and set a sentence that will help achieve this.

8.77. Commenting on non-parole periods generally, the High Court has observed:

> The intention of the legislature in providing for the fixing of minimum terms is to provide for mitigation of the punishment of the prisoner in favour of his rehabilitation through conditional freedom, when appropriate, once the prisoner has served the minimum time that a judge determines justice requires that he must serve having regard to all the circumstances of his offence.[110]

8.78. In Chapter 3, we discuss the over-representation of diverse and disadvantaged communities within the criminal justice system.[111] We recognise that there are many factors relevant to an offender's rehabilitation.

Improving the criminal justice system

Encouraging appropriate guilty pleas and cooperation

8.79. The Queensland criminal justice system recognises offenders who plead guilty and those who cooperate with law enforcement agencies, often by a reduction in the offender's sentence. The current murder sentencing regime disincentivises offenders from pleading guilty or cooperating with law enforcement agencies.

8.80. A guilty plea is recognised as a factor that can mitigate an offender's sentence.[112] It may demonstrate remorse and a willingness to facilitate justice on behalf of the offender[113] and is recognised as providing utilitarian benefits.[114]

8.81. In Queensland, there is no mandated reduction and no fixed or mathematical method that must be followed to reflect a guilty plea in the sentence. However, a common approach to reflect the benefits of a guilty plea is to bring forward parole eligibility to one-third of the head sentence,[115] rather than the usual one-half.[116]

8.82. Given the mandatory sentencing regime does not allow a reflection of a guilty plea in the offender's sentence, it is unsurprising that the rate of guilty pleas to murder in Queensland is only 25%,[117] in comparison to approximately 82% for other indictable offences.[118] An offender is less likely to plead guilty to murder due to its mandatory sentence and non-parole period.[119] Although this is not the only factor that may explain the low rate of guilty pleas, jurisdictions with more flexibility in sentencing show a higher rate of guilty pleas.[120] **Figure 8.2**, below, shows the percentage of offenders who plead guilty to murder in Queensland and in Victoria.

8.83. Our sentencing for murder research (Research Report 2) found that in Queensland cases involving callous and deliberate conduct that may otherwise warrant an increase in the non-parole period, a plea of guilty may avoid that consequence. This may create a somewhat perverse situation where a guilty plea may be taken into account as a mitigating factor in more serious cases of murder but not in other cases.[121]

Figure 8.2: Guilty plea rate to murder

8.84. Introducing discretion to set a non-parole period would permit a guilty plea to be appropriately reflected in the non-parole period. It would have no impact on the head sentence.

8.85. Cooperation with authorities has similarly been recognised as a factor that can mitigate an offender's sentence.[122] It may be in the public interest to extend leniency to offenders to assist with obtaining evidence that can be used to prosecute other offenders and facilitate justice. An offender who cooperates with authorities is exposing themselves to potential danger.[123]

8.86. For all other criminal offences, there is a legislative mechanism that allows a sentencing court to recognise cooperation with a discount to the offender's sentence.[124] Due to the mandatory sentencing regime, cooperation cannot be reflected, generally, in either component of the sentence. Cooperation may only be reflected in particularly heinous murders that would have otherwise received an extension to the non-parole period.

8.87. Introducing discretion to set a non-parole period would likely incentivise some offenders to cooperate with authorities. It would not compel a sentencing court to automatically reduce an offender's sentence, nor would it alter the mandatory sentence of life imprisonment.

Impact on decision-making

8.88. Mandatory sentencing regimes can impact decision-making by participants in the criminal justice system.

8.89. As we recognise in Chapter 5, mandatory sentencing may encourage DFV victim-survivors to plead guilty to manslaughter, even if there are circumstances that may support self-defence.[125] The discretionary sentencing regime for manslaughter is a compromise to the risks of taking a murder charge to trial and failing to access self-defence.[126] Our recommendation would not address this issue entirely. Our reforms to introduce flexibility to the setting of a non-parole period, combined with our defensive conduct reforms, would, however, result in significant improvements.

Respecting the traditional function of sentencing courts

8.90. All branches of Government are involved in the sentencing framework that applies to an offender. The sentence parameters are prescribed by the legislature. Following a conviction, the judiciary imposes the sentence. The sentence is administered by the executive.

8.91. The mandatory sentencing framework constrains the traditional judicial role in sentencing. A former Chief Justice of the High Court commented:

> It is both unusual and in general, in my opinion, undesirable that the court should not have a discretion in the imposition of penalties and sentences, for circumstances alter cases and it is a traditional function of a court of justice to endeavour to make the punishment appropriate to the circumstances as well as to the nature of the crime.[127]

8.92. Parliament has prescribed six sentencing purposes including, recently, recognition of the harm to the victim.[128] However, when Parliament legislates a mandatory penalty for a criminal offence, it sets a penalty of general application. In doing so, Parliament, speaking for the community, fixes a sentence that addresses the sentencing purposes of denunciation and general deterrence. It may also be seen to promote community safety. However, it cannot assess what sentence would best promote community safety in an individual case. This limits realisation of the sentencing principles of proportionality and parity, which require an individualised approach that considers the unique circumstances of the individual offence, the victim and the offender. The court is appropriately placed to assess the circumstances that relate to these further sentencing principles and set a parole eligibility date that is just in all the circumstances.

8.93. The approach we recommend would respect Parliament's authority to set the standard non-parole period by reference to the objective seriousness of the offence. The experience of other jurisdictions, for example NSW, which we discuss above, demonstrates that non-parole periods set by the courts closely reflect the legislated periods. It would also reinforce the court's traditional role in exercising some discretion to consider what constitutes just punishment and most appropriately protects the community in all of the circumstances. It would allow for evidence-based sentencing outcomes in cases where there are different degrees of culpability and factors that justify a different sentence. This would include mercy killings, cases where murder is established through gross negligence or convictions based on being a party to another person's actions.

Sentences of life imprisonment excluding murder

8.94. The Corrective Services Act provides that, for sentences of life imprisonment for offences other than murder, a person must serve 15 years before being eligible for parole.[129]

8.95. As this provision does not apply to murder, our recommendation would not change this provision.

8.96. We recognise that there may be some inconsistency between our reforms and the provision, as offenders sentenced to life imprisonment for other offences would not be subject to a standard non-parole period scheme.

Human rights considerations

8.97. Our reforms prevent arbitrary sentencing outcomes and promote human rights. We consider our reforms appropriately balance the rights of offenders, victims' families, and the broader community.

8.98. Permitting sentencing discretion while retaining life imprisonment for murder promotes the right to life. The right to life is a fundamental human right and no one should be arbitrarily deprived of their life. Retaining the mandatory penalty for murder provides a protective legal framework that would continue to prohibit, punish, deter and incapacitate offenders whose actions result in the deprivation of life.[130] High-risk offenders would continue to have

restrictions on their parole eligibility, promoting the right to life and safety of victim's families and the community.

8.99. The right to liberty and security protects people from unlawful and arbitrary deprivation of their physical liberty. Mandatory sentencing regimes that fail to reflect culpability can be considered arbitrary when they result in outcomes that are unjust, unreasonable, and disproportionate.[131] Permitting sentencing discretion in determining non-parole periods would achieve just outcomes by enabling mitigating or aggravating circumstances to influence the period of detention rather than fixed sentencing rules.

8.100. Introducing judicial discretion in determining minimum sentences also promotes rights in criminal proceedings, including the right to have a conviction and sentence reviewed by a higher court. While the current sentencing framework currently permits this, some commentators have argued that the existence of a mandatory penalty precludes any substantive appeal of the sentence.[132] The former United Nations Special Rapporteur on the independence of judges and lawyers stated that:

> [The right of appeal] is negated when the trial judge imposes the prescribed minimum sentence, since there is nothing in the sentencing process for an appellate court to review. Hence, legislation prescribing mandatory minimum sentences may be perceived as restricting the requirements of the fair trial principle and may not be supported under international standards.[133]

8.101. In Queensland, the current minimum non-parole period cannot be reduced below 20 years and imposition of this minimum therefore cannot be appealed. Our sentencing reforms would promote rights in criminal proceedings by enabling the Court of Appeal to modify the non-parole period if the sentence is held to be manifestly inadequate or excessive.

References

1 Criminal Code (Qld) s 302.

2 Indefinite sentences are imposed under the Penalties and Sentences Act 1992 (Qld) pt 10. An offender cannot apply for parole: Corrective Services Act 2006 (Qld) s 179(2)(a)(iii). Indefinite sentences are exceedingly rare, we could only locate one example where an indefinite sentence was imposed on a count of murder and not later set aside: R v Fraser [2001] QCA 187.

3 Criminal Code (Qld) s 305(1).

4 Criminal Code (Qld) ss 305(2)–(4); Corrective Services Act 2006 (Qld) ss 181(1), (2)(a)–(c).

5 Corrective Services Act 2006 (Qld) ss 176, 180.

6 Corrective Services Act 2006 (Qld) ss 193–193B.

7 Corrective Services Act 2006 (Qld) ss 205(2)(a)–(b), 209.

8 Corrective Services Act 2006 (Qld) s 176. However, prisoners who are subject to a no body, no parole declaration or are on remand cannot apply for exceptional circumstances parole: ss 176B–176C.

9 Corrective Services Act 2006 (Qld) s 193.

10 Parole Board Queensland, Annual Report 2023–24 (Report, September 2024) 13 fn 9.

11 Explanatory Notes, Corrective Services Bill 2006 (Qld) 141.

12 Repeat serious child sex offences prescribe a mandatory sentence and non-parole period: Penalties and Sentences Act 1992 (Qld) pt 9B; Corrective Services Act 2006 (Qld) s 181A.

13 Elias v The Queen (2013) 248 CLR 483, 494–5 [27]; R v Smith (2022) 10 QR 725, 731 [8], 742 [81]–[83].

14 Penalties and Sentences Act 1992 (Qld) s 9(1).

15 Veen v The Queen (No 2) (1988) 164 CLR 465, 472–4.

16 Postiglione v The Queen (1997) 189 CLR 295, 301, 325–6; R v Smith (2022) 10 QR 725, 739–41 [66]–[75].

17 Mill v The Queen (1988) 166 CLR 59, 62–3; R v Symss (2020) 3 QR 336, 345–6 [30]–[34].

18 R v Maygar; Ex parte Attorney-General; R v WT; Ex parte Attorney-General [2007] QCA 310 [63]; R v Cowan; ex parte Attorney-General [2016] 1 Qd R 433, 492–3 [128]–[130].

19 R v Maygar; Ex parte Attorney-General; R v WT; Ex parte Attorney-General [2007] QCA 310 [63]–[64], [88]; R v Sica [2014] 2 Qd R 168, 201 [161]; R v Cowan; ex parte Attorney-General [2016] 1 Qd R 433, 492–3 [128]–[131].

20 R v Maygar; Ex parte Attorney-General; R v WT; Ex parte Attorney-General [2007] QCA 310 [64]–[68], [97]; R v Cowan; ex parte Attorney-General [2016] 1 Qd R 433, 492–3 [128]–[131]; R v Appleton [2017] QCA 290 [48].

21 R v Sica [2014] 2 Qd R 168, 201 [161]; R v Cowan; ex parte Attorney-General [2016] 1 Qd R 433, 492–3 [128]–[131]; R v Appleton [2017] QCA 290 [47]–[49].

22 QLRC, Review of Particular Criminal Defences: Mandatory Penalty for Murder — Key Research Insights (Research Report No 2, June 2025) 16–18 [70]–[83].

23 Australian National University Law Reform and Social Justice Research Hub, Submission 16; Queensland Sexual Assault Network, Submission 26; Zoe Rathus, Submission 29; Queensland Law Society, Submission 30; Legal Aid Queensland, Submission 31; Rachel Dioso-Villa and Caitlin Nash, Submission 38; Bar Association of Queensland, Submission 42; James Duffy, Submission 44; Sisters Inside, Submission 45.

24 Joseph Lelliott and Rebecca Wallis, Submission 22.

25 Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cl 29.

26 Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cl 29.

27 However, there are differences to the NSW model: Crimes (Sentencing Procedure) Act 1999 (NSW) pt 4 div 1A.

28 Sentencing Act 2017 (SA) ss 47(5)(b), 48(2)(b), (3)–(3a); Sentencing Act 1995 (NT) ss 53A(6)–(8). Note that the South Australian provision is inclusive, while the Northern Territory is exhaustive, as to what may be exceptional circumstances.

29 Muldrock v The Queen (2011) 244 CLR 120, 131–2 [26]–[28].

30 Penalties and Sentences (Serious Violent Offences) Amendment Act 1997 (Qld) s 10; Queensland, Parliamentary Debates, Legislative Assembly, 19 March 1997, 595.

[31] Queensland, Parliamentary Debates, Legislative Assembly, 19 March 1997, 595–7; R v Free; Ex parte Attorney-General (2020) 4 QR 80, 99 [52].

[32] Penalties and Sentences Act 1992 (Qld) sch 1.

[33] Corrective Services Act 2006 (Qld) ss 182(1)–(2).

[34] Penalties and Sentences Act 1992 (Qld) ss 161A(a), 161B(1).

[35] Penalties and Sentences Act 1992 (Qld) ss 161A(b), 161B(3)–(4).

[36] Penalties and Sentences Act 1992 (Qld) sch 1 items 15–16A.

[37] Queensland Sentencing Advisory Council, Minimum Standard Non-Parole Periods (Final Report, September 2011) 83.

[38] Serious and Organised Crime Legislation Amendment Act 2016 (Qld) s 279; Explanatory Notes, Serious and Organised Crime Legislation Amendment Bill 2016 (Qld) 19–20; Taskforce on Organised Crime Legislation, Report of the Taskforce on Organised Crime Legislation (Report, March 2016) 239–43.

[39] For example: R v Hill (No 2) (2020) 6 QR 1, 36 [150].

[40] Criminal Code (Qld) s 1 (definition of 'circumstance of aggravation').

[41] Criminal Code (Qld) s 305(5); Penalties and Sentences Act 1992 (Qld) s 161Q. Murder is a 'prescribed' offence: Penalties and Sentences Act 1992 (Qld) sch 1C.

[42] Corrective Services Act 2006 (Qld) s 181(2A); Penalties and Sentences Act 1992 (Qld) s 161R(2)(b)(i).

[43] Penalties and Sentences Act 1992 (Qld) s 161R(3)(c).

[44] Penalties and Sentences Act 1992 (Qld) s 161S.

[45] Peter Sallmann, 'Mandatory Sentencing: A Bird's-Eye View' (2005) 14(4) Journal of Judicial Administration 177, 178.

[46] Barry Mitchell and Julian Roberts, Exploring the Mandatory Life Sentence for Murder (Hart Publishing, 2012) 43–4.

[47] See Chapter 3, 'DFV has a significant lethality risk'.

[48] Penalties and Sentences Act 1992 (Qld) s 9(10A).

[49] Penalties and Sentences Act 1992 (Qld) s 9(10B).

[50] QLRC, Review of Particular Criminal Defences: Mandatory Penalty for Murder — Key Research Insights (Research Report No 2, June 2025) 13–14 [46]–[49].

[51] Penalties and Sentences Act 1992 (Qld) s 9(10B).

[52] Payne v The King [2024] VSCA 273.

[53] R v Heath [1991] 2 Qd R 182, 189.

[54] Mirko Bagaric, Theo Alexander and Richard Edney, Sentencing in Australia (Thomson Reuters, 11th ed, 2025) 330.

[55] QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 91–2, 117–19.

[56] Criminal Code (Qld) s 311.

[57] Criminal Code (Qld) ss 300, 303.

[58] Office of the Director of Public Prosecutions (Qld), Director's Guidelines (Guidelines, June 2024) 2–8, 23–6.

[59] R v Salter [2024] NZHC 381.

[60] Criminal Code (Qld) s 7(1).

[61] Criminal Code (Qld) s 8.

[62] Lowe v The Queen (1984) 154 CLR 606, 610–11.

[63] R v Smith (2022) 10 QR 725.

[64] R v Smith (2022) 10 QR 725, 740 [68]–[69].

[65] R v Malyschko & Grieve (Supreme Court of the Northern Territory, Mildren J, 9 January 2013). The Northern Territory has a similar scheme to Queensland, where murder carries mandatory life imprisonment with a 20-year non-parole period: Criminal Code (NT) ss 156–157; Sentencing Act 1995 (NT) s 53A(1). There are some limited exceptions to the minimum non-parole period in the Northern Territory: Sentencing Act 1995 (NT) ss 53A(6)–(7).

[66] Penalties and Sentences Act 1992 (Qld) ss 9(2), (3)(g).

[67] Penalties and Sentences Act 1992 (Qld) ss 9(2)(f)–(fa), (3)(h).

68 Penalties and Sentences Act 1992 (Qld) s 9(2)(f).

69 Penalties and Sentences Act 1992 (Qld) s 9(3)(j).

70 Penalties and Sentences Act 1992 (Qld) ss 9(2)(f), (3)(h); Bugmy v The Queen (2013) 249 CLR 571, 592–3 [37].

71 Diminished responsibility is a partial defence to murder, reducing it to manslaughter: Criminal Code (Qld) s 304A.

72 Hili v The Queen (2010) 242 CLR 520, 535 [48]–[49].

73 Sarah Krasnostein and Arie Freiberg, 'Pursuing Consistency in an Individualistic Sentencing Framework: If You Know Where You're Going, How Do You Know When You've Got There?' (2013) 76(1) Law and Contemporary Problems 265, 271; Mirko Bagaric, 'Sentencing: From Vagueness to Arbitrariness — The Need to Abolish the Stain That Is The Instinctive Synthesis' (2015) 38(1) University of New South Wales Law Journal 76, 83.

74 Lowe v The Queen (1984) 154 CLR 606, 610–11.

75 Criminal Code (Qld) s 305(1); Corrective Services Act 2006 (Qld) ss 181(2)(a)–(c).

76 Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cl 29.

77 There are some noticeable differences, for example, we do not have a discretionary head sentence for murder and there is not a statutory relationship between the head sentence and non-parole period, as there is in NSW: Crimes (Sentencing Procedure) Act 1999 (NSW) s 44(2).

78 Crimes (Sentencing Procedure) Act 1999 (NSW) pt 4 div 1A table item 1. Note the murder of children and police officers have a higher standard non-parole period of 25 years: items 1A–1B.

79 New South Wales Sentencing Council, Homicide (Report, May 2021) 7 [1.15], 51 [4.25].

80 Penalties and Sentences Act 1992 (Qld) s 9(1)(e).

81 Criminal Code (Qld) s 305(1).

82 Corrective Services Act 2006 (Qld) ss 180(1), (2)(e). Exceptional circumstances parole may be applied for at any time, while other parole orders must be made within 6 months of parole eligibility date (end of non-parole period): Corrective Services Act 2006 (Qld) ss 176.

83 R v Hatahet (2024) 418 ALR 520, 526 [20]; Crump v New South Wales (2012) 247 CLR 1, 26–7 [60].

84 Corrective Services (No Body, No Parole) Amendment Act 2017 (Qld) ss 3–4; Police Powers and Responsibilities and Other Legislation Amendment Act 2021 (Qld) ss 7–12.

85 Explanatory Note, Corrective Services (No Body, No Parole) Amendment Bill 2017 (Qld) 1, 4; Explanatory Note, Police Powers and Responsibilities and Other Legislation Amendment 2021 (Qld) 7.

86 Corrective Services Act 2006 (Qld) s 175C.

87 Corrective Services Act 2006 (Qld) ch 5 pt 1AB div 2.

88 Corrective Services Act 2006 (Qld) ss 176B, 180(2)(d), 193A(2).

89 This statistic is calculated by tallying the numbers of declarations made from decisions following applications from 2017–2024: Parole Board Queensland, Annual Report 2017–18 (Report, September 2018) 19; Parole Board Queensland, Annual Report 2018–19 (Report, September 2019) 27; Parole Board Queensland, Annual Report 2019–20 (Report, July 2020) 30; Parole Board Queensland, Annual Report 2020–21 (Report, September 2021) 30; Parole Board Queensland, Annual Report 2021–22 (Report, September 2022) 18; Parole Board Queensland, Annual Report 2022–23 (Report, September 2023) 14; Parole Board Queensland, Annual Report 2023–24 (Report, September 2024) 13.

90 Police Powers and Responsibilities and Other Legislation Amendment Act 2021 (Qld) ss 7–12.

91 Explanatory Note, Police Powers and Responsibilities and Other Legislation Amendment 2021 (Qld) 7, 11.

92 Corrective Services Act 2006 (Qld) s 175D.

93 Corrective Services Act 2006 (Qld) s 175H. For the whole declaration process: ch 5 pt 1AB div 1.

94 Corrective Services Act 2006 (Qld) ss 180(2)(c), 193AA(4). It does not preclude an application for exceptional circumstances parole, but does make obtaining it more difficult: s 176A.

95 Corrective Services Act 2006 (Qld) s 175I(3).

96 This statistic is calculated by tallying the numbers from 2021–2024 Parole Board Queensland, Annual Report 2021–22 (Report, September 2022) 18; Parole Board Queensland, Annual Report 2022–23 (Report, September 2023) 14; Parole Board Queensland, Annual Report 2023–24 (Report, September 2024) 10, 13.

97 Corrective Services Act 2006 (Qld) ss 176, 180. Parole Board Queensland was established as an independent authority under Corrective Services Act 2006 (Qld) ch 5 pt 2.

98 Corrective Services Act 2006 (Qld) ss 188–189, 192–193; Laura Gerber, Ministerial Guidelines to the Parole Board Queensland (Guidelines, 21 December 2024) 1–2 [2.1], 5 [5.1].

99 Laura Gerber, Ministerial Guidelines to the Parole Board Queensland (Guidelines, 21 December 2024) 1–2 [1.2], [2.1].

100 Corrective Services Act 2006 (Qld) ss 200–200A.

101 Corrective Services Act 2006 (Qld) ss 205(2)(a), (b), 209.

102 NSW Sentencing Council, Homicide (Report, May 2021) 7 [1.15].

103 Victorian Sentencing Advisory Council, Sentencing Snapshot: Murder (Report No 273, June 2023) 4–5.

104 Mirko Bagaric, Theo Alexander and Richard Edney, Sentencing in Australia (Thomson Reuters, 11th ed, 2025) 225.

105 See the research discussed in: Mirko Bagaric, Theo Alexander and Richard Edney, Sentencing in Australia (Thomson Reuters, 11th ed, 2025) 225, 235–247.

106 Crimes Act 1900 (NSW) s 19A; Crimes (Sentencing Procedure) Act 1999 (NSW) ss 21, 44, 54B, pt 4 div 1A table item 1. Unless a judge sentences a person to life imprisonment for murder, then they must remain in custody for their natural life: Crimes Act 1900 (NSW) s 19A(2).

107 Crimes Act 1958 (Vic) s 3; Sentencing Act 1991 (Vic) ss 5A–5B, 11A.

108 'Recorded Crime - Victims', Australian Bureau of Statistics (Web Page, 30 September 2025) <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/latest-release#data-downloads>. See Victims of Crime, States and Territories (Table 10).

109 Penalties and Sentences Act 1992 (Qld) s 9(1)(b).

110 Bugmy v The Queen (1990) 169 CLR 525, 536, citing: Deakin v The Queen (1984) 54 ALR 765, 766.

111 Chapter 3, 'Over-representation in the criminal justice system'.

112 Cameron v The Queen (2002) 209 CLR 339, 343 [11]. The statutory procedure for taking a plea of guilty into account (not necessarily lowering the punishment) is provided for: Penalties and Sentences Act 1992 (Qld) s 13.

113 Cameron v The Queen (2002) 209 CLR 339, 343 [11].

114 R v Pike [2021] QCA 285, [26]–[27]; R v O'Sullivan and Lee; Ex parte Attorney-General (2019) 3 QR 196, 222–3 [69]. The utilitarian benefit includes limiting re-traumatisation of the victims' family, avoiding jurors and witnesses attending, and saving expenses, see: Cameron v The Queen (2002) 209 CLR 339, 360.

115 This is only for offences without serious violent offence declarations: R v Smith (2022) 10 QR 725, 741–2 [80].

116 Corrective Services Act 2006 (Qld) ss 184(1)–(3).

117 QLRC, Review of Particular Criminal Defences: Mandatory Penalty for Murder — Key Research Insights (Research Report No 2, June 2025) 14 [53].

118 From 2019–2024, the percentage of guilty pleas to indictable offences varied between 82% and 86%: Office of the Director of Public Prosecutions (Qld), Annual Report 2023–2024 (Report, 2025) 30.

119 See for example: NSW Law Reform Commission, Sentencing (Final Report No 79, 1996) 208 [9.11].

120 It is approximately 48% in Victoria: Victorian Sentencing Advisory Council, Guilty Pleas in the Higher Courts: Rates, Timing, and Discounts (Report, August 2015) 19 [2.36].

121 QLRC, Review of Particular Criminal Defences: Mandatory Penalty for Murder — Key Research Insights (Research Report No 2, June 2025) 14.

122 Penalties and Sentences Act 1992 (Qld) ss 13A–13B.

123 Williams v Queensland Community Corrections Board [2001] 1 Qd R 557, 566 [20].

124 Penalties and Sentences Act 1992 (Qld) ss 13A–13B, 161S.

125 Chapter 5, 'Ensuring genuine self-defence is recognised'.

126 Chapter 5, 'Ensuring genuine self-defence is recognised'.

127 Palling v Corfield (1970) 123 CLR 52, 58.

128 Penalties and Sentences Act 1992 (Qld) s 9(1).

129 Corrective Services Act 2006 (Qld) s 181(2)(d).

130 Human Rights Committee, General Comment No. 36: Article 6: Right to Life, UN Doc CCPR/C/GC/36 (3 September 2019) 4–5 [20]–[21].

131 Human Rights Committee, General Comment No. 35: Article 9 (Liberty and Security of Person), UN Doc CCPR/C/GC/35 (16 December 2014) 3 [12].

132 Sarah Pritchard, 'International Perspectives on Mandatory Sentencing' (2001) 7(2) Australian Journal of Human Rights 51, 54.

133 Dato' Param Cumaraswamy, 'Mandatory Sentencing: The Individual and Social Costs' (2001) 7(2) Australian Journal of Human Rights 7, 14.

PART 6

Protection and management of children

CHAPTER 9

The protection and management of children

Contents

Recommendations

R16 The defence of domestic discipline (section 280) should be renamed 'protection and management of a child' and reformed in two steps:

(a) Reform the defence to limit the lawful degree of force to common assault and to limit the persons who may rely on the defence to a parent or person exercising parental responsibilities.

(b) Three years later, further reform the defence to limit the lawful purpose to using force that is reasonable in the circumstances for the protection or management of a child.

R17 In consultation with stakeholders, the Government should design and legislate a court-based diversion scheme.

R18 The following measures should be implemented to support compliance with legislative reforms:

(a) The Government should provide State-wide evidence-based parenting and family support programs that are culturally responsive and trauma-informed and which are preventative, interventionist and treatment-based.

(b) The Queensland Human Rights Commission should promote community awareness and understanding of the reformed defence.

(c) Legal Aid Queensland should develop and publish guidelines and fact sheets about the reformed defence and court-based diversion scheme.

(d) The Queensland Police Commissioner should amend the Child Harm chapter of the Operational Procedures Manual to provide guidance to police on the operation of the reformed defence. This guidance should include factors that may be relevant to assessing whether a person's application of force, or attempt or threat to apply force, to a child was reasonable in the circumstances.

(e) Queensland Police Service should revise practices, procedures and training related to child harm and alternatives to prosecution.

(f) The judiciary should develop guidelines to support effective consideration and application of the reformed defence and court-based diversion scheme.

(g) The Government should, in collaboration with the relevant professional bodies, develop guidance and training for legal practitioners, education professionals, care workers, child safety officers, health professionals and social service workers in relation to the reformed defence.

R19 The Government should require the Queensland Police Service and Office of the Director of Public Prosecutions to collect and report data in relation to the reformed defence.

R20 The Attorney-General should review the operation of the reformed defence.

(QLRC Draft Bill cl 12, 18–20)

Introduction

9.1. This chapter discusses our recommendations to reform the defence of domestic discipline (section 280) so that children are afforded equal protection to adults from assault.

9.2. The defence justifies a parent, person acting in the place of a parent, schoolteacher or master, who has care of a child, using force towards the child if it is for the purpose of discipline, correction, management or control and the force used is reasonable in the circumstances. The effect of this defence is that children receive differential treatment based on age and, when compared to adults, have limited legal protection from assault-related offences.

9.3. If a defendant raises evidence of the defence, the prosecution has the onus of proving beyond reasonable doubt that the defence does not apply. This means that the prosecution must disprove at least one element of the defence:

- the defendant is a parent, person in the place of a parent, schoolteacher or master
- the child or pupil was in the defendant's care
- the defendant used force towards the child or pupil for the purpose of correction, discipline, management or control
- the use of force was reasonable in the circumstances.

9.4. Physical punishment of children is a subject that creates heated debate.[1] Our reforms seek to address seven key issues with the operation of the defence of domestic discipline which lawfully justifies physical punishment:

- the defence does not distinguish between use of force towards a child that is necessary to manage and protect people and the use of force to cause pain, discomfort and humiliation
- the scope and availability of the defence are unclear
- the defence is applied inconsistently by police as a bar to prosecution and in ways that do not align with community standards
- physical punishment of children is ineffective and can be harmful
- the availability of the defence to schoolteachers is inconsistent with education policy and with laws that seek to protect children in non-school settings
- physical punishment limits the rights of children
- community attitudes towards physical punishment are changing, with fewer people supporting its use.

9.5. Our reforms would limit section 280, so it is only a defence to common assault (section 335) and is no longer available to schoolteachers and masters. The defence would also be narrowed to confine the purposes for which force can be used, allowing reasonable use of force for management and protection and removing protection for physical punishment. Clarifying the scope of the defence would support access to, and consistent application of, the defence.

9.6. This chapter has four sections. The first section explains our recommended solutions and briefly summaries the problems with the defence. The second section draws on evidence from a range of sources to justify our reforms. The third section considers the human rights implications of our reforms. The final section discusses the implications of the reforms for children, schoolteachers and police. We discuss implementation considerations, including

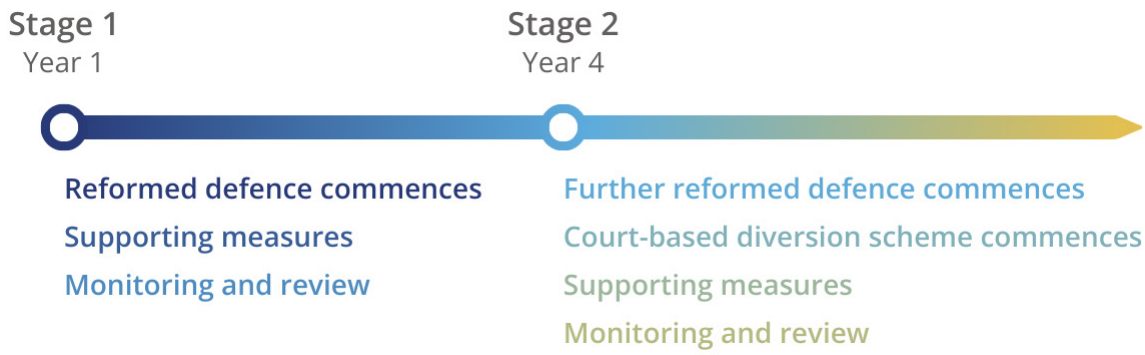
staging, resourcing and community leadership in and co-design of supportive measures throughout the chapter.

Our reforms explained

9.7. **Recommendations 16–20** aim to progressively abolish the lawful physical punishment of children and are intended to mitigate any unintended consequences of reform. Possible unintended consequences include increased criminalisation of parents and carers and potential disproportionate impacts for diverse and disadvantaged communities.

9.8. If **Recommendations 16–20** are adopted, reforms would be implemented over a seven-year period in two stages (see **Figure 9.1**).

Figure 9.1: Timing of reforms



9.9. Our reforms are comprised of legislative amendments to the defence, initiatives to protect children and support families and the monitoring and review of reforms. Components of reform are depicted in **Figure 9.2** and explained in the sections below. All components would require appropriate resourcing to achieve the intended policy outcomes.

Figure 9.2: Components of reforms

Stage 1 (Years 1–3)

9.10. Stage 1 reforms would commence when the reformed defence of domestic discipline comes into force. Implemented over a three-year period, these reforms would limit and clarify the scope of the defence, introduce measures to support families and protect children and ensure the reforms are monitored and reviewed.

Legislative reform of section 280

9.11. **Recommendation 16** provides for the legislative reform required to increase protection for children by progressively abolishing physical punishment. The first step towards the protection of children is limitation of the defence (**Recommendation 16(a)**). Our Draft Bill implements this recommendation into a proposed provision.[2] This would be achieved by confining the defence as follows:

- to the offence of common assault
- so that it is only available to a 'parent', defined to include persons exercising parental responsibility for the child
- to when the child is in that person's care
- for the purpose of protecting, managing, disciplining or correcting the child
- where the force applied is reasonable in the circumstances.

9.12. The defence would exclude types of force that are not reasonable in any circumstance.

9.13. The first stage of reforms to the defence would operate for three years. We have recommended three years to provide time to implement supportive measures to mitigate potential unintended consequences of the stage 2 reforms, which would remove the justification of using force for the purpose of discipline or correction.

9.14. We recommend the legislative amendments for both stages to be made at the same time with a legislated commencement date for the stage 2 reform three years after the commencement date for stage 1 reforms. We recommend this approach because:

- it would ensure certainty about the sequence and timing of the staged reforms and ensure they are fully implemented
- the reforms reflect a normative shift
- it would create impetus to implement supportive measures before stage 2 commences to remove protection for physical punishment.

A defence to common assault

9.15. The defence of domestic discipline is currently available for various offences in the Criminal Code. Defendants have raised the defence in relation to charges of common assault, assault occasioning bodily harm, breach of a domestic violence order, cruelty to children and threatening violence whilst armed.[3] Our domestic discipline research (Research Report 3) found that police have also relied on the defence when deciding not to charge a parent or carer for the use of force towards a child.[4] This includes in response to alleged conduct that might constitute common assault and more serious offences such as assault occasioning bodily harm which cause injury.[5]

9.16. The reformed defence would be limited to the offence of common assault (section 335).

9.17. 'Assault' is defined in section 245(1) and includes when a person:

- strikes, touches, moves or applies force of any kind to another person
- either directly or indirectly, and
- without the other person's consent, or if the other person's consent is obtained by fraud.

9.18. An act can also be an assault if a person:

- attempts or threatens to apply force of any kind to another person
- using any bodily act or gesture
- without the other person's consent, and
- has the actual or apparent ability to carry out the attempt or threat.

9.19. Limiting the operation of the defence to common assault means the defence would not justify any application of force that causes bodily harm. 'Bodily harm' means any bodily injury which interferes with health or comfort.[6]

9.20. Further, the defence would exclude certain types of force even if they do not cause bodily harm. This includes the application of heat, light, electrical force, gas, odour, or any other substance or thing. This clarifies that it is not reasonable, in any circumstance, to apply such types of force to a child as it is cruel and degrading.[7]

Available to a parent or person exercising parental responsibility for the child

9.21. The reformed defence would continue to be available to a parent or person exercising parental responsibility for the child, reflecting relevant case law.[8]

9.22. The Criminal Code does not currently define the terms 'parent' or 'person in the place of a parent'. Consequently, when applying the defence as a bar to prosecution, police have taken an ad hoc approach in deciding who is a 'person in the place of a parent'. This includes in relation to an Aboriginal person or Torres Strait Islander person with caring responsibilities towards a child.[9] Our reforms respond to this issue by specifying the persons to whom the defence applies.

9.23. The term 'parent' would be defined to include several types of persons who may be a parent or acting in the place of a parent, including:

- a relation of the child having or exercising parental responsibility for the child. A 'relation' of a child is defined to include:
  - a person who is related by blood, spousal relationship, adoption, a parentage order or a cultural recognition order. The term 'parentage order' is defined in relation to surrogacy laws in Queensland and other Australian jurisdictions. 'Cultural recognition order' refers to an order made under the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act
  - a person who is regarded as a relative of the child under Aboriginal tradition or Ailan Kastom where the child is an Aboriginal person or Torres Strait Islander person
- a person who is granted guardianship of the child under the Child Protection Act, other than the chief executive of the department which administers that Act, or under a law of another State
- an approved kinship carer or foster carer for the child under the Child Protection Act

- for an Aboriginal child, a person who is regarded under Aboriginal tradition as a parent of the child or an appropriate person to exercise parental responsibilities in relation to the child. For a child who is a Torres Strait Islander child, a person who is regarded under Ailan Kastom as a parent of the child or an appropriate person to exercise parental responsibilities in relation to the child.

9.24. The reformed defence would not be available to a 'schoolteacher or master'. This aligns the Criminal Code with current education policy and is consistent with other laws that prohibit persons who act in place of a parent from applying force to a child. This does not leave schoolteachers unprotected. There may be other defences available to justify or excuse their use of force towards a student. Depending on the facts and circumstances, implied consent to physical interactions, self-defence and extraordinary emergencies may apply.

9.25. Schoolteachers have a common law duty to take reasonable care to prevent the risk of foreseeable harm to students, themselves and other persons.[10] This duty would continue to apply. At least in relation to State schools:

- schoolteachers would still be allowed to make physical contact with a student in circumstances where a reasonable person would consider that the emotional needs of the student are met[11]
- physical restraint of a student would still be authorised under an Individual Student Safety Plan and Individual Behaviour Support Plan and the restrictive practices procedure.[12]

The child is in the person's care

9.26. We recommend no change to the current requirement that the defence applies only when a child is in the care of a person to whom the defence applies. This ensures the reformed defence is only available when the person is authorised to exercise parental responsibilities. The reformed defence is not intended to apply to a person, including a parent, who has the child without authority.

For protection, management, discipline or correction of the child

9.27. The stage 1 reformed defence would continue to apply to force used for the purpose of management, discipline or correction of a child. It would not apply to force used for the purpose of control, because this is an aspect of management, which includes performing normal tasks that are incidental to good care and parenting of a child.

9.28. It would also apply to force used for the purpose of protection which includes preventing or minimising harm to the child. We recommend specifying protection as a lawful purpose because this reflects the duty of a person who has care of a child.[13]

9.29. Additional guidance on the nature and scope of each purpose would be provided through the OPM, police practice and procedure and training and judicial guidelines.

9.30. After three years, the stage 2 amendments would commence and the reformed defence would no longer apply for the purpose of discipline or correction and the physical punishment of children would not be justified under the Criminal Code.

Force applied is reasonable in the circumstances

9.31. The reformed defence would exclude certain kinds of force applied to a child which are not reasonable in any circumstance. These are:

- striking the head, face or neck of the child

- applying pressure to the child's neck that completely or partially restricts respiration or blood circulation, or both
- shaking the child
- kicking the child or otherwise applying force to any part of the child with an implement or closed fist
- applying heat, light, electrical force, gas, odour, or any other substance or thing to the person of the child.

Legislating a court-based diversion scheme

9.32. **Recommendation 17** provides for the Government to design and legislate a court-based diversion scheme in consultation with stakeholders. This reform is intended to provide targeted support to parents and carers and mitigate criminalisation. Educative, intervention and treatment-focused parenting programs and counselling support would be offered through the scheme.

9.33. The scheme should:

- have clear and appropriate eligibility criteria and clearly state circumstances that may exclude diversion, for example, a history of DFV perpetration
- be available throughout Queensland, including in regional, rural and remote areas
- be culturally responsive and trauma-informed
- be accessible and tailored to the needs of Aboriginal peoples, Torres Strait Islander peoples and people from culturally and linguistically diverse communities.

9.34. The consequences of not completing a diversionary program need to be carefully considered. Otherwise, people may be disadvantaged because they cannot access a program or because programs are not culturally appropriate.

9.35. Consultation with stakeholders would help ensure the scheme achieves its objectives. It should include engagement with experts who understand when the application of force to a child may indicate a serious risk calling for a criminal justice response.[14]

9.36. Part 4A of the Domestic and Family Violence Protection Act is a relevant example of how a court-based diversion scheme might be legislated.

9.37. Queensland Court Services would require adequate funding to implement the scheme across Queensland.

Initiatives to protect children and support families

9.38. **Recommendation 18** provides for a suite of initiatives to protect children and support families. These initiatives are critical to the success of legislative reforms and would promote a system-wide response to changes in the law through professional guidance and training and community education and awareness-raising about the reforms and evidence-based parenting.

9.39. Implementing these initiatives alongside legislative reforms is critical to mitigating any consequential criminalisation and disproportionate impacts on Aboriginal peoples, Torres Strait Islander peoples, people from culturally and linguistically diverse communities and other marginalised persons, particularly when physical punishment is abolished in stage 2 of the reforms.

9.40. Some initiatives would require development and/or implementation prior to the commencement of the reformed defence. Others would follow the commencement of the reformed defence. The timing and work required for each initiative are considered below.

Community awareness, education and parenting support

9.41. **Recommendation 18(a)** is that the Government provide or fund State-wide evidence-based parenting and family support programs that are:

- culturally responsive and trauma-informed
- preventative and proactive, as well as responsive
- accessible.

9.42. Programs should support parents and carers to use effective, non-violent parenting strategies and be inclusive of and accessible to diverse family types. Programs should support families to heal from chronic and complex intergenerational trauma and should be fit-for-purpose, culturally responsive and trauma-informed, inclusive and accessible.[15] They should be available when the reformed defence commences.

9.43. **Recommendation 18(b)** is that the Queensland Human Rights Commission have responsibility for promoting community awareness and understanding of the reformed defence. This function is consistent with the objectives of the Human Rights Act and within the scope of the Commission's existing statutory functions.[16] Our consultations with the Commission have confirmed that their community engagement division has the experience and connections to effectively perform this collaborative function in partnership with marginalised communities.

9.44. The experience in several other countries shows the vital role of awareness-raising initiatives in the overall success of reforms that abolish the physical punishment of children.

9.45. Initiatives that build community awareness and understanding should be led by and co-designed with marginalised communities and coordinated by the Queensland Human Rights Commission. They should be implemented progressively, beginning with the commencement of the reformed defence. Community leadership and co-design of awareness-raising initiatives with Aboriginal communities, Torres Strait Islander communities and culturally and linguistically diverse communities would be paramount to the success of these initiatives and the policy aims of legislative reforms.[17] The Family Peace Building initiative coordinated by the Refugee and Immigration Legal Service is an example of a successful community-led and co-designed initiative in Queensland.[18]

Professional guidance and training

9.46. **Recommendation 18(c)** is that Legal Aid Queensland develop and publish guidelines and fact sheets about the reformed defence and court-based diversion scheme.

9.47. Guidance and information are necessary before commencing the reformed defence. Revision of these resources would be necessary before the stage 2 amendments commence.

9.48. These resources would support legal practitioners and their clients to understand the implications of the reformed defence, including the sequence and timing of the staged commencement. Resources would also clarify the eligibility requirements for, and obligations tied to, the court-based diversion scheme and the types of services available to support parents and families.

9.49. We intend these resources to complement those developed by the Queensland Human Rights Commission for raising community awareness (**Recommendation 18(b)**). Developed in collaboration with stakeholders, this guidance and information should be user-centred,

culturally responsive and trauma-informed. A collaborative approach would help to build understanding of the reforms within the legal sector.[19]

9.50. **Recommendation 18(d)** is that the Queensland Police Commissioner amend the Child Harm chapter of the OPM to provide guidance to police on the operation of the reformed defence.

9.51. This guidance should include factors that may be relevant to assessing whether a parent or carer's application of force, or attempt or threat to apply force, to a child was reasonable in the circumstances. Police consideration of these circumstances would assist them to identify factors that increase a child's vulnerability to harm, the systemic use of violence towards a child and cumulative harm and would help ensure that the application of the defence by police aligns with community expectations. Factors that may be relevant for inclusion in this guidance to ensure they are considered by police are:

- the attributes or personal characteristics of the child, including, for example, age, size and degree of vulnerability
- the nature of the assault
- if the charge relates to a series of offences, the duration and frequency of the offences
- whether the offence is part of a course of conduct against the child that consists of child maltreatment or domestic violence, happening on more than one occasion.

9.52. The rationale for the defence of domestic discipline is not intended to justify or mask conduct that amounts to child maltreatment or DFV.[20] However, a history of child maltreatment is common in cases where police apply the defence as a bar to prosecution.[21] The defence is also applied by police where there is a history of domestic violence.[22] Considering whether the force was applied as part of a course of conduct involving child maltreatment would further help to identify potential cumulative harm. Similarly, considering whether the force was applied as part of a course of conduct that involves DFV, including coercive control, acknowledges that children can be direct victims of DFV and would ensure that the defence does not contribute to systemic use of violence in a DFV situation.

9.53. **Recommendation 18(e)** is that the QPS revise practices, procedures and training related to child harm and alternatives to prosecution. This is to ensure that practices, procedures and training align with amendments to the Child Harm chapter of the OPM in accordance with **Recommendation 18(d)**.

9.54. In relation to the prosecution process, training of specialist investigators and police prosecutors is intended to support the consistent consideration of the reformed defence by police, including in assessing:

- whether there is sufficient evidence to prove a charge against a person, including whether the defence can be disproven[23]
- circumstances in which alternatives to prosecution may be appropriate.[24]

9.55. Participation in training is intended to support the consistent application of diversion options State-wide. This would, in turn, help to mitigate any increased criminalisation because of the operation of the reformed defence.

9.56. Police practices, procedures and training related to child harm and alternatives to prosecution should be updated prior to the commencement of stage 2 to ensure they reflect abolition of the lawful justification of physical punishment and the commencement of the court-based diversion scheme.

9.57. **Recommendation 18(f)** is that the judiciary develop guidelines to support effective consideration and application of the reformed defence and court-based diversion scheme. The Supreme and District Courts Criminal Directions Benchbook currently provides guidance on

the operation of section 280. We recommend review and revision of the Benchbook prior to commencement of each stage of the reformed defence and prior to the commencement of the court-based diversion scheme.

9.58. **Recommendation 18(g)** is that the Government develop, in collaboration with the relevant professional bodies, guidance and training about the reformed defence for legal practitioners, education professionals, care workers, child safety officers, health professionals and social service workers.

9.59. For schoolteachers, this guidance is needed prior to the commencement of the reformed defence to support them to understand the implications of this reform for their work. This guidance should include information about other defences that may apply to their contact with children. The Government should ensure that all schoolteachers receive training on fostering safe and inclusive learning environments, including in relation to:

- creating trauma-informed and culturally safe spaces for learning
- supporting all children to access, take part and engage meaningfully in learning
- strategies to support students to develop their emotional intelligence and regulate their own emotions and behaviour
- identifying early intervention points prior to behaviour escalating
- responding appropriately to escalating behaviour.

9.60. This guidance and training should be developed in collaboration with stakeholders to ensure it is comprehensive, specific to each schooling authority and rights-focused.[25]

9.61. Guidance and training for other professionals and workers should be developed in consultation with relevant stakeholders.[26] This guidance and training is required prior to the abolition of physical punishment at the commencement of stage 2. These measures are intended to strengthen the capacity of frontline workers, including mandatory reporters,[27] to:

- promote a shared commitment to creating child-safe environments at home and in the community. These professionals and workers are in key positions to help to connect parents and carers with culturally responsive and trauma-informed support and training and hold mandatory reporting obligations
- understand and affirm human rights
- respond appropriately to incidents of physical punishment.

Monitoring and review

9.62. **Recommendations 19** and **20** provide for legislative and operational measures to help ensure the operation of the defence and the effects of reform are monitored and reviewed. Implementing these recommendations would help ensure the reforms do not lead to unintended consequences for Aboriginal peoples, Torres Strait Islander peoples, culturally and linguistically diverse communities and other marginalised people.

9.63. **Recommendation 19** is that the Government require the QPS and ODPP to collect and report data in relation to the reformed defence. This may include data on the application of the defence as a bar to prosecution, the relationship between the child and alleged perpetrator and relevant circumstances of the alleged offending.

9.64. **Recommendation 20** provides for a statutory duty for the Attorney-General to review the operation of the reformed defence. Our Draft Bill includes a clause to give effect to this recommendation.[28] This review should be conducted as soon as practical after the defence has operated for two years after commencement of stage 1. It should examine the efficacy of the

information and education strategy and consider any disproportionate or adverse impacts of reform. It would require the Attorney-General to table a report in the Legislative Assembly on the outcome of the review within six months of starting the review.

Stage 2 (Years 4–7)

9.65. Stage 2 reforms would commence three years after the initial legislative reforms commence.

9.66. Implemented over a four-year period, stage 2 reforms would abolish the lawful justification of physical punishment, introduce a court-based diversion scheme and initiatives to protect children and support families and provide for continued monitoring and review of reforms.

Legislative reforms

Protection for children – abolition of physical punishment

9.67. **Recommendation 16(b)** provides for the lawful justification of physical punishment to be abolished three years after the reformed defence commences.[29] This means the defence would no longer apply to the offence of common assault (section 335 of the Criminal Code) where the force is used for the purpose of discipline or correction.[30] The reformed defence would remain where the force is used for the purpose of management of the child or protection of the child or another person. The defence is designed to prevent parents or persons in the place of a parent being criminalised for 'the normatively acceptable range of required physical interactions'[31] between a parent or carer and a child. To help give effect to the abolition of lawful physical punishment, smacking and spanking would be included as types of force excluded from the defence.

Commencement of a court-based diversion scheme

9.68. A fit-for-purpose court-based diversion scheme, designed in stage 1, would commence when the lawful justification of physical punishment is abolished in stage 2, giving effect to **Recommendation 17**.

Protecting children and supporting families

9.69. Several measures started in stage 1 to support families and the protection of children would continue in stage 2. The Government would continue to provide evidence-based parenting supports to assist parents and carers to adopt and use non-violent parenting strategies. The Queensland Human Rights Commission would continue to promote community awareness and understanding of the reformed defence.

Monitoring and review

9.70. **Recommendation 20** provides for review of the operation of the reformed defence for a further four years.[32] Under a statutory duty, the Attorney-General would:

- review the defence as soon as practical:
  - two years after the commencement of stage 2, and
  - four years after the commencement of stage 2
- table in the Legislative Assembly a report on the outcome of each review within six months of starting each review.

9.71. The review would examine the same matters as in stage 1 and would be informed by data collected and reported on by the QPS and ODPP in relation to the reformed defence (**Recommendation 19**).

Case for reform

9.72. This part considers the four key arguments justifying our recommended reforms, which are:

- physical punishment of children is ineffective and can be harmful
- children are the only people in society who can be legally assaulted
- physical punishment limits the rights of the child
- community attitudes towards physical punishment are changing. Few Australians believe physical punishment is necessary to raise a child.

9.73. The reforms in **Recommendations 16–20**:

- align with two of our guiding principles for reform
- are evidence-based, reflecting current understandings of child development, child maltreatment and DFV
- align with community attitudes
- align with laws of other jurisdictions.

9.74. In this section we draw on a broad range of evidence, including insights from our consultations, semi-structured interviews, focus group and written submissions, our domestic discipline research (Research Report 3) findings and our doctrinal and academic research.

A clear and evidence-based defence

9.75. Our recommendations promote two of our guiding principles for reform.

9.76. Principle 3 is that 'defences should be clear and easy to understand'.[33] The reformed defence would clarify the scope of the defence, as discussed above. It would be easier for police, prosecutors, judicial officers, juries, defendants and the community to understand when the defence does and does not apply.

9.77. Our reforms to protect children and support families are informed by and align with Principle 5, which states that 'defences and recommended reforms should be informed by evidence including expert knowledge and lived experience'.[34]

Supporting child development, wellbeing, relationships and preventing cycles of violence

9.78. Abolishing the lawful justification of physical punishment would support children to foster positive relationships, develop cognitive and emotional skills, reduce aggressive and anti-social behaviours and prevent cycles of violence within family and domestic settings.

9.79. Effective non-violent discipline can guide and teach a child self-discipline, boundaries and expectations, emotional maturity and acceptable and appropriate behaviours for participating in relationships and society.[35] A range of evidence-supported interventions are also effective in responding to challenging behaviours.[36] Research indicates that the ongoing use of physical

punishment may be tied to lack of awareness of effective non-violent disciplinary alternatives.[37]

9.80. Research provides no evidence that physical punishment improves child behaviour.[38] In addition to being ineffective,[39] physical punishment is potentially harmful,[40] and closely linked to physical abuse[41] and violence in the home.[42]

9.81. Parental use of physical punishment is associated with various negative outcomes for children in childhood and later in life,[43] including:

- negative effects on the development of a child's 'moral compass'[44]
- increased childhood and adult aggression[45]
- increased childhood delinquent and antisocial behaviour and increased adult criminal and antisocial behaviour[46]
- decreased mental health[47]
- increased likelihood of suicide attempts, moderate to heavy drinking and illegal drug use in adulthood[48]
- increased risk of being a victim of physical intimate partner violence[49] and of becoming a perpetrator of physical intimate partner violence.[50]

9.82. In its position statement on the physical punishment of children, the Royal Australasian College of Physicians said:

> Physical punishment sends a message that aggressive behaviour is the solution to conflict … physical punishment of children is more likely to occur in families where there is aggression or violence between parents.[51]

9.83. The embedding of violence into family life through the mislabelling of abuse as discipline was highlighted in a report prepared for the South Australian Royal Commission into Domestic, Family and Sexual Violence.[52] The report focused on children and young peoples' experiences of violence and found that '[i]n some cases, violence was deeply embedded in family tradition and viewed as an expected method of parenting'.[53] One young person who participated in the research reflected:

> From how, like, my parents were brought up and how other family members were brought up around me, hitting your kids wasn't really, like, a bad thing … it just happened so many times, and I sort of saw the patterns in the cycle.[54]

9.84. The cycle of violence may also be reflected in aggressive behaviours in children. There is an established connection between exposure to intimate partner violence and maladaptive development of children, including significant emotional impairment and aggressive behaviour.[55] There is also growing recognition that children are not only exposed to but are also direct victims of DFV, including coercive control.[56] Research also indicates that children are physically punished in the context of coercive control.[57]

9.85. Child development and wellbeing can be nurtured through strong and positive relationships with parents and carers. Our reforms aim to build community awareness about evidence-based parenting strategies and provide parents and carers with access to parenting and family support services. These proposed services are to support parents and carers to foster strong and positive relationships with children in their care. In instances where there is intergenerational violence and trauma, appropriate interventions would be available to parents and carers.

Reforms reflect international trends and community attitudes

9.86. Abolishing the lawful justification of physical punishment aligns with the global movement to eliminate physical punishment of children.

9.87. Sweden was the first country to prohibit the use of physical punishment of children in 1979. Since then, 70 countries, representing a diversity of cultures and faiths, have abolished the lawful use of physical punishment, with 25 other states committing to legislative reform.[58]

9.88. In Australia, community attitudes towards physical punishment are changing and few Australians believe physical punishment is necessary to raise a child.

9.89. A 2023 study into the prevalence of and community beliefs about physical punishment in Australia found that, while over 62% of Australians experienced physical punishment in childhood, nearly three-quarters of Australians do not believe physical punishment is necessary to raise a child.[59] In addition, the study revealed:

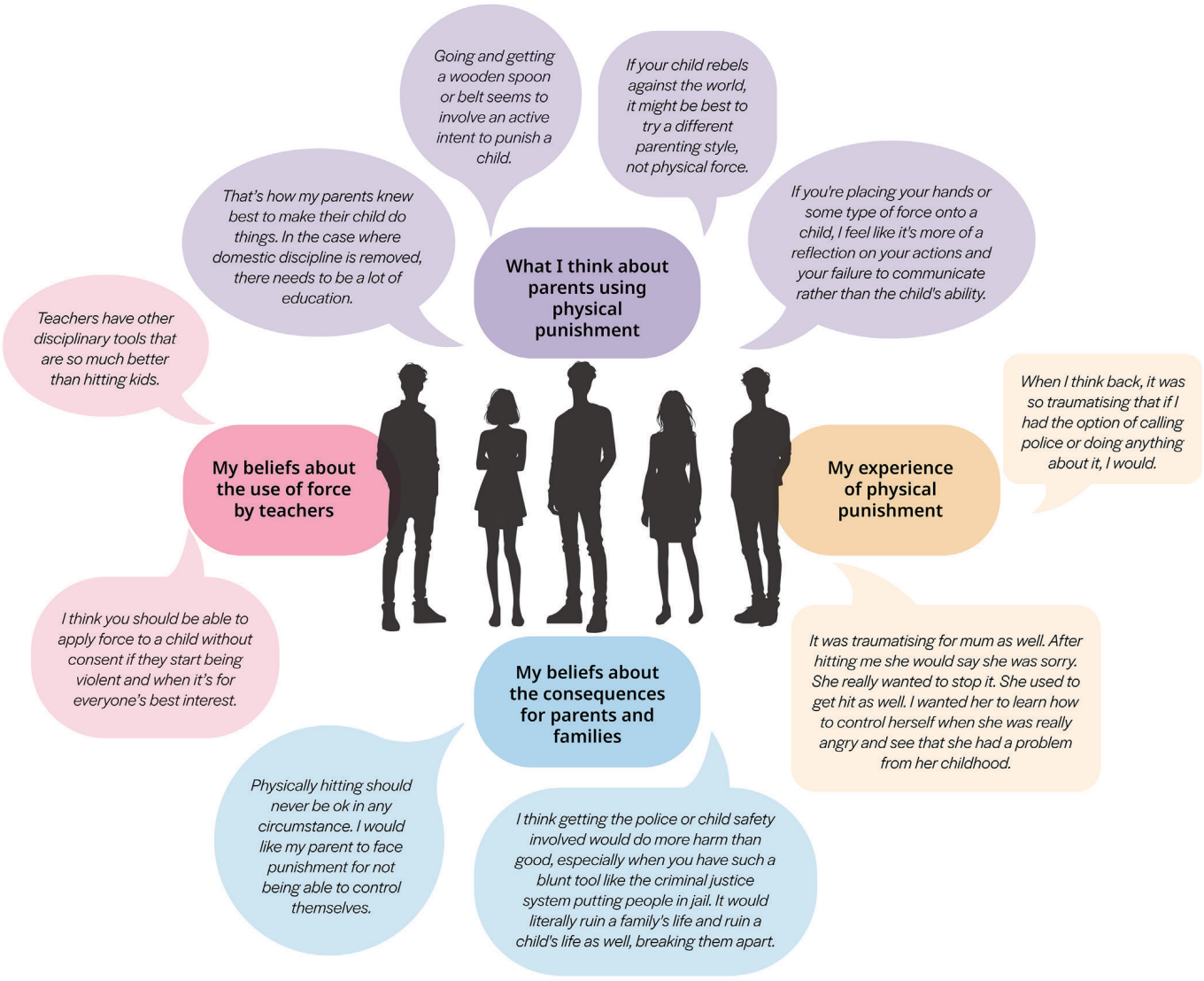
- Generational differences exist in the perceived need for and actual use of physical punishment in raising a child. Young parents were 10 times less likely to use physical punishment than parents aged 65 years and older.[60]
- Parents who experienced physical punishment as children were more likely to use physical punishment as parents, compared with the general parent population. This trend was even more prevalent for parents experiencing socioeconomic disadvantage.[61] This reflects the intergenerational embedding and perpetuation of violence into family life.
- Parents experiencing the highest level of socioeconomic disadvantage were more likely to believe that physical punishment is necessary to raise a child.[62]
- Even though more than half of the parents in the study had used physical punishment at some point in time (53.7%),[63] only 26.4% believed physical punishment was necessary to raise a child.[64] Male parents were more likely to consider physical punishment to be necessary.[65]

9.90. Our community attitudes research (Research Report 1) found in relation to physical punishment:

- community acceptance or tolerance of the use of physical punishment decreases as the level of force used increases[66]
- the community supports alternatives to criminal prosecution when parents use minimal force to discipline children[67]
- there is less community acceptance of using force towards a child when an instrument is used and the child is injured.[68] Survey participants were more likely to say a parent should be found guilty of assault if the perceived or potential harm to the child involved the use of an implement.[69]

9.91. A focus group we conducted in partnership with the Queensland Family and Child Commission engaged young people in Queensland to discuss their experiences, perspectives and opinions on physical punishment and the defence of domestic discipline. **Figure 9.3** highlights views and experiences shared by participants.

Figure 9.3: Youth roundtable participants' views and experiences of physical punishment



Reforms are consistent with laws in comparable jurisdictions

9.92. Jurisdictions comparable to Australia, including New Zealand, Ireland, Jersey, Scotland and Wales, have successfully abolished the lawful justification of physical punishment and provide models for reform in Queensland. Reforms in NSW and recommendations for reform in South Australia also align with our recommendations.

Limitation and clarification of section 280

9.93. At the commencement of stage 1, the reformed defence would closely align with the statutory defence of lawful correction in NSW,[70] which reflects the policy that the use of excessive physical force to punish a child is unacceptable. As is the case in NSW,[71] our reformed defence would apply to common assault only, clarify acts that are outside of the scope of the defence

and are not lawful, clarify to whom the defence applies and impose a Ministerial duty to review the operation of the defence.[72]

Abolition of lawful physical punishment

9.94. At the commencement of stage 2, our reformed defence would align with laws in New Zealand,[73] Ireland,[74] Jersey,[75] Scotland[76] and Wales[77] which have abolished lawful justification of physical punishment. In August 2025, the South Australian Royal Commission into Domestic, Family and Sexual Violence recommended repealing the defence of reasonable chastisement which applies to the use of corporal punishment by parents and caregivers.[78]

9.95. Some jurisdictions allowed time prior to abolition to implement supportive measures,[79] which we have reflected in the timing of our reforms.

Promoting public awareness and education

9.96. New Zealand, Jersey, Scotland and Wales undertook extensive public health, education and awareness-raising campaigns to accompany the legislative reforms. For example, Jersey conducted a public awareness campaign to help ensure parents and carers could find appropriate support to approach children's behaviour without violence.[80] In New Zealand, a government-funded positive parenting campaign preceded the prohibition of physical punishment.[81] This and other supporting initiatives were inclusive of key communities potentially at risk of being disproportionately affected by the abolition of physical punishment. This involved leaders from these communities.[82]

9.97. The South Australian Royal Commission into Domestic, Family and Sexual Violence has recommended that the SA Government undertake a public awareness and education campaign about the effect of the repeal of the reasonable chastisement defence and alternatives to physical punishment prior to commencing any legislative change.[83]

9.98. Our reforms include a range of measures that include raising community awareness and education in partnership with key communities at risk of being disproportionately affected. We intend these measures to support the success of legislative reforms and mitigate any unintended consequences of reform.

Monitoring and review

9.99. Our reforms create statutory obligations for monitoring and reporting on the operation of the reformed defence. Similar measures were embedded in legislative reforms in NSW, New Zealand, Scotland and Wales. For example, the NSW defence provision requires the Attorney-General to review the defence three years after commencement to determine whether its provisions continue to be appropriate for achieving the intended policy objective.[84] In New Zealand, the Chief Executive of the Ministry of Justice was obliged to monitor and report on the effects of the Crimes (Substituted Section 59) Amendment Act 2007 and to advise the Minister on its effects, including the extent to which it was achieving its purpose.[85] In Scotland and Wales, a duty was imposed on ministers to ensure accountability for reporting on the effect of legislative reforms and promoting public awareness of the changes to the law.[86]

9.100. Insights from the monitoring and reporting of New Zealand's reforms may provide reassurance that implementation of our recommendations would not result in increased criminalisation. Monitoring of the effects of law reforms found that in the first three years of the operation of the new defence:

- incidents of child assault reduced[87]

- three parents were prosecuted for smacking, while 69 were either given a warning or there was no further action or another outcome[88]
- 16 parents were prosecuted for minor acts of physical discipline, while 240 were given a warning or there was no further action or another outcome[89]
- parents who came to the attention of police were increasingly referred to agencies for parenting information and support.[90]

Human rights considerations

9.101. **Recommendations 16–20** seek to better protect the rights of the child and mitigate any unintended consequences of abolishing lawful physical punishment. The interplay between the rights of parents and carers, the rights of children and the best interests of the child as a primary consideration mean that, in some instances, rights held by parents and carers may require limitation to give full effect to the rights of the child.

9.102. Overall, **Recommendations 16–20** are compatible with human rights enshrined in international law and the Human Rights Act. Any potential limitations on rights held by parents and carers would be reasonable and demonstrably justifiable.

Rights promoted

9.103. The reformed defence would affirm that children have the same rights as adults and that children need protections that reflect their vulnerability and evolving capacity.[91] It aligns with the obligation to treat a child's best interests as a primary consideration.[92] Trends in the law also recognise that 'parents exercise responsibilities in the best interests of their children'.[93]

9.104. The reformed defence would promote the right to equal protection of the law without discrimination[94] by ending differential treatment based on age and providing children with equal protection to adults from criminal assault. It would also promote protection for children from ill-treatment that is, for instance, degrading.[95] Several UN bodies, including the Committee on the Rights of the Child, Human Rights Committee and Committee against Torture, recognise any use of physical punishment as inherently degrading treatment, including because of the harm caused and the power dynamics involved.[96] The reformed defence would also promote a child's rights to liberty and security of person[97] and to access education.[98]

Potential limitations that are reasonable and demonstrably justifiable

9.105. The rights of the family and child[99] may be limited if a parent or carer is subjected to criminal prosecution and punishment once the lawful justification for physical punishment is abolished. There may be consequential effects on other rights, such as cultural rights[100] and access to education[101] if a child's relationship with a parent or carer is disrupted by criminalisation. While the rights of the family are closely related to the right to privacy,[102] the right to privacy has not been interpreted to include a right to physically punish a child in the home.

9.106. Potential limitation of the rights of the family and child is not inevitable, given the reformed defence would not criminalise the normatively acceptable range of required physical interactions between parents and children for management and protection. This approach is endorsed by the Committee on the Rights of the Child[103] and respects the responsibilities,

rights and duties of parents, legal guardians or extended family or community (as provided for by local custom) to provide appropriate direction and guidance to a child as they exercise their rights, consistent with their evolving capacities.[104]

9.107. The right to recognition and equality before the law[105] may be limited given the risk that changes in the law may disproportionately affect Aboriginal peoples and Torres Strait Islander peoples in the context of over-surveillance, over-incarceration and historically imbalanced relationships with police.[106] People from culturally and linguistically diverse backgrounds and other marginalised backgrounds may also be disproportionately affected by implementation of the reformed defence.

9.108. During stage 1, the reformed defence would justify kinship and foster carers using force for the purpose of discipline or correction. This is incompatible with the standards of care set out in the Child Protection Act which promote the best interests of the child.[107] Over 59% of children placed with kin in 2023–24 were Aboriginal children and Torres Strait Islander children.[108] This time-limited measure is intended to avoid any disproportionate impact to Aboriginal and Torres Strait Islander kinship carers.

9.109. Any potential impact on these rights would be mitigated by introducing a court-based diversion scheme and implementing supportive initiatives alongside staged legislative reform. These measures include building community awareness about the abolition of physical punishment, providing parenting and family support programs State-wide and publishing accessible legal information about the reformed defence and court-based diversion scheme. The staging of legislative reforms would also help to mitigate any potential impact on rights.

9.110. The right to freedom of thought, conscience, religion and belief[109] and the ability to enjoy and practice culture protected by cultural rights[110] may be limited by the prohibition of physical punishment. Any limitation on these rights would be reasonable and justifiable taking into consideration that these rights must be considered alongside the rights of the child.[111] Further, both rights can be limited and must be exercised in a way that is 'consistent with respect for others' human dignity and physical integrity'.[112] The Queensland Aboriginal and Torres Strait Islander Child Protection Peak stated that 'it is essential to recognise that traditional Aboriginal and Torres Strait Islander parenting approaches do not rely on physical discipline'.[113] The Committee on the Rights of the Child and Committee on the Elimination of Discrimination against Women have emphasised that cultural and religious grounds cannot justify harmful practices, such as corporal punishment.[114]

Implications of reform

9.111. Our reforms would mean that:

- children are legally protected from physical punishment in all contexts, including alternative care settings, early childhood education and childcare services, youth detention and schools
- schoolteachers can continue to access legal protections, including criminal defences and the provision of other laws
- there is greater consistency in police decision-making.

Children are legally protected from physical punishment in all contexts

9.112. Standards of care and codes of conduct apply to people working with and caring for children in different non-parental care settings. These standards include the prohibition of physical punishment as a disciplinary approach. Mandatory reporting obligations also apply to people working with and caring for children in different settings and are intended to protect children, as vulnerable people, from harm.[115]

9.113. Currently, there is inconsistency in the legal protections afforded to children from physical punishment across different settings. By removing application of the defence to schoolteachers, our reforms would provide legal protection from physical punishment for children in Queensland in all non-parental care contexts. This includes:

- alternative care (including foster, kinship and residential care)
- early childhood education and childcare services
- youth detention
- schools.

9.114. This section examines the laws and standards of care that apply across settings to help ensure the physical integrity of children.

Alternative care settings

9.115. Under the Child Protection Act, a child is placed in care when it is assessed that they are unable to remain safely with their family.[116] Alternative care settings include, for example, kinship care, foster care and residential care.[117]

9.116. Standards of care apply to a child placed in care.[118] These standards include the use of positive guidance when necessary to support the child to change inappropriate behaviour and prohibit physical punishment or 'punishment that humiliates, frightens or threatens the child in a way that is likely to cause emotional harm'.[119]

Early childhood education and childcare

9.117. The physical punishment of children in early childhood education in Queensland is an offence.[120] This applies to providers, nominated supervisors, staff members, volunteers and family day care providers of an approved education and care service. The standards of care set out in the Child Protection Act similarly apply in childcare settings.

Youth detention

9.118. Under the Youth Justice Act, the chief executive of the department responsible for the Act is responsible for maintaining discipline and good order in a detention centre.[121] The Youth Justice Regulation prohibits the use of physical punishment as a form of discipline within a detention centre.[122] The regulations permit a detention centre employee to use reasonable force 'to protect a child, or other persons or property in the centre, from the consequences of a child's misbehaviour'. This use is available if the detention centre employee has successfully completed physical intervention training approved by the chief executive and the employee reasonably believes the child, person or property cannot be protected in another way.[123]

Schools

9.119. Other than the home, schools are the only setting in Queensland where physical punishment is not prohibited as a matter of law. Physical punishment is prohibited in Queensland State schools, however, as a matter of policy.[124] The Department of Education told us that:

> All Queensland schooling sectors are aligned, in that state schools, Catholic schools and independent schools operate with policies and procedures that do not endorse the use of corporal punishment.[125]

9.120. This policy framework is in tension with the current defence.

9.121. In its submission, the Department of Education said:

> [C]onsideration of an amendment to the Education (General Provisions) Act 2006 (EGPA) to reflect the contemporary policy and practice of the Queensland education schooling sectors is not possible while the Criminal Code section 280 allows for corporal punishment as a defence for schoolteachers and masters.[126]

9.122. Reform of the defence in stage 1, so that it no longer applies to schoolteachers, would allow Queensland education law, which applies to both State and non-State schools, to give legislative effect to current policy. This reform is significant given school education is compulsory for children aged between six years and six months and less than 16 years, or until a child has completed year 10.[127] In 2024, there were 880,948 full-time students attending schools in Queensland, including State and non-State schools.[128] As of August 2025, 564,846 students were enrolled in State schools alone.[129]

9.123. This reform would promote consistency with other settings and within the schooling sector.

9.124. We do not expect this change in law would lead to the increased criminalisation of schoolteachers. Data obtained from the Queensland Teachers Union shows nine schoolteacher prosecution matters involving the domestic discipline defence were finalised between July 2019 and February 2023. The defence was raised in relation to common assault, AOBH, indecent treatment of a child under 16 and observations or recording in breach of privacy. From the information we were able to access, only one of these cases turned on access to the domestic discipline defence (in the context of management and control of students).[130] In that case, the defendant was found not guilty[131] but was dismissed by their employer. Subsequently, in the same schoolteacher's application for unfair dismissal, the Queensland Industrial Relations Commission decided that misconduct, at the civil level, had occurred and the dismissal was reasonable.[132]

9.125. In that case, the Commission stated:

> Physical violence towards children in a school environment is utterly unacceptable. Children are incredibly vulnerable and the potential for long term emotional harm is enormous. Notwithstanding this, I note that the department policies set out clear and practical guidance informing teachers when physical intervention can legitimately occur. It is certainly not the case that teachers are defenceless against genuinely violent students.
>
> Further, having regard to her 22 years' experience and the evidence of training records in evidence before me, Ms Augustine must have been aware of the limits of appropriate conduct, whether from existing policies or others like them that have applied to her in the past. In any event, no teacher should require the explicit guidance of a policy to know that it is inappropriate to physically tussle with a child when de-escalation and/or assistance from colleagues is immediately available.

> While there will always be exceptions for the use of physical intervention and while I accept that Student T presented significant challenges to Ms Augustine, the circumstances of this case provided no justification for the actions that Ms Augustine took. Far from mitigating her situation, it is instead perplexing that Ms Augustine's 22 years of teaching experience did not provide her with the skills and the professionalism to have dealt with this difficult scenario appropriately or at the very least, demonstrate insight into her errors after the fact.[133]

9.126. This case is a contemporary example of the standards of conduct expected of a schoolteacher in Queensland. Our reforms would align the criminal law with professional conduct requirements.

9.127. The ethical conduct of schoolteachers in State schools is guided by the Department of Education Standard of Practice.[134] In demonstrating a high standard of workplace behaviour and personal conduct, schoolteachers are to recognise that '[a]ll students have a fundamental right to a safe and trusted physical and emotional environment that is free from harm'.[135] The conduct of schoolteachers in Catholic schools and independent schools is similarly guided by the codes of conduct, policies and procedures of those schooling authorities.[136]

9.128. Professional registration under the Education (Queensland College of Teachers) Act also requires a schoolteacher to behave in a way that satisfies the standard of behaviour generally expected of a schoolteacher. The Queensland College of Teachers can bring disciplinary action against schoolteachers for behaviour that does not satisfy this standard.[137] This is a civil proceeding conducted after any criminal prosecution is finalised.

9.129. While the Education (Queensland College of Teachers) Act does not define 'standard of behaviour generally expected of a teacher', decisions from disciplinary proceedings provide guidance. In Queensland College of Teachers v MXQ,[138] the Tribunal noted that '[t]he standard is a fluid one and informed by how the community, including the teaching profession, would expect a teacher to behave'.[139] In Queensland College of Teachers v Armstrong,[140] the Tribunal referred to the 'welfare and best interests of children' as a primary consideration of the Tribunal in such matters.[141]

9.130. Our recommendations would promote consistency with other obligations held by schoolteachers which aim to protect children:

- All schoolteachers hold mandatory reporting obligations.[142]
- Schoolteachers stand in place of a parent (loco parentis) while students are in their care and hold a non-delegable duty of care to take reasonable action to prevent the risk of foreseeable harm to students.[143]
- The Human Rights Act applies to all State schools in Queensland. Schoolteachers must not limit the rights held by students through their actions, unless the limitation is reasonable and demonstrably justified.[144]

9.131. Our recommendations are consistent with existing policies and procedures which promote safety and wellbeing in schools.[145]

9.132. Restrictive practices procedures would still be authorised and available to schoolteachers in State and non-State schools in Queensland in limited circumstances and for limited purposes.[146] Schoolteachers may be permitted to physically restrain a student when it is reasonable in the circumstances and there is no less restrictive measure available to respond to the behaviour. For instance, Department of Education's Restrictive Practices Procedure, which applies in relation to students who have a Positive Behaviour Support Plan, permits the use of physical restraint where:

- the student is behaving in a way that poses an immediate foreseeable risk of harm to themselves or others
- the physical restraint is reasonable in all the circumstances as a response to the student's behaviour and
- there is no less restrictive measure available to respond to the student's behaviour in the circumstances.[147]

9.133. Catholic Education also authorises the use of restrictive practices.[148]

9.134. Without limitation and oversight, restrictive practices can seriously affect a child's human rights. The Disability Royal Commission found that restrictive practices used on students with a disability in schools are a driver of violence, abuse, neglect and exploitation. Research commissioned by the Disability Royal Commission concluded that '[r]estrictive practices are at odds with the human rights of people with disability and represent a significant form of violence and coercion'.[149]

Schoolteachers can continue to access legal protections and criminal defences

Work Health and Safety Act

9.135. Where a schoolteacher applies force to a student to protect the student, themselves or another, other defences would continue to be available. However, while defences against criminal charges help to ensure a fair legal process, they are not intended to address systemic issues of violence, such as the issue of systemic occupational violence in schools which was raised in some submissions.[150]

9.136. The Queensland Teachers' Union cited the Australian Principal Occupational Health, Safety and Wellbeing Survey,[151] compiled by the Australian Catholic University's Institute for Positive Psychology and Education.[152] The 2024 survey found that school leaders are increasingly being exposed to occupational violence. In Queensland, 49.6% of school leaders experienced physical violence and 54.5% experienced threats of violence. Of those reporting threats of violence, 80.4% of these threats were made by students. These rates of exposure to physical violence and threats of violence were disproportionate to the general population.[153]

9.137. School authorities have a statutory obligation to address systemic occupational violence under the Work Health and Safety Act.[154]

9.138. Schoolteachers and other school employees are owed a duty of care by their employer under that Act. Queensland schooling authorities, as the 'person conducting the business or undertaking', hold a primary duty of care to schoolteachers and other school staff to maintain a work environment without risk to health and safety. This includes a duty to address any risk of occupational violence in schools and to provide training and supervision necessary to protect the health and safety of all persons.[155] In accordance with the statutory duty to consult workers,[156] schooling authorities must provide all schoolteachers under their employ with a reasonable opportunity to express their views and to raise work health and safety issues and to contribute to decisions related to such matters.[157]

9.139. The Education (General Provisions) Act also provides for the maintenance of good order and management of schools which can address systemic issues of occupational violence.[158]

Access to criminal defences

9.140. Defences would still be available to schoolteachers in their professional role, and cover circumstances in which schoolteachers may have to make physical contact with or apply force to a student to protect themselves, the student and other students or staff. These defences are implied consent to physical interactions, self-defence and extraordinary emergency.

9.141. These defences must be considered by police in deciding whether to prosecute and by a court or jury in a criminal proceeding where evidence supporting a defence is raised. Criminal defences are also relevant considerations for disciplinary proceedings, although the disciplinary offence may be proved even where the schoolteacher may not be found guilty of a criminal offence.[159]

Implied consent

9.142. At least in relation to State schools, schoolteachers are permitted to make physical contact with students in circumstances where a reasonable person would consider that the emotional needs of the student, for instance, to be comforted, reassured or encouraged, are met.[160] This includes making physical contact through a normal, caring gesture when offering praise, encouragement, guidance or comfort.

9.143. Physical contact of this nature is justified under the common law, which recognises that certain physical contact is inevitable for people living and moving in society, such as jostling in crowded places or slight touching to get a person's attention. These types of applications of force are not considered assault.

9.144. Implied or tacit consent to these physical interactions is one legal justification that has been accepted by the Queensland courts under the common law.[161] The courts have also accepted that an absence of consent can be expressed or inferred from circumstances and that implied or tacit consent can be revoked through words or gestures.[162] In cases where someone is unable to consent, for example, because of age or mental incapacity, there may be consent implied by law or, alternatively, implied authorisation by the community.[163] The implied consent approach may support reliance on the defence of mistake of fact under section 24 of the Criminal Code if a person can show that they were honestly and reasonably mistaken in their belief that, for instance, the student was consenting to the application of force and the student had not withdrawn consent.[164]

Self-defence and aiding in self-defence

9.145. The Queensland Teachers' Union expressed a need for schoolteachers to be able to defend themselves from occupational violence.[165]

9.146. Self-defence has been successfully raised by schoolteachers as a defence to charges of AOBH.[166]

9.147. Our reformed self-defence provision would still protect schoolteachers who use force they believe necessary to defend themselves or another or to prevent or cease the unlawful deprivation of liberty of themselves or another.[167] Self-defence is a complete defence to several offences, including common assault and AOBH.

9.148. This defence would not cover all scenarios in a school setting where a schoolteacher may have to use physical force to control or manage students.

Extraordinary emergency

9.149. Some scenarios not covered by self-defence may be captured by other defences. Extraordinary emergency is a defence that could be relied upon where physical force is required to avoid imminent harm, for example if a student is choking, having a medical episode or requires restraint from doing a dangerous activity, such as running onto a road or touching something very dangerous.

9.150. Under section 25 of the Criminal Code, a person is not criminally responsible for an act or omission done or made under such circumstances of sudden or extraordinary emergency that an ordinary person possessing ordinary power of self-control could not reasonably be expected to act otherwise. As extraordinary emergency is a 'residual defence', its scope is subject to the operation of other defences, including compulsion, provocation and self-defence.[168]

9.151. The defence is limited to cases where the defendant is confronted by sudden and extreme circumstances and where the danger is imminent and extreme.[169] The force used must be proportionate so that the peril created is relative to the peril avoided.[170] Case law from Western Australia suggests that an emergency would arise where 'a person has reasonable cause to believe that circumstances exist which are likely to endanger life or property'.[171]

Greater consistency in police decision-making

9.152. Our reforms would support greater consistency in police decision-making when police exercise their discretion to charge a person who has applied force to a child.

9.153. In considering whether there is sufficient admissible evidence to prove a charge against a person, police must consider possible defences.[172] Police are required to be satisfied any relevant defences can be disproven before charging a person with an offence. If police believe that a defence will likely apply, this may act as a bar to prosecution, which means the matter will not be prosecuted.

9.154. In the four-year period between January 2021 and December 2024, police applied section 280 as a bar to prosecution in 443 cases.[173] Police consideration and application of the defence was far greater than any consideration of the defence by the courts or juries. Because of this, the consistency with which police apply section 280 as a bar to prosecution has significant ramifications for how the defence operates.

9.155. In Research Report 3, we highlighted key findings from our analysis of police operational data which recorded consideration and application of section 280 as a bar to prosecution by police.[174] We also drew insights from our semi-structured interviews with Child Protection Investigation Unit officers which focused on the operation of the defence. Our domestic discipline research (Research Report 3) found that police apply section 280 in a range of circumstances and do so inconsistently. In considering and applying the defence, police take into consideration the elements of the defence and broader public interest factors.[175]

9.156. We found that police applied section 280 as a bar to prosecution in incidents where:

- **A charge more serious than common assault could have been laid**: In 46% of cases we examined, the incident recorded was a more serious type of assault (other serious assaults, assaults occasioning bodily harm).[176]
- **It was not clear that the defence was available to the person**: Without authoritative guidance on who is a 'person in the place of a parent', police applied an ad hoc approach to determine whether section 280 was available to a person.[177] Police looked for evidence of a transfer or delegation of caregiving responsibilities from a parent of

the child or at the relationship between the person and the child.[178] Police were unsure about how to approach this assessment when the child and person involved were from an Aboriginal community or Torres Strait Islander community.[179]

- **The purpose for the force used was not always lawful**: In almost half of the cases we examined, the use of force was framed as a form of behavioural control, with reports citing 'correction', 'discipline', or 'discipline/punishment' as the purpose for the use of force.[180] 'Anger' and 'frustration', which are not lawful purposes under section 280, were commonly cited alongside lawful purposes in case reports.[181] In almost a quarter of the cases we analysed, no lawful purpose was cited. In these cases, only 'anger' or 'frustration' were cited.[182]

9.157. The way police assessed whether the use of force was reasonable in the circumstances was inconsistent. This was reflected in the inconsistent approach to the reasonableness test, the types of factors or circumstances considered and how the police assessed the gravity of these circumstances. In cases where section 280 was applied as a bar to prosecution, we found that:

- police applied the reasonableness test subjectively[183]
- police relied on limited case law from other jurisdictions for guidance to assess whether the use of force was reasonable in the circumstances[184]
- injury was recorded in over 40% of cases[185]
- an instrument was used in 36% of cases[186]
- the conduct of the child was not considered[187]
- the defence was applied where the child was one week old and shaken by a parent [188]
- child maltreatment was referred to in almost one-third of cases[189]
- DFV was present, including in cases where a history of DFV and abuse was indicated, a current domestic violence order was in place or where the incident took place as part of a larger domestic violence incident.[190]

9.158. While each incident has a unique set of circumstances that must be considered, a policy response is justified by the frequency at which section 280 has been applied as a bar to prosecution, the inconsistent application of section 280 by police and the vulnerability of children to violence and harm.

Measures that promote greater consistency in police decision-making

9.159. Our reforms would promote greater consistency in decision-making when police are exercising their discretion to charge a person for applying force to a child, by:

- **Limiting application of the reformed defence to common assault and excluding particular acts from the operation of the defence**: The defence could not be applied as a bar to prosecution in cases where a parent or person in the place of a parent applies force to a child and the child is injured. This reform would also ensure the defence is not available in circumstances that do not align with community expectations and where a child is more likely to be harmed (**Recommendation 16**).
- **Defining 'parent'**: This would support police to better identify whether the reformed defence is available to a person. This definition includes the types of persons who would be acting in the place of a parent (**Recommendation 16**).
- **Providing guidance on the operation of the reformed defence in the OPM**: This guidance would support police to exercise their discretion to charge a person. Guidance would explain the elements of the reformed defence and factors that may be relevant in

assessing whether a parent's application of force, or attempt or threat to apply force, to a child was reasonable in the circumstances (**Recommendation 18(d)**).

- **Providing practices, procedures and training on the operation of the reformed defence and alternatives to prosecution**: These practices, procedures and training would be informed by guidance on the operation of the defence which is included in the OPM and would seek to ensure consistent, effective and appropriate implementation of that guidance (**Recommendation 18(e)**).

References

1 We use the term 'physical punishment' to refer to punishment in which force is used and intended to cause some degree of pain or discomfort. We recognise that punishment is not a term used to describe a lawful purpose for which physical force can be used against a child in section 280. The term physical punishment encompasses conduct associated with the use of force against a child, such as smacking, slapping and spanking, that may be for a purpose stated in section 280, including discipline or correction.

2 Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cl 18.

3 Department of Justice and Attorney-General (Qld), Summary of Review of Section 280 of the Criminal Code (Summary Report, November 2008) 2.

4 See key finding 1 in: QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 19.

5 See: QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 16.

6 Criminal Code (Qld) s 1 (definition of 'bodily harm').

7 Committee on the Rights of the Child, General Comment No. 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, Inter Alia), UN Doc CRC/C/GC/8 (2 March 2007) [11].

8 R v SDJ [2020] QCA 157, [13].

9 See, QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 26.

10 Ramsay v Larsen (1964) 111 CLR 16, 27−29.

11 Department of Education, Guidelines for Implementing 'Allegations Against Employees in the Area of Student Protection' (Guidelines, 14 July 2025) <https://ppr.qed.qld.gov.au/pp/allegations-against-employees-in-the-area-of-student-protection-procedure> 1.

12 Department of Education (Qld), Restrictive Practices Procedure: Version 1.4 (Procedure, 11 October 2024).

13 Criminal Code (Qld) s 286(1).

14 Relevant stakeholders would include Aboriginal peoples and Torres Strait Islander peoples and their communities, people from culturally and linguistically diverse backgrounds and their communities, experts in DFV, child maltreatment, child protection, evidence-based parenting programs and supports, Queensland Court Services, QPS, Queensland Child and Family Commission, Queensland Council of Social Services (DFV Peak), Queensland Aboriginal and Torres Strait Islander Child Protection Peak, Queensland Human Rights Commission, Queensland Law Society and legal aid service providers.

15 Parenting supports and evidence-based sources of parenting information exist, though some are funded by the Australian Government. Relevant supports include, but are not limited to, Family and Child Connect, Aboriginal and Torres Strait Islander Family Wellbeing Services, Parentline and Triple P – Positive Parenting Program. Some of these services are provided by Aboriginal and Torres Strait Islander community-controlled organisations which aims to ensure supports are culturally responsive and appropriate.

16 Human Rights Act 2019 (Qld) ss 3(c) and 61(e).

17 Queensland Aboriginal and Torres Strait Islander Child Protection Peak, Submission 27.

18 'Family Peace Building', Refugee and Immigration Legal Service (Web Page, 2025) <https://www.rails.org.au/education/family-violence-prevention>.

19 Relevant stakeholders would include Community Legal Centres Queensland, Queensland Indigenous Family Violence Legal Service, Aboriginal and Torres Strait Islander Legal Service and Queensland Human Rights Commission.

20 In its 2023−2024 Annual Report, the Child Death Review Board recognised that 'physical abuse of a child can happen under the guise of discipline or punishment'. It can be difficult for child protection workers to determine whether a child is describing domestic discipline, which is lawful, or physical abuse. See, Child Death Review Board, Annual Report 2023–24 (Report, October 2024), 113. See also, Kate Fitz-Gibbon, Silence & Inaction: Children and Young People's Failure in South Australia (Report, 2025) 27–8; The Royal Australasian College of Physicians, Physical Punishment of Children (Position Statement, July 2013) 7.

21 QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) [126].

22 QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) [129].

23 Queensland Police Service, Operational Procedures Manual (Issue 108, October 2025) [3.4.3] 373.

24 For instance, a verbal warning, referral to a support service, adult caution or restorative justice conference. See Queensland Police Service, Operational Procedures Manual (Issue 108, October 2025) 366 [3.1.1], 368–72 [3.2.4]–[3.3], 599–600 [6.3.14].

25 Relevant stakeholders would include the Queensland College of Teachers, Queensland Teachers' Union, Queensland Catholic Education Commission, Queensland independent school peaks and Queensland Human Rights Commission.

26 Relevant stakeholders would include the Australian Childcare Alliance (Queensland), Australian College of Care Workers, Independent Schools Queensland, Queensland Catholic Education Commission, Queensland Council of Social Services, Queensland Family and Child Commission, Queensland Human Rights Commission.

27 Mandatory reporting obligations aim to identify cases of child abuse and neglect and assist children. They are set out in the Child Protection Act 1999 (Qld) ch 2 pt 1AA div 2.

28 Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cl 20.

29 Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cls 18–19 implement this recommendation.

30 In order to demonstrate both stage 1 and stage 2 in our Draft Bill, there is some complexity about how the sunset clause in section 336(6) in clause 18 amends the substantive provisions. Changes of this nature will often be given effect to through transitional provisions. We have reflected the reforms for both stages in the substantive provisions. This would need to be considered by the Government in finalising the draft Bill for introduction, if they accept these recommendations.

31 Ben Mathews, Submission 43.

32 As implemented by Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cl 20.

33 See Chapter 1 and QLRC, Review of Particular Criminal Defences: Our Guiding Principles for Reform (Background Paper No 2, July 2024) 11.

34 See Chapter 1 and QLRC, Review of Particular Criminal Defences: Our Guiding Principles for Reform (Background Paper No 2, July 2024) 13.

35 P Nieman et al, 'Effective Discipline for Children' (2004) 9(1) Paediatrics & Child Health 37, 37.

36 Karen Quail and Catherine Ward, 'Nonviolent Disciplinary Options for Caregivers and Teachers: A Systematic Overview of the Evidence' (2020) 23(2) Trauma, Violence & Abuse 620, 625–33.

37 Karen Quail and Catherine Ward, 'Nonviolent Disciplinary Options for Caregivers and Teachers: A Systematic Overview of the Evidence' (2020) 23(2) Trauma, Violence & Abuse 620, 620.

38 Elizabeth T Gershoff and Andrew Grogan-Kaylor, 'Spanking and Child Outcomes: Old Controversies and New Meta-Analyses' (2016) 30(4) Journal of Family Psychology 1, 16.

39 Stephanie Hicks-Pass, 'Corporal Punishment in America Today: Spare the Rod, Spoil the Child? A Systematic Review of the Literature' (2009) 5(2) Best Practices in Mental Health 71, 76.

40 See, for example, Elizabeth Gershoff, 'Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review' (2002) 128(4) Psychological Bulletin 539; Elizabeth T Gershoff and Andrew Grogan-Kaylor, 'Spanking and Child Outcomes: Old Controversies and New Meta-Analyses' (2016) 30(4) Journal of Family Psychology 1.

41 Divna Haslam et al, 'The Prevalence of Corporal Punishment in Australia: Findings from A Nationally Representative Survey' (2023) 59(3) Australian Journal of Social Issues 580; Sophie Havighurst et al, 'Corporal Punishment of Children in Australia: The Evidence-Based Case for Legislative Reform' (2023) 47(3) Australian and New Zealand Journal of Public Health 1; Australian Child Maltreatment Study, The Prevalence and Impact of Child Maltreatment in Australia: Findings from the Australian Child Maltreatment Study (Brief Report, 2023); Angelika Poulsen, 'Corporal Punishment of Children in the Home in Australia: A Review of the Research Reveals the Need for Data and Knowledge' (2019) 44(3) Children Australia 110; Elizabeth Gershoff, 'Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review' (2002) 128(4) Psychological Bulletin 539.

[42] The Royal Australasian College of Physicians, Physical Punishment of Children (Position Statement, July 2013) 7.

[43] Elizabeth T Gershoff and Andrew Grogan-Kaylor, 'Spanking and Child Outcomes: Old Controversies and New Meta-Analyses' (2016) 30(4) Journal of Family Psychology 1, 467.

[44] Elizabeth Gershoff, 'Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review' (2002) 128(4) Psychological Bulletin 539, 544.

[45] Elizabeth Gershoff, 'Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review' (2002) 128(4) Psychological Bulletin 539, 544.

[46] Elizabeth Gershoff, 'Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review' (2002) 128(4) Psychological Bulletin 539, 544.

[47] Sophie Havighurst et al, 'Corporal Punishment of Children in Australia: The Evidence-Based Case for Legislative Reform' (2023) 47(3) Australian and New Zealand Journal of Public Health 1, 4, 5.

[48] Tracie O Afifi et al, 'Spanking and Adult Mental Health Impairment: The Case for the Designation of Spanking As An Adverse Childhood Experience' (2017) 71 Child Abuse & Neglect 24, 29.

[49] Angelika Poulsen et al, 'Childhood Experiences of Corporal Punishment and Associated Intimate Partner Violence Perpetration and Victimization in Adulthood: Results from a Longitudinal Twin Study' [2025] Journal of Family Violence 8; Sophie Havighurst et al, 'Corporal Punishment of Children in Australia: The Evidence-Based Case for Legislative Reform' (2023) 47(3) Australian and New Zealand Journal of Public Health 1, 5.

[50] Angelika Poulsen et al, 'Childhood Experiences of Corporal Punishment and Associated Intimate Partner Violence Perpetration and Victimization in Adulthood: Results from a Longitudinal Twin Study' [2025] Journal of Family Violence 8.

[51] The Royal Australasian College of Physicians, Physical Punishment of Children (Position Statement, July 2013) 7.

[52] Kate Fitz-Gibbon, Silence & Inaction: Children and Young People's Failure in South Australia (Report, 2025) 27–8.

[53] Kate Fitz-Gibbon, Silence & Inaction: Children and Young People's Failure in South Australia (Report, 2025) 27.

[54] Kate Fitz-Gibbon, Silence & Inaction: Children and Young People's Failure in South Australia (Report, 2025) 28.

[55] Jill McTavish et al, 'Children's Exposure to Intimate Partner Violence: An Overview' (2016) 28(5) International Review of Psychiatry 504, 507–8; Megan Holmes, 'The Sleeper Effect of Intimate Partner Violence Exposure: Long-Term Consequences on Young Children's Aggressive Behavior' (2013) 54(9) Journal of Child Psychology and Psychiatry 986, 991.

[56] Jane E. M. Callaghan et al, 'Beyond "Witnessing": Children's Experiences of Coercive Control in Domestic Violence and Abuse' (2018) 33(10) Journal of Interpersonal Violence 1551, 1570; Emma Katz, 'Beyond the Physical Incident Model: How Children Living with Domestic Violence Are Harmed By and Resist Regimes of Coercive Control' (2016) 25 Child Abuse Review 46, 52–3.

[57] Kate Fitz-Gibbon, Silence & Inaction: Children and Young People's Failure in South Australia (Report, 2025) 25; Emma Katz, Anna Nikupeteri and Merja Laitinen, 'When Coercive Control Continues to Harm Children: Post-Separation Fathering, Stalking and Domestic Violence' (2020) 29(4) Child Abuse Review 310, 312; Megan Haselschwerdt et al, 'Heterogeneity Within Domestic Violence Exposure: Young Adults' Retrospective Experiences' (2019) 34(7) Journal of Interpersonal Violence 1512, 1528–30; Carolina Øverlien, 'The Children of Patriarchal Terrorism' (2013) 28(3) Journal of Family Violence 277, 280–1.

[58] 'Progress', End Corporal Punishment of Children (Web Page, 2025) <https://endcorporalpunishment.org/countdown/>.

[59] Divna Haslam et al, 'The Prevalence of Corporal Punishment in Australia: Findings from A Nationally Representative Survey' (2023) 59(3) Australian Journal of Social Issues 580, 588, 597–8.

[60] Divna Haslam et al, 'The Prevalence of Corporal Punishment in Australia: Findings from A Nationally Representative Survey' (2023) 59(3) Australian Journal of Social Issues 580, 590.

[61] Divna Haslam et al, 'The Prevalence of Corporal Punishment in Australia: Findings from A Nationally Representative Survey' (2023) 59(3) Australian Journal of Social Issues 580, 590, 597.

62 Divna Haslam et al, 'The Prevalence of Corporal Punishment in Australia: Findings from A Nationally Representative Survey' (2023) 59(3) Australian Journal of Social Issues 580, 593.

63 Divna Haslam et al, 'The Prevalence of Corporal Punishment in Australia: Findings from A Nationally Representative Survey' (2023) 59(3) Australian Journal of Social Issues 580, 596.

64 Divna Haslam et al, 'The Prevalence of Corporal Punishment in Australia: Findings from A Nationally Representative Survey' (2023) 59(3) Australian Journal of Social Issues 580, 597.

65 Divna Haslam et al, 'The Prevalence of Corporal Punishment in Australia: Findings from A Nationally Representative Survey' (2023) 59(3) Australian Journal of Social Issues 580, 581.

66 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) xii, xvii.

67 See key finding 6 in: QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) xv.

68 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) xvii.

69 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) xii, xvii.

70 Crimes Act 1900 (NSW) s 61AA.

71 In relation to the NSW defence, assault occasioning bodily harm and grievous bodily harm would be excluded from the application of the defence through the operation of section 61AA(2)(b) which states that the application of force is not reasonable if it is 'likely to cause harm to the child that lasts for more than a short period'. Section 61AA(2)(a) excludes force applied to any part of the head or neck of the child and force that is 'likely to cause harm that lasts for more than a short period' which in effect, causes the defence to exclude assault occasioning bodily harm or grievous bodily harm. This provision might also negate application of the defence to chocking, suffocation and strangulation. Pursuant to section 61AA(1)(a), the defence applies to a parent or person acting for a parent. Sub-section (6) clarifies the meaning given to 'parent' and 'person acting for a parent' in the provision. A 'person acting for a parent' is defined to include, in the case of an Aboriginal child or Torres Strait Islander child, a person who is recognised by the Aboriginal or Torres Strait Islander community to which the child belongs as being an appropriate person to exercise special responsibilities in relation to the child. Section 61AA(8) imposes a requirement on the Attorney General to review section 61AA three years after commencement to determine whether its provisions continue to be appropriate for achieving the intended policy objective and to table a report on the outcome in each House of Parliament within six months after the end of the period of three years.

72 Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cls 18, 20.

73 The Crimes (Substituted Section 59) Amendment Act 2007 (NZ) amended section 59 of the Crimes Act 1961 (NZ) to give effect to this prohibition.

74 In Ireland, the common law defence of reasonable chastisement was abolished when the Children First Act 2015 (Ireland) commenced on 11 December 2017.

75 The abolition of physical punishment in Jersey came into effect on 24 April 2020 through the Children and Education (Amendment) (Jersey) Law 2020 (Jersey).

76 The defence was repealed when the Children (Equal Protection from Assault) (Scotland) Act 2019 (Scot) came into force on 7 November 2020.

77 The defence was repealed when the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 (Wales) came into force on 21 March 2022. The Act received Royal Assent on 20 March 2020.

78 See recommendation 89 in: Royal Commission into Domestic, Family and Sexual Violence: With Courage — South Australia's Vision Beyond Violence (Report, August 2025) 454.

79 For example, section 51 of the Criminal Justice (Scotland) Act 2003 (Scot) was repealed in 2020, abolishing physical punishment in Scotland. This abolition took effect one year after the Act received Royal Assent, providing time and opportunity for implementation of supportive measures. Similarly, to Scotland, a period of two years was allowed in Wales before abolition took effect to enable legislated supportive measures to be implemented.

80 'Smacking Ban Is Law from Today', Government of Jersey (Web Page, 24 April 2020) <https://www.gov.je:443/News/2020/pages/smackingbanlaw.aspx>.

81 Beth Wood, Ian Hassall and George Hook, Unreasonable Force: New Zealand's Journey Towards Banning the Physical Punishment of Children (Save the Children New Zealand, 2008) 173.

82 Sophie Havighurst et al, 'Corporal Punishment of Children in Australia: The Evidence-Based Case for Legislative Reform' (2023) 47(3) Australian and New Zealand Journal of Public Health 1, 7.

83 See recommendation 90 in: Royal Commission into Domestic, Family and Sexual Violence: With Courage — South Australia's Vision Beyond Violence (Report, August 2025) 454.

84 Crimes Act 1900 (NSW) s 61AA(8). The policy objectives of section 61AA can be found in the report on the statutory review of the provision: Department of Justice and Attorney-General (NSW), Statutory Review: Section 61AA, Crimes Act 1900 (NSW) (Report, February 2010) 3−4, 12−16. The statutory review of section 61AA found that there was little case law indicating application of the defence. Also, in relation to submission made to the review, most expressed the view that section 61AA was successful in meeting its policy objectives and several expressed the view that section 61AA reflected community attitudes and provided guidance on the discipline or children. In response to the statutory review, the Attorney General recommended that section 61AA continue to operate as a defence under NSW law: Department of Justice and Attorney-General (NSW), Statutory Review: Section 61AA, Crimes Act 1900 (NSW) (Report, February 2010) 3.

85 Crimes (Substituted Section 59) Amendment Act 2007 (NZ) s 7.

86 Children (Equal Protection from Assault) (Scotland) Act 2019 (Scot) s 2; Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 (Wales) ss 2, 3.

87 Sophie Havighurst et al, 'Corporal Punishment of Children in Australia: The Evidence-Based Case for Legislative Reform' (2023) 47(3) Australian and New Zealand Journal of Public Health 1, 7.

88 'Crimes (Substituted Section 59) Amendment Act 2007 - 7th Review: Comparison and Cases', New Zealand Police (Web Page, June 2010) <https://www.police.govt.nz/about-us/publication/crimes-substituted-section-59-amendment-act-2007-7th-review/comparison-cases>.

89 'Crimes (Substituted Section 59) Amendment Act 2007 - 7th Review: Comparison and Cases', New Zealand Police (Web Page, June 2010) <https://www.police.govt.nz/about-us/publication/crimes-substituted-section-59-amendment-act-2007-7th-review/comparison-cases>.

90 New Zealand Police, 9th Review of Policy Activity Since Enactment of the Crimes (Substituted Section 59) Amendment Act 2007 (Report, July 2011).

91 Human Rights Act 2019 (Qld) s 26(2).

92 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 3.

93 Elizabeth Dallaston, 'Prohibition of Corporal Punishment and Alternative Justifications for the Lawful Use of Force Against Children in Australia' (2024) 59(3) Australian Journal of Social Issues 637, 637.

94 Human Rights Act 2019 (Qld) s 15(3).

95 Human Rights Act 2019 (Qld) s 17.

96 Committee on the Rights of the Child, General Comment No 13: The Right of the Child to Freedom From All Forms of Violence, UN Doc CRC/C/GC/13 (18 April 2011) [24]; Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc CCPR/C/GC/20 (10 March 1992) [5] interpreting the scope of art 7 of the International Covenant on Civil and Political Rights; International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); Committee Against Torture, Concluding Bbservations on the Sixth Periodic Report of Australia, UN Doc CAT/C/AUS/CO/6 (5 December 2022) [47]−[48] interpreting the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).

97 Human Rights Act 2019 (Qld) s 29(1). In RK v Mirik and Mirik (2009) 21 VR 623 Bell J interpreted the scope of s 21(1) of the Charter of Human Rights and Responsibilities Act 2006 (Vic) to include the human right to personal integrity (at [5]). Notwithstanding this, the scope of the right to security of person is unsettled. See: Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 258.

98 Human Rights Act 2019 (Qld) s 36(1).

99 Human Rights Act 2019 (Qld) s 26(1).

100 Human Rights Act 2019 (Qld) ss 27−28.

101 Human Rights Act 2019 (Qld) s 36(1).

102 Human Rights Act 2019 (Qld) s 25; Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 217.

103 Committee on the Rights of the Child, General Comment No 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, Inter Alia), UN Doc CRC/C/GC/8 (2 March 2007) [14]−[15].

104 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 5.

105 Human Rights Act 2019 (Qld) s 15.

106 Queensland Human Rights Commission, Submission 41.

107 Child Protection Act 1999 (Qld) s 122.

108 Queensland Family and Child Commission, Annual Report 2023−2024 (Report, August 2024) 108.

109 Human Rights Act 2019 (Qld) s 20.

110 Human Rights Act 2019 (Qld) ss 27−28.

111 Human Rights Act 2019 (Qld) s 26(2).

112 Committee on the Rights of the Child, General Comment No 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, Inter Alia), UN Doc CRC/C/GC/8 (2 March 2007) [29].

113 Queensland Aboriginal and Torres Strait Islander Child Protection Peak, Submission 27.

114 Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child, Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination Against Women/General Comment No. 18 of the Committee on the Rights of the Child, UN Doc CEDAW/C/GC/31/REV.1 - CRC/C/GC/18/Rev.1 (2014) (8 May 2019) [31], [55]. As to the categorisation of corporal punishment as a 'harmful practice' see [9].

115 Mandatory reporting obligations aim to identify cases of child abuse and neglect and assist children in these cases. These reporting obligations apply, for example, to a person employed to work at a residential care facility, an approved kinship carer, an approved foster carer, a schoolteacher and an early childhood education and care professional pursuant to the Child Protection Act 1999 (Qld) ss 13E, 13F.

116 For circumstances in which a child protection order would be made, which would facilitate a child being placed in care, see, Child Protection Act 1999 (Qld) s 59.

117 The types of care in which the chief executive may place a child are set out in Child Protection Act 1999 (Qld) s 82.

118 The Standards of Care are set out in the Child Protection Act 1999 (Qld) s 122.

119 Child Protection Act 1999 (Qld) ss 122(1)(g), 122(2).

120 Education and Care Services National Law (Queensland) s 166.

121 Youth Justice Act 1992 (Qld) s 263(3)(c).

122 Youth Justice Regulation 2016 (Qld) reg 16(4)(a).

123 Youth Justice Regulation 2016 (Qld) reg 16(5).

124 Department of Education and Training (Qld), Standard of Practice (February 2016) 7. In relation to State schools, the prohibition of physical punishment is authorised by the Education (General Provisions) Act 2006 which requires the principal of a State school to '… control and regulate student discipline in the school …' (s 275) in accordance with departmental policies and procedures (s 276). How policies and procedures will be developed or implemented by non-State schools is not prescribed under the Education (General Provisions) Act 2006 (Qld).

125 Department of Education, Submission 39.

126 Department of Education, Submission 39.

127 Education (General Provisions) Act 2006 (Qld) s 9.

128 Queensland Government Statistician's Office, Schools Queensland 2024 (Report, 17 February 2025) 1.

129 Queensland Government, State School Enrolments: August 2021–25 (Record, September 2025).

130 Decisions involving the prosecution of schoolteachers where section 280 was raised as a defence tend not to be published. The Queensland Teachers' Union was not able to provide the names of relevant cases due to legal professional privilege. We obtained high level information from the Queensland College of Teachers about relevant cases. Using this information, the Queensland Courts assisted us to identify the

names of some matters, for which we obtained transcripts. These transcripts enabled us to identify the extent to which section 280 was relied upon by a defendant.

131 Transcript of Proceedings, Police v Augustine (Magistrates Court at Cairns, Magistrate Black, 26 July 2019).

132 Augustine v State of Queensland (Department of Education) [2022] QIRC 184.

133 Augustine v State of Queensland (Department of Education) [2022] QIRC 184, [131]–[133].

134 Department of Education and Training (Qld), Standard of Practice (February 2016); The Queensland Government, Code of Conduct for the Queensland Public Service (Code, 1 January 2011); and the Public Sector Ethics Act 1994 (Qld) also apply to schoolteachers in State schools.

135 Department of Education and Training (Qld), Standard of Practice (February 2016) 7.

136 See, for example, Catholic Archdiocese of Brisbane, Code of Conduct (Code, September 2022); Anglican Schools Commission, Anglican Church Southern Queensland, Creating Environments for Children and Young People to Thrive: Code of Conduct for Anglican Schools and Education and Care Services (Code, September 2018).

137 Education (Queensland College of Teachers) Act 2005 (Qld) s 92(1)(h).

138 Queensland College of Teachers v MXQ [2025] QCAT 60.

139 Queensland College of Teachers v MXQ [2025] QCAT 60, [13]. See also, Queensland College of Teachers v CMF (No 2) [2016] QCAT 290, [24]; Queensland College of Teachers v Armstrong [2010] QCAT 709.

140 Queensland College of Teachers v Armstrong [2010] QCAT 709.

141 Queensland College of Teachers v Armstrong [2010] QCAT 709, [36].

142 Child Protection Act 1999 (Qld) s 13E(1)(c).

143 Ramsay v Larsen (1964) 111 CLR 16, 27–9. See also, Richards v State of Victoria [1969] VR 136, 138. This duty is reflected in codes of conduct that apply to teaching professionals. See, for example, Catholic Archdiocese of Brisbane, Code of Conduct (Code, September 2022) 13.

144 Human Rights Act 2019 (Qld) ss 5(2)(c), 8, 13.

145 In relation to State schools, these policies and procedures include: Department of Education (Qld), Inclusive Education Policy: Version 1.3 (Policy, 10 August 2021); Department of Education (Qld), Guide to Individual Behaviour Support Planning for Schools (Guide); Department of Education (Qld), Student Discipline Procedure: Version 1.12 (Procedure, 1 September 2025); 'Risk Assessment—Behaviour, Safety and Wellbeing', Department of Education (Qld) (Web Page, 8 March 2021) <https://behaviour.education.qld.gov.au/supporting-student-behaviour/intensive-support/risk-assessment-behaviour-safety-and-wellbeing>; Department of Education (Qld), Occupational Violence Prevention Procedure: Version 1.2 (Procedure, 21 February 2025); Department of Education (Qld), Restrictive Practices Procedure: Version 1.4 (Procedure, 11 October 2024).

146 Restrictive practice procedures are authorised by the non-delegable duty of care to take reasonable action to prevent the risk of foreseeable harm to students, themselves and other persons: Ramsay v Larsen (1964) 111 CLR 16, 27–9. In relation to State schools, these practices are prescribed by Department of Education (Qld), Restrictive Practices Procedure: Version 1.4 (Procedure, 11 October 2024).

147 Department of Education (Qld), Restrictive Practices Procedure: Version 1.4 (Procedure, 11 October 2024) 1.

148 Catholic Education Diocese of Cairns, Restrictive Practices Procedure (Procedure, May 2022).

149 Claire Spivakovsky, Linda Steele and Dinesh Wadiwel, 'Restrictive Practices: A Pathway to Elimination' (Research Report, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, July 2023) 31–45.

150 Queensland Catholic Education Commission, Submission 13; Queensland College of Teachers, Submission 21; Queensland Teachers' Union, Submission 24.

151 Australian Catholic University, Institute for Positive Psychology and Education, Australian Principal Occupational Health, Safety and Wellbeing Survey (Final Report, May 2025).

152 Queensland Teachers' Union, Submission 24.

153 Australian Catholic University, Institute for Positive Psychology and Education, Australian Principal Occupational Health, Safety and Wellbeing Survey (Final Report, May 2025) 34.

154 Work Health and Safety Act 2011 (Qld).

155 Work Health and Safety Act 2011 (Qld) ss 19(3)(a), (3)(f).

156 Work Health and Safety Act 2011 (Qld) pt 5, div 2.

157 Work Health and Safety Act 2011 (Qld) s 48(1)(b).

158 Education (General Provisions) Act 2006 (Qld) ch 12.

159 See, for example, Queensland College of Teachers v MXQ [2025] QCAT 60, [152]–[153]. The standard of proof required in a civil matter is the balance of probabilities. If a finding of criminal conduct is to be made in a civil action, the Briginshaw principle must be applied. See, Briginshaw v Briginshaw (1938) 60 CLR 336. Unlike the requirements placed on the prosecution in criminal proceedings, the applicant in a civil disciplinary proceeding is not required to negate a defence.

160 Department of Education, Guidelines for Implementing 'Allegations Against Employees in the Area of Student Protection' (Guidelines, 14 July 2025) <https://ppr.qed.qld.gov.au/pp/allegations-against-employees-in-the-area-of-student-protection-procedure> 1.

161 Collins v Wilcock [1984] 1 WLR 1172, 1177 at F-G.

162 Horan v Ferguson [1995] 2 Qd R 490, 495, 504.

163 R v GEE [2016] 2 Qd R 602, 604.

164 Horan v Ferguson [1995] 2 Qd R 490, 495.

165 Queensland Teachers' Union, Submission 24.

166 See, for example, Transcript of Proceedings, R v Best (District Court at Maroochydore, Sheridan J, 26 June 2020).

167 Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cl 11.

168 R v Lacey; ex parte Attorney-General [2009] QCA 274, [39].

169 R v Dimitropoulos (2020) 282 A Crim R 402; R v Bishop [2010] QCA 375; R v Hunt [2009] QCA 397; R v Heenan [2002] QCA 292.

170 R v Rogers (1996) 86 A Crim R 542.

171 Dudley v Ballantyne (1998) 28 MVR 209, 213.

172 Queensland Police Service, Operational Procedures Manual (Issue 108, October 2025) [3.4.3] 373.

173 QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 14 [44].

174 This data was obtained from the QPS. The disclosure of data by QPS was authorised pursuant to the Police Service Administration Act 1990 (Qld) s 10.2: Letter from Brian Connors to Queensland Law Reform Commission, 24 January 2025; Letter from Brian Connors to Queensland Law Reform Commission, 8 April 2025; Letter from Brian Connors to Queensland Law Reform Commission, 14 May 2025.

175 QLRC, Domestic Discipline (Research Report 3); QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 21–7 [85]–[131].

176 QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 22 [89]. The incident types recorded in QPRIME are for administrative purposes and do not dictate the ultimate charge. For example, the incident type 'other serious assault' in the QPS data does not refer to section 340 serious assaults in the Criminal Code.

177 QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 26 [119].

178 QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 26 [119], [122].

179 QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 26 [120]–[121].

180 QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 25 [112].

181 QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 25 [112].

182 QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 25 [114].

183 QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 22–3 [94]–[96]. The benchbook and jury directions associated with section 280 indicate that the defence incorporates an objective reasonableness test: Queensland Courts, 90. Domestic Discipline: S 280 (Supreme and District Courts Criminal Directions Benchbook, February 2025).

[184] QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 22 [92].

[185] QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 24 [106]. While bruising was the most common injury reported, in some instances, the child sustained an injury to the face or head (for example, bloody nose, black eye, cut, abrasion, cracked tooth).

[186] QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 23 [100]. Some initial assessments made and recorded in police reports indicated that the use of an instrument (causing injury) was considered unreasonable in the circumstances and outside the scope of section 280. Ultimately, it was decided that section 280 applied.

[187] QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 25 [110]. The use of force towards a child was deemed reasonable in circumstances where the child made a mistake or where age-appropriate behaviour was being displayed. For example, this included bed wetting, playing a piece on the piano incorrectly and a 16-year-old getting a nose piercing.

[188] QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 26–7 [124]–[125]. Police told us that age was a factor they considered alongside others when assessing whether the force used towards a child was reasonable in the circumstances. While police indicated that the defence would never be applied in a 'shaken baby' case, we found record that section 280 was applied in relation to an incident where the child was one week old.

[189] QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) 27 [126]. This means police applied section 280 against a backdrop of child neglect, and/or physical, sexual or emotional abuse. This may indicate that physical abuse of children is being hidden by the application of section 280, which is a concern previously raised by the Child Death Review Board. See, Child Death Review Board, Annual Report 2023–24 (Report, October 2024) 113.

[190] QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025) [129]–[130] 27. In some cases, the parent had a history of breaching domestic violence orders and children were named persons on the order. In two of the cases we examined, the parent was charged for breach of a domestic violence order but not for assault of a child.

PART 7

Improving the criminal justice system response

CHAPTER 10

Our approach to practice and procedure reforms

Contents

Introduction

10.1. Our terms of reference ask us to make recommendations about the need for reform of practice and procedure relating to the defences we are reviewing. Part 7 of this report presents our practice and procedure recommendations.

10.2. This chapter introduces Part 7 and outlines its structure. It explains our approach to developing these recommendations, first highlighting the need for holistic criminal justice system reforms. We then discuss how our recommendations reflect the significant work of many other stakeholders and organisations to address systemic issues within the criminal justice system. We discuss our review's parameters and finally consider the implications of the changing legal and policy landscape in which we make our recommendations.

10.3. The term 'practice and procedure' refers to the rules and processes through which the criminal law is applied, set by laws, regulations, guidelines and policies. They include processes for investigating, charging, prosecuting and defending criminal cases and the processes involved pre-trial, at trial, for sentencing and on appeal.

10.4. The Queensland criminal justice system is complex. It involves a broad range of organisations performing separate and intersecting roles, including the QPS, the legal sector, DFV and other support services, the courts, the corrections system and the mental health system.

10.5. In our Consultation Paper, we explored options for practice and procedure reforms to support improved criminal justice processes and outcomes.[1] We focused on reforms to support equality for people who may experience additional barriers to justice as well as reforms to improve the fairness, effectiveness and efficiency of the criminal justice system. We discussed and sought feedback on measures designed to:

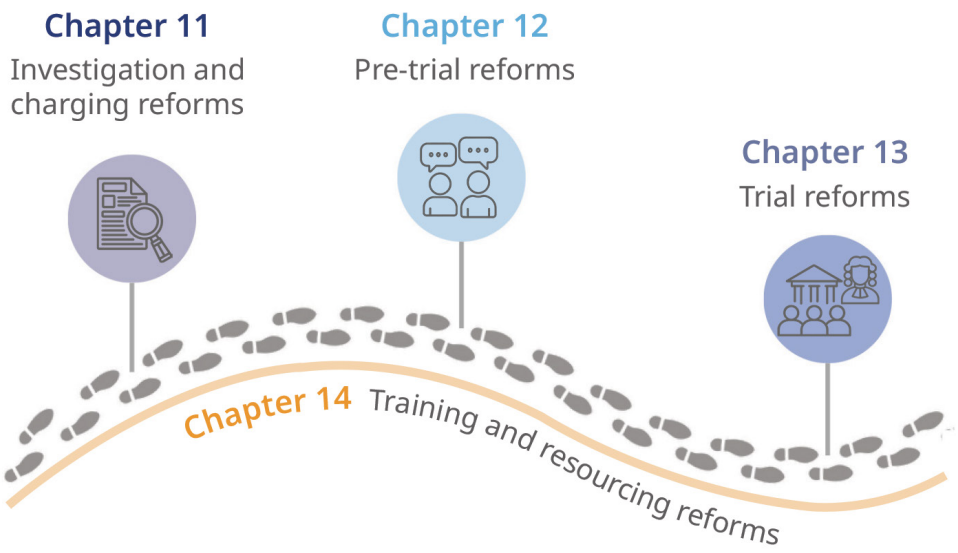
- improve access to defences for DFV victim-survivors who offend
- support early identification of self-defence, early resolution of criminal prosecutions and legal certainty
- facilitate admission of evidence of the nature and impact of DFV
- improve access to justice for Aboriginal peoples and Torres Strait Islander peoples.

10.6. The need for significant practice and procedure reforms to address barriers to justice was a strong theme of stakeholder feedback.[2] We heard that reform is needed to improve just access to the defences. While stakeholders told us about the need for holistic reforms, many highlighted the importance of reforms to address barriers to justice for DFV victim-survivors, Aboriginal peoples and Torres Strait Islander peoples and people from culturally and linguistically diverse backgrounds.

10.7. We have developed recommendations that support access to justice and are compatible with human rights. We recognise the relevance of the criminal procedure rights in the Human Rights Act, including the right to due process and fairness throughout the criminal justice process, as well as the presumption of innocence. These rights primarily focus on the accused's rights. We also recognise the relevance of human rights protections for others engaged in criminal justice processes, including the protection of victims through the Charter of victims' rights.[3]

Part 7 structure

Figure 10.1: A snapshot of our practice and procedure reforms



10.8. This Part of the report is structured to reflect an accused person's pathway through the Queensland criminal justice system. It considers practice and procedure reforms relevant to the defences sequentially. It is in four substantive chapters, as reflected in **Figure 10.1**, above.

Chapter 11 presents four recommendations (**Recommendations 21–24**) for reform of investigative and charging practice. This is usually the first phase of a person's interaction with the criminal justice system. A person's initial interactions can shape their subsequent experience with the criminal justice system, particularly for a person experiencing additional vulnerabilities or disadvantage. These reforms are designed to promote gender-responsive and trauma-informed practice and improved evidence collection, charging and prosecution practice. To achieve these objectives, we recommend legislative reform of the Police Powers and Responsibilities Act and amendments to the OPM, the Director's Guidelines and police training.

Chapter 12 presents two recommendations (**Recommendations 25–26**) for reform of pre-trial practice and procedure. These reforms aim to provide clarity in criminal justice processes and increase fairness and just outcomes, including for DFV victim-survivors. We recommend that the ODPP assume early carriage of all murder and manslaughter cases. We also recommend amending the disclosure provisions of the Criminal Code to improve access to relevant DFV evidence.

Chapter 13 presents six recommendations (**Recommendations 27–32**) for reform of criminal trial practice and procedure. The reforms aim to safeguard the rights of individuals engaged in criminal proceedings, whether as a victim-survivor, defendant, family member or witness, and improve the efficiency and effectiveness of criminal justice processes. Recommendations for evidence reform are designed to increase the protections for witnesses with recognised vulnerabilities that may impact their ability to give evidence or to access justice. They aim to ensure appropriate evidence and information is available to juries to support just outcomes, including expert DFV evidence and evidence of traditional laws and customs. Recommendations about jury directions are designed to ensure juries are properly directed about the relevance of DFV, including to defences and their potential availability in the case before them.

Chapter 14 presents three recommendations (**Recommendations 33–35**) for training and resourcing reforms. These non-legislative reforms aim to improve outcomes for DFV victim-survivors and address barriers to justice for people experiencing disadvantage. Legislative change alone would not achieve equality or address all current issues with the criminal justice system. Recommendations for training and resourcing reforms are designed to improve service delivery by enhancing service providers' understanding of the needs of communities particularly vulnerable to DFV. The recommendations increase the legal assistance sector's capacity to provide appropriate, targeted legal and advocacy services. This supports individuals as well as fair and efficient processes and outcomes. The recommendations also address key factors relevant to the fair and effective application of the laws, including by expanding the Community Justice Group Program. Collectively, these reforms would support access to justice and equality before the law and help to safeguard against the legislative reforms having disproportionate or unintended consequences.

Our approach to reforming practice and procedure

10.9. Our recommendations for practice and procedure reform focus on reforms that:

- are directly relevant to the defences we are reviewing
- are consistent with our guiding principles and protect and promote human rights, with a particular focus on ensuring equality before the law
- prioritise the application of the laws in the DFV context, while recognising their broader application.

10.10. We aim to promote the public interest in a fair, clear, contemporary and effective criminal justice system. We endeavour to make recommendations that are practical and implementable in the context in which the laws operate.

The need for holistic reforms

10.11. In Chapter 3, we discuss key issues with the legal and criminal justice systems that have shaped the context for our review. They include the significance of delay and its effect on decision-making by parties to a criminal proceeding, as well as its broader systemic effects. We explore key access to justice issues and their effects on people experiencing disadvantage and at a heightened risk of experiencing additional barriers to justice. We discuss the over-representation of people from disadvantaged groups within the criminal justice system, notably Aboriginal peoples and Torres Strait Islander peoples and people with cognitive disability, and its relevance for our recommended reforms.

10.12. In consultations, many stakeholders shared their views of the effects of, and need for reforms to address, these broader issues.[4] Our review findings reinforce the connection between these systemic issues and the heightened risk of adverse outcomes for the most disadvantaged individuals engaged in the criminal justice system. These insights, and our research findings, build on a strong body of existing work to reinforce the urgent need for reforms to address these systemic issues.

10.13. Addressing these issues is beyond this review's scope. However, it is important context and ensures our reform agenda is appropriately informed and pragmatic. We have refined our approach to identify reforms that would address problems and alleviate systems pressures within the parameters of our terms of reference.

Current work to address systemic issues

10.14. Multiple stakeholders with broad and diverse functions support Queensland's criminal justice system. Along with the QPS, courts and legal profession, stakeholders across multiple disciplines perform significant roles. Many undertake vital work to address broader issues with the criminal justice system that affect equality. This may be carried out as part of, or in addition to, their core roles. This work is significant and dynamic and it is not possible to comprehensively reflect it in this report.

10.15. Our research and consultation with a wide range of stakeholders assures us of the breadth and integrity of the work already underway to enhance Queensland's criminal justice system. We are particularly assured by the extent of leadership by, and co-design with, groups that have historically experienced disadvantage within the criminal justice system. This includes Aboriginal peoples and Torres Strait Islander peoples, people with disability, people from culturally and linguistically diverse backgrounds and people from the LGBTQIA+ community.

10.16. Our recommendations for practice and procedure reforms aim to supplement and strengthen existing initiatives and introduce complementary reforms.

Our reform lens

10.17. We developed our recommendations for reform through a human rights and trauma-informed lens. Human rights law provides a framework for considering, promoting and reconciling different rights, aims and interests. We are particularly mindful of the importance of protecting and promoting the right to equality, by which everyone is equal before the law. This right is recognised in all major human rights treaties and requires governments, among other things, to make laws, policies and programs that promote equality.[5] It encompasses the concept of substantive equality, which justifies a tailored approach to law and policy development and the provision of 'special measures' to promote equal outcomes for certain groups that may

otherwise experience limitations on their rights and freedoms.[6] In Queensland, the right to equality is recognised in the Human Rights Act which:

- requires laws and policies to be applied equally and without discrimination[7]
- requires public entities, courts and tribunals to treat all people equally when applying the law[8]
- requires the law to provide equal protection for all people[9]
- recognises that, at times, differential treatment of certain groups may be required to ensure those groups can have equal protection of this law.[10]

10.18. The Human Rights Act also:

- recognises and protects individual rights in criminal proceedings, including:
  - the right to be presumed innocent until proven guilty according to law[11]
  - the right to a fair trial[12]
  - minimum guarantees about how a person charged with an offence is treated and how criminal proceedings are conducted without discrimination[13]
  - review of a conviction and any sentence imposed[14]
- details special protections for children involved in criminal proceedings, including the right to:
  - be treated in a way appropriate for the child's age[15]
  - not be detained with adults[16]
  - be brought to trial as quickly as possible[17]
- recognises and protects rights more generally relevant to criminal proceedings, including the right to:
  - protection from torture and cruel, inhuman or degrading treatment[18]
  - liberty and security of person[19]
  - humane treatment when deprived of liberty[20]
  - not be tried or punished more than once for the same offence[21]
  - protection from the retrospective operation of criminal laws.[22]

10.19. As noted above, practice and procedure reforms are needed across the spectrum of the criminal justice system. Many of these issues are directly relevant to, but also extend beyond, our review's scope and our practice and procedure recommendations. We also recognise the relevance of other factors to the operation of the criminal justice system. They include:

- the adequacy of legal assistance sector funding and how it affects that sector's ability to meet the critical need for legal advice and representation, particularly for those who may face additional barriers to justice
- gaps in accessible, appropriate and timely community awareness and education about laws and law reforms
- training deficits for key stakeholders and staff of organisations that play a key role in criminal justice processes, including in cultural capability and DFV
- cultural and attitudinal issues within service delivery organisations, particularly in regional and remote areas, that impact staff retention and workplace culture and affect individuals' experiences of criminal justice processes.

A changing legal landscape

10.20. We note in Chapter 3 that our review takes place in the context of an increasing focus on DFV, driven by growing evidence of its significance and prevalence in Queensland and its lethality risk.[23] This has led to a rapidly changing legal and regulatory context for DFV offending.

10.21. In developing our recommendations for practice and procedure reform, we considered the need for the defences to reflect the current context. We also recognise the importance of ensuring the reforms have enduring relevance. This requires that they are evidence-based and reflect contemporary understandings of DFV.

10.22. In Chapter 3, we discuss key contextual factors. Findings of particular relevance to our recommendations for practice and procedure reform include:

- difficulties DFV victim-survivors can face reporting their abuse
- pressure DFV victim-survivors can face to withdraw police complaints
- failure to properly understand and recognise DFV, including misidentification of the primary aggressor and inaccurate risk assessments for victim-survivors and their children
- lack of understanding of DFV by key stakeholders at every stage of the criminal justice system, including the use of stereotypes about an 'ideal victim' and the use of minimising language.

10.23. Our recommendations are evidence-based and insights-driven. They reflect current understandings and best practice with flexibility to respond to future developments in research, policy and practice. They include pragmatic consideration of factors relevant to their implementation, including appropriate training and resourcing for key stakeholders. We also recommend ongoing monitoring and review to ensure our reforms work fairly and effectively (**Recommendations 19, 20, 36**).

References

1 QLRC, Review of Particular Criminal Defences: Equality and Integrity — Reforming Criminal Defences in Queensland (Consultation Paper, February 2025) 60–71.
2 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 41–7.
3 Victims' Commissioner and Sexual Violence Review Board Act 2024 (Qld) sch 1.
4 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 47–9.
5 International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 2.2, 26.
6 Explanatory Notes, Human Rights Bill 2018 (Qld) 19.
7 Human Rights Act 2019 (Qld) ss 15(3)–(4).
8 Human Rights Act 2019 (Qld) ss 15(3)–(4).
9 Human Rights Act 2019 (Qld) s 15(3).
10 Human Rights Act 2019 (Qld) ss 15(3), (5).
11 Human Rights Act 2019 (Qld) s 32(1).
12 Human Rights Act 2019 (Qld) s 31.
13 Human Rights Act 2019 (Qld) s 32(2).
14 Human Rights Act 2019 (Qld) s 32(4).
15 Human Rights Act 2019 (Qld) s 33(3).
16 Human Rights Act 2019 (Qld) s 33(1).
17 Human Rights Act 2019 (Qld) s 33(2).
18 Human Rights Act 2019 (Qld) s 17.
19 Human Rights Act 2019 (Qld) s 29.
20 Human Rights Act 2019 (Qld) s 30.
21 Human Rights Act 2019 (Qld) s 34.
22 Human Rights Act 2019 (Qld) s 35.
23 Chapter 3, 'The DFV context'.

CHAPTER 11

Investigative and charging reforms

Contents

Recommendations

R21 The Queensland Police Commissioner should amend the Domestic Violence chapter of the Operational Procedures Manual to provide guidance to police in determining the person most in need of support and protection in a relationship where DFV is occurring.

R22 The Police Powers and Responsibilities Act 2000 should be amended to expand the nature and scope of protections available for people questioned for indictable offences. Safeguards should be available to all people who may experience additional barriers to justice, including:

(a) DFV victim-survivors

(b) Aboriginal peoples and Torres Strait Islander peoples

(c) people with disability and mental illness

(d) people from culturally and linguistically diverse backgrounds.

R23 The Director of Public Prosecutions should update the Director's Guidelines to include new chapters on prosecuting and obtaining evidence from DFV victim-survivors and Aboriginal persons and Torres Strait Islander persons. The chapters should be developed in consultation with DFV victim-survivors and experts, the First Nations Justice Office, Aboriginal peoples and Torres Strait Islander peoples and their communities and representative organisations.

R24 The Queensland Police Commissioner should revise and supplement existing training programs for police regarding available defences.

Introduction

11.1. In this chapter, we set out our recommendations to reform practice and procedure for investigative and charging offences. These practice and procedure reforms would:

- reduce further traumatisation of DFV victim-survivors
- support vulnerable defendants to access the reformed defences.

11.2. We know that some communities or groups with complex and intersecting vulnerabilities experience particular barriers to accessing justice. This includes DFV victim-survivors, Aboriginal peoples and Torres Strait Islander peoples, people with disability, people from culturally and linguistically diverse backgrounds and other groups.[1]

11.3. DFV victim-survivors with intersecting identities can be vulnerable to misidentification, which is a distinct barrier to accessing justice. Misidentification as a DFV perpetrator can occur when a victim-survivor does not present as a stereotypical, or 'ideal', victim.[2] The Commission of Inquiry recognised that police can:

> misidentify victim-survivors as perpetrators when they fail to recognise parties with vulnerabilities that limit their ability to fully engage in an investigation, and to make reasonable adjustments to support their involvement.[3]

11.4. Victim-survivors may have difficulty disclosing their history of DFV abuse and the interconnectedness of this abuse to the offending conduct.[4] Defendants from vulnerable communities may struggle to access defences and feel pressured to plead guilty despite

defences being available.[5] We discuss these issues in Chapter 3[6] and examine them in detail in Background Paper 3.[7]

11.5. This chapter has four sections. Section one provides a summary of our recommendations to improve criminal justice practice and procedure to assist our reformed defences to work as intended. Section two provides a rationale for these changes. The third section provides an analysis of the human rights considerations of our recommendations. The final section sets out the implications of our recommended reforms.

Overview of reforms

Amending the Operational Procedures Manual

11.6. **Recommendation 21** is that the Queensland Police Commissioner amend the Domestic Violence chapter of the OPM to provide guidance to police in determining the person most in need of support and protection in a relationship where DFV is occurring.[8] Our reform would ensure police, frontline staff and prosecutors have access to clear and detailed guidance when investigating DFV incidents. This would improve individual responses to victim-survivors in civil domestic violence protection order and criminal justice processes.

11.7. The amended chapter would:

- include the factors for determining the person most in need of protection as set out in section 22A of the Domestic and Family Violence Protection Act
- require police responding to a DFV callout to consider and document how the factors for determining the person most in need of protection apply to the circumstances of the case
- require police to consider the victimisation and abuse history and any prior records of complaint/s of a person suspected of committing a domestic violence offence, before charging them with an offence, including whether the person may have been:
  - acting in self-defence or defence of another in response to DFV victimisation
  - acting in response to or because of DFV victimisation
  - misidentified as the primary aggressor in the incident under investigation or in the past.

Legislative safeguards for questioning

11.8. **Recommendation 22** provides for the amendment of safeguards in the Police Powers and Responsibilities Act to expand the nature and scope of protections available for people questioned for indictable offences.[9] Safeguards would be available to all people who may experience additional barriers to justice, including:

- DFV victim-survivors
- Aboriginal peoples and Torres Strait Islander peoples
- people with disability or mental illness
- people from culturally and linguistically diverse backgrounds.[10]

11.9. Chapter 15, part 3 of the Police Powers and Responsibilities Act 'applies to a person if they are in the company of police for the purpose of being questioned as a suspect about the person's

involvement in the commission of an indictable offence'.[11] It prescribes safeguards to protect the rights of persons questioned by police for indictable offences and to ensure fairness. For example, police must not obtain a confession by a threat or promise and before being questioned for an indictable offence, a person has the right to speak with a lawyer.[12] Questioning by police is often a person's first point of contact with the criminal justice system. The way police conduct questioning can impact the entire process of investigation, charging and prosecution. Compliance with the safeguards in chapter 15, part 3 ensures information obtained during or after questioning is admissible as evidence in court.

11.10. The nature and scope of protections afforded by chapter 15, part 3 of the Police Powers and Responsibilities Act are limited. For example, special requirements for questioning vulnerable groups apply only to Aboriginal peoples and Torres Strait Islander peoples, children, persons with impaired capacity and intoxicated persons and these protections have limitations.[13]

11.11. Our recommendation to amend chapter 15, part 3 of the Police Powers and Responsibilities Act would ensure appropriate protection is available to people from vulnerable communities who may experience barriers to justice during police questioning for an indictable offence, including DFV victim-survivors, Aboriginal peoples and Torres Strait Islander peoples, people with disability or mental illness and people from culturally and linguistically diverse backgrounds.

11.12. Amendments to chapter 15, part 3 would be developed in consultation with stakeholders. These amendments should ensure that:

- the existing rights of all suspects to communicate with and have a friend, relative or lawyer present during questioning are sufficient[14]
- further protections required for people from vulnerable communities when being questioned are afforded[15]
- an interpreter is provided for all persons unable to fully understand and participate in questioning[16]
- an intermediary is required when questioning a person suspected to have communication support needs related to offences relevant to the Queensland Intermediary Scheme[17]
- protections apply to questioning at the scene of a crime and recorded by body worn camera.

Amending the Director's Guidelines

11.13. **Recommendation 23** is that the Director of Public Prosecutions should update the Director's Guidelines to include new chapters on prosecuting and obtaining evidence from DFV victim-survivors and Aboriginal persons and Torres Strait Islander persons. This would improve prosecutorial practice and equality before the law.

11.14. The Director of Public Prosecutions may issue guidelines to staff and police for the prosecution of offences.[18] The Director's Guidelines 'assist the exercise of prosecutorial decisions to achieve consistency and efficiency, effectiveness and transparency in the administration of criminal justice'.[19] These guidelines recognise that the ODPP represents the community and that the 'community's interest is that the guilty be brought to justice and that the innocent not be wrongly convicted'.[20]

11.15. A new chapter setting out considerations for prosecution of an accused who is a DFV victim-survivor should be developed in consultation with DFV experts and victim-survivors with lived experience. This chapter should include:

- information about DFV, including coercive control, how it affects victim-survivors and its relationship with offending
- information about myths and misconceptions about DFV and advice on how to address these
- guidance on deciding whether to prosecute and which offence to charge, including information on how to interpret the public interest criteria and apply them in cases where offending was in the context of DFV.

11.16. Where there was DFV in a relationship, including coercive control, the guidance should require prosecutors to consider whether:

- the suspect was the person most in need of protection
- the suspect was the primary perpetrator
- the offending was in response, or due, to the suspect's victimisation
- certain protections should apply, such as special witness protections or the Queensland Intermediary Scheme.

11.17. A new chapter setting out considerations for prosecution of an accused who is an Aboriginal person or Torres Strait Islander person should be developed in consultation with the First Nations Justice Office, Aboriginal peoples and Torres Strait Islander peoples, communities and organisations. In relation to the new chapter, consideration should be given to the inclusion of:

- information about cultural factors that may affect Aboriginal peoples and Torres Strait Islander peoples
- a requirement for prosecutors to consider whether cultural factors were relevant to the alleged offending
- guidance on deciding whether to prosecute and which offence to charge, including information on how to interpret the public interest criteria and apply the public interest test in cases where cultural factors were relevant to the alleged offending
- a requirement for prosecutors to consider whether certain protections should apply, such as special witness protections or the Queensland Intermediary Scheme.

11.18. The new chapters would assist prosecutors to act as model litigants when prosecuting people from vulnerable communities. The revised Director's Guidelines would be complemented by our recommended training in DFV, cultural capability and barriers to justice (**Recommendation 33**), which we discuss in Chapter 14.

Police training on defences

11.19. **Recommendation 24** is that QPS revise and supplement existing training programs for police regarding available defences. This includes training on the reformed defences.[21]

11.20. The OPM already requires police investigating an offence to be satisfied of certain matters before taking action against a suspect for an offence. These matters are:

- that an offence has been committed
- all elements of the charge(s) can be proven
- any relevant defences can be excluded
- admissible evidence to substantiate the charge(s) can be presented when necessary.[22]

11.21. The OPM is consistent with the Director's Guidelines in the guidance it provides police for considering the sufficiency of evidence. The OPM requires sufficient admissible evidence to

prove a charge against the defendant.[23] This means there must be a reasonable prospect of a conviction. Police are directed to consider all aspects of the evidence, including admissibility, reliability, contradictory evidence and possible defences.[24]

11.22. Police receive training in the identification of defences at the QPS Academy and develop workplace experience in applying that knowledge. The recommended training would update, revise and supplement current training programs and support the implementation of QPS policies and procedures. This would help ensure that investigations are conducted fairly and that charges are only laid when there is sufficient evidence.

11.23. We understand the QPS has its own internal legal units, including a team that provides legal advice to police and local police prosecution services which operate State-wide. These units may be well-placed to help develop, or lead, the recommended training programs.

11.24. Training could be co-delivered by the ODPP and QPS Prosecution Services, given that ultimate responsibility for criminal prosecutions in Queensland is vested in the ODPP.

The case for reform

11.25. This section considers three key arguments justifying our recommended reforms, which are:

- improving evidence collection, charging and prosecution practices
- supporting identification of the person most in need of protection
- promoting gender-responsive and trauma-informed practices.

11.26. **Recommendations 21–24** support our guiding principle for reform that 'the defences should better reflect circumstances involving DFV, including coercive control'.[25] They do this by helping to ensure our reformed defences are considered in the context of DFV by police and prosecutors.

Improving evidence collection, charging and prosecution practices

11.27. Stakeholders supported reforms to evidence collection, charging and prosecution practices, recognising:

- a significant power imbalance between a female accused and the police[26]
- DFV victim-survivors' current lack of confidence in the criminal justice system[27]
- the need for systemic service and criminal justice system reform to accompany legislative change.[28]

11.28. As we discuss in Chapter 3, systemic responses to DFV do not always reflect contemporary understanding of DFV. Over recent years, understanding of DFV has evolved and become more sophisticated. It is now recognised that DFV is most often 'characterised by one person being subjected to an ongoing pattern of abuse by another person who is motivated by the desire to dominate and control them', rather than individual incidents of physical violence.[29] When viewed in isolation, DFV incidents may seem minor and insignificant.[30] The Taskforce found that legal and other agency and service systems have struggled to respond to DFV as more than isolated incidents.[31]

11.29. Systemic failure to recognise DFV properly has serious consequences. These include:

- misidentification of the primary aggressor

- inaccurate risk assessments for victim-survivors and their children
- erosion of victim-survivor trust in police
- perpetrators not being held accountable.

11.30. These failures can occur at multiple stages of the criminal justice system as a matter progresses. In turn, these consequences can:

- lead to further physical and mental harm to victim-survivors
- prevent police from obtaining an accurate version of events from victim-survivors during an investigation
- result in police focusing questioning on a victim-survivor's use of violence rather than a defensive intent and need for protection
- delay a victim-survivor from disclosing facts to their legal representative which may support the availability of defences.

11.31. Our reforms would help address these issues by providing police and prosecutors with the guidance and training needed to understand and/or recognise:

- DFV, including coercive control, as a pattern of abuse and its implications for a victim-survivor
- the social context in which DFV, including coercive control, occurs
- the person most in need of protection.

11.32. **Recommendations 21**, **22** and **24** would improve evidence collection and charging practices, for example by:

- ensuring police questioning is conducted in a manner conducive to obtaining the best evidence of the circumstances of the offence. This includes by implementing safeguards for people so that information obtained during questioning is admissible as evidence in court
- requiring police to document the evidence used to identify the person most in need of protection, referencing relevant factors for determining the person most in need of protection as set out in section 22A of the Domestic and Family Violence Protection Act and how these factors apply to the circumstances of a case. This would:
  - support decisions to prosecute abusers, provide protections to victim-survivors and inform the facts relied upon to prove a charge
  - provide a record of DFV relationship factors which informed a charging decision and aid identification of patterns of abuse over time
  - support defences relied upon by a victim-survivor in any subsequent relevant case and support the prosecution to exclude defences raised by a primary perpetrator
  - reinforce the credibility of the person most in need of protection as a witness or accused
  - assist experts preparing sentencing reports in support of sentence mitigation to understand the full context in which the offending occurred and whether the accused is the person most in need of protection or the primary perpetrator
- ensuring police consider during their investigation any patterns of abuse, coercive or controlling motives and the broader relationship context in which an incident occurred

- supporting identification of relevant social framework evidence (as we discuss in Chapter 3 and Background Paper 3)
- informing a more accurate understanding of the offence
- supporting identification of circumstances where defences may apply, particularly self-defence, to ensure charging decisions are appropriate. This would help ensure:
  - appropriate charges are laid from the outset and that no charges are laid without consideration of evidence of any arguable defence, reducing the need to withdraw charges
  - fair criminal justice outcomes for all people suspected of criminal offences.

11.33. Prosecution practices would be improved by our recommendation for new chapters in the Director's Guidelines focusing on issues relevant to DFV victim-survivors and Aboriginal peoples and Torres Strait Islander peoples (**Recommendation 23**). This guidance would support prosecutors:

- to understand and recognise relevant DFV contextual factors of a case, where the offending was in the context of DFV, to ensure that:
  - prosecution is in the public interest. This includes applying a contemporary understanding of DFV to the public interest criteria when considering the public interest test[32]
  - an indictment reflects the most appropriate charge
- in their interactions with people from vulnerable communities by requiring consideration of whether additional supports are needed to enable witnesses to give their best evidence. This may include protections afforded by special witness provisions or the Queensland Intermediary Scheme.[33]

11.34. **Recommendation 23** is not novel. The Director's Guidelines already provide guidance intended to inform the decision to prosecute particular cases, including, for example, where the accused is a child, aged or infirmed or has mental illness.[34] This guidance provides prosecutors with important information such as:

- matters that should be carefully considered
- public interest factors that may be of particular relevance
- general circumstances in which it may not be in the public interest to prosecute.[35]

11.35. Inclusion of new chapters focusing on considerations relevant to DFV victim-survivors and Aboriginal peoples and Torres Strait Islander peoples would build on this prosecutorial resource.

Identifying the person most in need of protection

11.36. Since the commencement of the Domestic and Family Violence Protection Act, Queensland's domestic violence laws have incorporated the concept of the person most in need of protection. One of the principles for administering the Act is that the person most in need of protection should be identified 'where there are conflicting allegations of domestic violence or indications that both persons in a relationship are committing acts of violence, including for their self-protection'.[36] In 2023, a section setting out factors relevant to accurately identifying the person most in need of protection was inserted.[37] This reform responded to recommendations and comments of the Domestic and Family Violence Death Review and Advisory Board and involved consultation with DFV stakeholders.[38]

11.37. The Domestic and Family Violence Protection Act recognises that when both parties are alleged to use violence, including for self-defence, the person most in need of protection should be identified. Unless there is clear evidence both people require protection from each other, a protection order should only be made for the protection of the person most in need of protection.[39] The factors relevant to the assessment[40] are also relevant to whether a person should be charged with a criminal offence for using force in the context of DFV.

11.38. The Death Review and Advisory Board has recognised that 'it is of critical importance that the person most in need of protection, and the person most likely to inflict harm, are correctly identified at every point of contact with services who may be in a position to assist'.[41]

11.39. Accurately identifying the person in most need of protection is a critical step in ensuring the criminal justice process is not abused to further traumatise or victimise DFV victim-survivors.

11.40. In its 2016–17 Annual Report, the Death Review and Advisory Board found that a substantial portion of DFV homicide victims had been viewed as perpetrators prior to their death:

- in 44.4% of DFV-related deaths of women considered by the Board, the woman had been identified by police as a respondent on at least one occasion
- in the majority of cases reviewed at a meeting focused on Aboriginal family violence homicide, nearly all victims had a prior history as both respondent and aggrieved.[42]

11.41. The Board acknowledged that not imposing a criminal justice response when victim-survivors use force 'may be seen to be condoning or dismissing their use of abusive tactics' and that there are challenges in identifying patterns of behaviour over time if 'information is not easily accessible or when there is a need for an immediate response to a crisis situation'.[43]

Who is the person most in need of protection? [44]

Section 22A of the Domestic and Family Violence Protection Act, inserted in 2023, provides legislative guidance for identifying the person most in need of protection. It recognises the increased vulnerability to victimisation of women, children, Aboriginal peoples and Torres Strait Islander peoples, people from a culturally and linguistically diverse background, people with disability, LGBTQIA+ people and elderly people.

A person is most in need of protection if the other person's behaviour towards them is likely:

- abusive, threatening or coercive
- controlling or dominating, causing them to fear for their safety, the safety of a child, another person or an animal.

Their own behaviour is likely:

- for self-protection, or for the protection of others (for example, a child or an animal)
- in retaliation to the other person's behaviour
- a result of the cumulative impact of the other person's domestic violence.

Factors relevant to whether the person is most in need of protection include:

- the history of the relationship and any domestic violence between the parties
- the nature and severity of harm caused by each person's behaviour
- the level of fear experienced by each person due to the other's behaviour
- each person's ability to:
  - cause serious harm
  - control or dominate the other, causing fear for safety or wellbeing.

11.42. Despite the recent legislative guidance on identifying the person most in need of protection and increased police training on the issue, misidentification of victim-survivors as perpetrators of DFV by police was consistently raised as a significant issue throughout our consultations and submissions.[45]

11.43. Stakeholders including the Bar Association of Queensland, Legal Aid Queensland and the Office of the Victims' Commissioner all supported amendments to the OPM to require police to consider the person's history of victimisation prior to charging them with an offence.[46] The Bar Association of Queensland also supported inclusion of a list of non-exhaustive factors in the OPM for police to consider when identifying DFV.[47]

11.44. Chapter 9 of the OPM (Domestic violence) requires police to conduct holistic investigations and identify the person most in need of protection.[48] This chapter was reviewed following recommendations made by the Commission of Inquiry[49] and the Taskforce.[50]

11.45. Chapter 9 of the OPM does not, however, list the factors relevant to identifying who is the person most in need of protection. This means that police must rely on the Domestic and Family Violence Protection Act or other sources for these factors. The chapter also lacks specific guidance on assessing defensive force used by DFV victim-survivors.

11.46. We recognise that police have access to the OPM in the field using electronic devices. These can also be used to access laws online. Given the OPM's repeated references to the need for police to identify the person most in need of protection, it seems more practical to include

these factors in the OPM. This would save police having to cross-check the OPM against the Domestic and Family Violence Protection Act.

11.47. **Recommendation 21** would ensure that Chapter 9 of the OPM provides guidance to police in determining the person most in need of support and protection in a relationship where DFV is occurring.

11.48. There are clear practical benefits in consolidating relevant information in the OPM:

- It would reflect the urgent, responsive nature of police duties in circumstances involving DFV and aid their assessment of whether a person is using force defensively. This would support consideration of the availability of self-defence from the outset.
- Including the section 22A definition and related information in Chapter 9 would recognise the weight that the OPM carries, as an exercise of a statutory power of the Commissioner.[51]
- It would ensure all matters relevant to whether a person is most in need of protection are clearly set out, together with the procedural requirements relevant to investigation of DFV matters.
- It would assist police to make more accurate assessments in relation to people who may otherwise be misidentified as the primary perpetrator, including:
  - people who do not conform to stereotypes of the 'ideal victim' (see Chapter 3)
  - people who use resistive violence
  - men, when they are the person most in need of protection.

11.49. We heard from the QPS that multiple resources and tools build and support police understanding of DFV. Training begins with recruit training at the QPS Academy and learning is reinforced through a combination of firsthand experience, online learning, mentoring during the First Year Constable Program and resources available to police in the field. Police are also provided protective assessment framework tools, online training products and guidance for responding to DFV incidents. These resources could be revised to ensure they reflect the amendments to the OPM.

Promoting gender-responsive and trauma-informed practices

11.50. DFV is highly gendered. We discuss this in Chapter 3 and Background Paper 3. Most DFV is perpetrated by men and most victim-survivors are women and children. Queensland's Domestic and Family Violence Death Review and Advisory Board recently found that over three-quarters of intimate partner homicides were committed by men who killed their current or former female partner.[52]

11.51. In our homicide cases research (Research Project 6), we identified 448 cases where a man was charged with murder and 70 cases where a woman was charged. Where a woman was charged with murder:

- 18.5% were convicted of murder, compared to 44% of men
- two pleaded guilty to murder (both partway through their trial), compared to 54 men
- 58.5% were convicted of manslaughter, compared to 38.5% of men
- 23% were not convicted of any homicide offence, compared to 17.5% of men.[53]

11.52. These results suggest that some women are being charged with murder in circumstances where a charge of manslaughter is more appropriate.

11.53. Trauma is also a significant consideration for criminal justice practice and procedure. DFV victim-survivors frequently experience severe trauma that can affect their ability to provide a coherent and cohesive account of their experiences.[54]

11.54. People from vulnerable communities face intersecting disadvantage arising from barriers to accessing justice and severe trauma, including experiencing DFV (see Chapter 3). This can make it harder for police to obtain a coherent and complete account of people's circumstances during questioning and affects criminal justice outcomes.

11.55. A victim-survivor's inability to disclose abuse can affect the course of the investigation, preventing investigators from considering factors relevant to defences. An incomplete understanding of an incident and its context at the start of the criminal justice process can make it difficult for victim-survivors to correct misunderstandings and receive a just outcome.

11.56. It can also present challenges for prosecutors in conducting effective pre-trial conferences and in eliciting cogent and cohesive testimony from victim-survivors at applications for domestic violence protection orders and during criminal trials.

11.57. While recent reforms arising from recommendations of the Taskforce and the Commission of Inquiry were aimed at addressing these issues, our research and consultations have shown that these concerns remain.

11.58. As we discuss in Chapter 3, Aboriginal peoples and Torres Strait Islander peoples are over-represented as offenders, victims and victim-survivors in the criminal justice system:

- Aboriginal peoples and Torres Strait Islander peoples constitute 4.6% of Queensland's population but make up 35% of the prison population.
- The Commission of Inquiry found that criminal justice responses to DFV can contribute to further over-representation of Aboriginal peoples and Torres Strait Islander peoples. Aboriginal women and Torres Strait Islander women who are DFV victim-survivors can be criminalised because they use resistive violence in response to DFV abuse.
- Our homicide cases research (Research Project 6) found that Aboriginal and Torres Strait Islander women charged with homicide offences were often DFV victim-survivors. Most pleaded guilty to manslaughter rather than pursuing an acquittal on the basis of self-defence at trial, despite killing in confrontational circumstances. None who killed their abusive intimate partners were acquitted.[55]
- This is consistent with Nash and Dioso-Villa's research findings. They observed that Aboriginal women and Torres Strait Islander women face greater risks that their defensive actions may be attributed to 'substance abuse issues and a history of mutual violence within a "volatile" and "turbulent" relationship' and that this overlooks 'the objectively dangerous reality of living within an abusive relationship and the severity of the abuse perpetrated by the deceased'.[56]

11.59. Access to relevant information and guidance for the QPS and ODPP would improve police responses to DFV victim-survivors and vulnerable communities by assisting them to identify the person most in need of protection. **Recommendation 22** would establish a framework to strengthen communication by police and prosecutors with people who have experienced DFV.

11.60. We know that victim-survivors have significant difficulty reporting their abuse to police.[57] Our recommendation to amend the Police Powers and Responsibilities Act would support police to appropriately and effectively question people with intersecting vulnerabilities who face barriers to accessing justice and are affected by trauma arising from their experience of DFV.

Our reforms would broaden protections for people questioned about indictable offences and expand who can access the Police Powers and Responsibilities Act safeguards. Given that the safeguards aim to reduce vulnerability and disadvantage in police interviews, it is important that protections are broad and inclusive in scope and not capable of arbitrary or subjective limitation in practice.

11.61. Submitters strongly supported special Police Powers and Responsibilities Act protections during questioning by police for DFV victim-survivors.[58] These protections already apply to some vulnerable groups, such as Aboriginal peoples, Torres Strait Islander peoples, children and persons with impaired capacity.[59] Feedback we received during consultations suggests police protections for interviewing Aboriginal peoples and Torres Strait Islander peoples are discretionary and can be applied inconsistently. For example, police may not ask a person with lighter skin if they identify as an Aboriginal person or a Torres Strait Islander person.

11.62. **Recommendation 22** would amend the Police Powers and Responsibilities Act to address key issues with the safeguards, which include:

- a person being interviewed by police will only receive the special protections if police 'reasonably suspect' the person belongs to a particular vulnerable group[60]
- police:
  - may deny a person the right to have a lawyer or other support person present during questioning if the time it will take the person to arrive is not considered reasonable[61]
  - are only required to allow a person being questioned to speak to their lawyer where they cannot be overheard if 'reasonably practicable'[62]
  - may exclude a support person from the interview if they suspect they are unwilling to act as a support person because they are ill, injured, in pain or tired[63]
- a person will only have the right to an interpreter if the police 'reasonably suspects' they are unable to speak English with reasonable fluency due to inadequate knowledge of the English language or a physical disability.[64] Police are not required to assess the person's ability to understand questions, which can lead to failing to provide support or an interpreter when a person cannot fully understand police questions or give detailed responses.

11.63. Significant implications flow from these assessments. This includes in relation to a person's experience of the questioning process and the effectiveness of subsequent stages of the criminal justice process and outcomes.

11.64. Developments in police equipment and technology have also altered the landscape in which the Police Powers and Responsibilities Act safeguards operate. When the Act was enacted, police interviews were predominately conducted in an interview room within a QPS facility and were principally recorded using cassette or VHS recorders. Now, police wear digital body-worn cameras and routinely record their interactions with victims, suspects and witnesses at the scene. Amendments to the Police Powers and Responsibilities Act would clarify whether safeguards apply in situations where a person is questioned at the scene in relation to an indictable offence and when police caution a suspect.

11.65. Ensuring adequate supports are available for people from vulnerable communities during police questioning would support improved policing practices and:

- reduce re-traumatisation of victims in the criminal justice system
- reduce re-traumatisation of witnesses who may be victims of crime

- support appropriate charging and successful prosecutions by improving the quality of witness evidence.

11.66. Training, investigative and decision-making support for QPS would improve responses to the needs of DFV victim-survivors.

11.67. **Recommendation 23** would amend the Director's Guidelines to ensure prosecutors act as model litigants in cases involving witnesses or people charged with offending who are:

- DFV victim-survivors
- Aboriginal peoples and Torres Strait Islander peoples.

Human rights considerations

11.68. By reforming QPS and ODPP practice and procedure for investigating and charging offences, our recommendations promote human rights.

11.69. **Recommendations 21–23** recognise that people who experience systemic disadvantage have difficulty accessing defences and the criminal justice system in general. Addressing these barriers promotes the right to recognition and equality before the law, particularly for DFV victim-survivors, Aboriginal peoples and Torres Strait Islander peoples, people with disability and mental illness and people from culturally and linguistically diverse backgrounds. Recognition and equality before the law recognises systemic inequality for particular groups and corresponds with other positive obligations to address systemic disadvantage and discrimination.[65]

11.70. These rights are realised by improving the ability of the police to identify the person most in need of protection (**Recommendation 21**). This particularly promotes the equality rights of Aboriginal women and Torres Strait Islander women and women from culturally and linguistically diverse backgrounds who are disproportionately misidentified as perpetrators at high rates. Equality rights are further advanced by mandating protections during police questioning for people who experience barriers to justice (**Recommendation 22**).

11.71. ODPP decisions about obtaining evidence and prosecuting must also consider how culture, gender and trauma can shape individual behaviour. Ensuring DFV victim-survivors and Aboriginal peoples and Torres Strait Islander peoples are involved in developing the new chapters of the Director's Guidelines (**Recommendation 23**) promotes the right to recognition and equality before the law and would prevent laws from operating in a way that entrenches further disadvantage.

11.72. Our recommendations also promote rights in criminal proceedings. Defendants who experience disadvantage are more likely to have negative first interactions with the criminal justice system. This could be because of trauma, culture, and systemic bias and discrimination. These systemic factors may affect the decisions an individual makes during pre-trial processes, including whether to admit to an offence they may not have committed or have a justification or excuse for. Ensuring police are aware of applicable defences (**Recommendation 24**) promotes rights in criminal proceedings by improving access to defences for people charged with criminal offences.

11.73. Defendants detained for questioning also have the right to humane treatment. Increasing the skills and knowledge of criminal justice personnel, particularly police and ODPP staff would help ensure people deprived of their liberty are treated with humanity and respect (**Recommendations 21–24**).

11.74. Improving guidance for police when determining the person most in need of protection (**Recommendation 21**) also promotes the right to life. Clearer guidelines that improve safety for victim-survivors and their families would similarly promote the right to liberty and security of the person, the right to protection from torture and cruel, inhuman and degrading treatment and the right to protection of families and children.

Implications of our reforms

11.75. Our reforms would have positive implications beyond criminal justice processes.

11.76. Chapter 9 of the OPM and identification of the person most in need of protection are also relevant to police investigations for civil law protection order matters under the Domestic and Family Violence Prevention Act.[66] Any improvements to practice and procedure for identifying the person most in need of protection in criminal matters would also have positive impacts in civil protection order matters.

11.77. Our recommendations must be resourced to be implemented effectively.

11.78. The QPS would be required to update the OPM, as well as develop a process for police to document their decision-making (**Recommendation 21**). We do not anticipate this would place any substantive additional demands on the QPS and consider that it could be absorbed as part of routine updates and training.

11.79. The resourcing implications of expanding the protections available for people being questioned should be considered in amending Chapter 15, Part 3 of the Police Powers and Responsibilities Act (**Recommendation 22**). While we are not considering reforms in relation to children, our recommended review and reform of Chapter 15 Part 3 of the Police Powers and Responsibilities Act may lead to amendments to the existing protections for children.

11.80. The ODPP may require additional resourcing to develop the new chapters in the Director's Guidelines (**Recommendation 23**). Funding would also be required for DFV victim-survivors and experts, the First Nations Justice Office, Aboriginal peoples and Torres Strait Islander peoples and their communities and representative organisations engaged to partner in the development of the resources.

11.81. Further, we acknowledge that implementation of **Recommendation 24**, which would enhance training for police on the defences, would also have resourcing implications for the QPS. The QPS would require resources to develop, implement and embed ongoing training for police. If the ODPP contribute to design and delivery of the training, they would also require additional resourcing.

11.82. In Chapter 3, we explore the implications of recent developments in our understanding of DFV as an ongoing pattern of abuse, rather than individual incidents of violence. We recognise, among other things, the implications for police investigations. Police are required to take a holistic approach to investigations, rather than investigating discrete incidence of DFV. The Commission of Inquiry recognised the associated resourcing implications for the QPS.[67] We also acknowledge these resourcing implications and the importance of adequate resourcing in supporting appropriate responses.

References

1 Law Council of Australia, The Justice Project (Final Report, August 2018) <https://lawcouncil.au/justice-project/final-report> Introduction and Overview, 20–37.

2 Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 1, xviii.

3 Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence: A Call for Change (Report, November 2022) 54.

4 QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 6–7 [16].

5 QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 39–40 [169].

6 Chapter 3, 'What we know about DFV' and 'Over-representation in the criminal justice system'.

7 QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 14–16 [60]–[67].

8 Queensland Police Service, Operational Procedures Manual (Manual Issue No 108, 1 October 2025) ch 9.

9 Police Powers and Responsibilities Act 2000 (Qld).

10 Chapter 3 includes discussion of barriers to accessing justice faced by vulnerable communities and groups.

11 Police Powers and Responsibilities Act 2000 (Qld) s 415(1).

12 Police Powers and Responsibilities Act 2000 (Qld) ss 416, 418.

13 Police Powers and Responsibilities Act 2000 (Qld) ss 420–423.

14 Police Powers and Responsibilities Act 2000 (Qld) s 419.

15 For example, under Police Powers and Responsibilities Act 2000 (Qld) ch 15 pt 3 div 3.

16 Police Powers and Responsibilities Act 2000 (Qld) s 433.

17 The South Australian Law Reform Institute formed the view that police should have positive obligations to engage a communication support person to all suspects questioned who the investigating officer reasonably suspects may need support: South Australian Law Reform Institute, Providing a Voice to the Vulnerable: A Study of Communication Assistance in South Australia (Report No 16, September 2021) xxxvii. See Chapter 13 'Expanding the Queensland Intermediary Scheme' for a discussion of our recommendation regarding expansion of the Queensland Intermediary Scheme (Recommendation 29).

18 Director of Public Prosecutions Act 1984 (Qld) s 11(1)(a).

19 Office of the Director of Public Prosecutions (Qld), Director's Guidelines (Guidelines, June 2024) 1.

20 Office of the Director of Public Prosecutions (Qld), Director's Guidelines (Guidelines, June 2024) 1.

21 Police must consider possible defences when evaluating the sufficiency of evidence. Queensland Police Service, Operational Procedures Manual (Manual Issue No 108, 1 October 2025) 373 [3.4.3].

22 Queensland Police Service, Operational Procedures Manual (Manual Issue No 108, 1 October 2025) 366 [3.1.1].

23 Police must consider possible defences when evaluating the sufficiency of evidence. Queensland Police Service, Operational Procedures Manual (Manual Issue No 108, 1 October 2025) 373 [3.4.3].

24 Police must consider possible defences when evaluating the sufficiency of evidence. Queensland Police Service, Operational Procedures Manual (Manual Issue No 108, 1 October 2025) 373 [3.4.3].

25 QLRC, Review of Particular Criminal Defences: Our Guiding Principles for Reform (Background Paper No 2, July 2024) 12.

26 Legal Aid Queensland, Submission 31.

27 Victims' Commissioner, Submission 32.

28 Victims' Commissioner, Submission 32; Rachel Dioso-Villa and Caitlin Nash, Submission 38.

29 Explanatory Notes, Domestic and Family Violence Protection Bill 2011 (Qld) 3.

30 Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 252.

31 Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 252.

32 Office of the Director of Public Prosecutions (Qld), Director's Guidelines (Guidelines, June 2024) 3–4 [4].

33 This would supplement existing support provided in Guideline 25 'Victims': Office of the Director of Public Prosecutions (Qld), Director's Guidelines (Guidelines, June 2024) 29–35 [25].

34 Office of the Director of Public Prosecutions (Qld), Director's Guidelines (Guidelines, June 2024) 5–8 [5].

35 Office of the Director of Public Prosecutions (Qld), Director's Guidelines (Guidelines, June 2024) 5–8 [5].

36 Domestic and Family Violence Protection Act 2012 (Qld) s 4(2)(d), as enacted. This concept is now in s 4(2)(e).

37 Domestic and Family Violence Protection Act 2012 (Qld) s 22A as inserted by Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023 (Qld) s 34.

38 Explanatory Notes, Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 (Qld) 6–7.

39 Domestic and Family Violence Protection Act 2012 (Qld) s 4(2)(e).

40 Set out in Domestic and Family Violence Protection Act 2012 (Qld) s 22A.

41 Domestic and Family Violence Death Review and Advisory Board, Annual Report 2016–17 (Report, 2017) 83.

42 Domestic and Family Violence Death Review and Advisory Board, Annual Report 2016–17 (Report, 2017) 82.

43 Domestic and Family Violence Death Review and Advisory Board, Annual Report 2016–17 (Report, 2017) 83.

44 Domestic and Family Violence Protection Act 2012 (Qld) s 22A.

45 LGBTI Legal Service, Submission 15; Victims' Commissioner, Submission 32; Queensland Council for Civil Liberties, Submission 35; Bar Association of Queensland, Submission 42.

46 Legal Aid Queensland, Submission 31; Victims' Commissioner, Submission 32; Queensland Council for Civil Liberties, Submission 35; Bar Association of Queensland, Submission 42.

47 Bar Association of Queensland, Submission 42.

48 Queensland Police Service, Operational Procedures Manual (Issue 108, October 2025) 760–3 [9.2.1].

49 See recommendation 18 in: Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence: A Call for Change (Report, November 2022) 24.

50 See recommendation 33 in: Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) lx.

51 The Operational Procedures Manual is issued pursuant to the Police Service Administration Act 1990 (Qld) s 4.9.

52 Of the 186 people killed by an intimate partner, 141 were women and girls. Domestic and Family Violence Death Review and Advisory Board, Annual Report 2020–21 (Report, 2021) 3.

53 QLRC, Homicide Cases (Research Project 6, 2025).

54 QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 39–41 [169]–[174].

55 QLRC, Homicide Cases (Research Project 6). We used Microsoft Excel to analyse data extracted from sentencing remarks, and court data provided by the Courts Performance and Reporting Unit. We conducted crosstabulations to explore the relevance for women convicted of an intimate partner homicide of factors such as a history of DFV victimisation, substance abuse or dependence, intoxication, and whether the killing occurred in defensive circumstances. See Appendix F, 'Research Methodology' for limitations and methodology.

56 Caitlin Nash and Rachel Dioso-Villa, 'Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners' (2023) 30(9) Violence Against Women 2275, 2294.

57 Stella Tarrant, Women Who Kill Their Spouse in A Context of Domestic Violence: An Opinion for the Law Reform Commission of Western Australia (Opinion, August 2006) 12–13; Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 269; Australasian Institute of Judicial Administration, 4.1. Myths and Misunderstandings (National Domestic Violence Benchbook, August 2025) <https://dfvbenchbook.aija.org.au/article/1080145>.

58 Queensland Sexual Assault Network, Submission 26; Legal Aid Queensland, Submission 31; Red Rose Foundation, Submission 33; Women's Legal Service Queensland, Submission 37; Bar Association of Queensland, Submission 42.

59 Police Powers and Responsibilities Act 2000 (Qld) ch 15 pt 3 div 3.

60 Police Powers and Responsibilities Act 2000 (Qld) ss 420(2)(b) & (c), 421(1)(b), 422(1)(b), 423(2).

61 Police Powers and Responsibilities Act 2000 (Qld) ss 418(3)–(6).

62 Police Powers and Responsibilities Act 2000 (Qld) s 419(1)(b).

63 Police Powers and Responsibilities Act 2000 (Qld) ch 15 pt 3 div 5. Specifically see: s 428(3)(c).

64 Police Powers and Responsibilities Act 2000 (Qld) s 433.

65 Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981) art 2; Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 4; International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969) art 5.

66 Domestic and Family Violence Protection Act 2012 (Qld) ss 36A, 90A, 160A, 189B, 234.

67 Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence: A Call for Change (Report, November 2022) 87–145.

CHAPTER 12

Pre-trial reforms

Contents

Recommendations

R25 The Office of the Director of Public Prosecutions should have carriage of all murder and manslaughter cases after the defendant's initial appearance before a Magistrate. The Government should ensure that the Office of the Director of Public Prosecutions and the Queensland Police Service are adequately resourced for this purpose. Legal Aid Queensland should also be adequately resourced to provide aid to facilitate early and appropriate defence involvement.

R26 The disclosure provisions in the Criminal Code should be amended to allow a defendant:

(a) charged with a domestic violence offence, to request access to the complainant's domestic violence history

(b) in a criminal proceeding, to request other relevant domestic violence evidence.

The Government should provide adequate resources to the Office of the Director of Public Prosecutions and the Queensland Police Service to respond to disclosure requests.

Introduction

12.1. This chapter discusses recommended reforms to the pre-trial phase of the criminal justice process. This is the phase after police have charged a person with an offence but prior to the start of a trial. We recommend two procedural changes to this phase. They are about who should be responsible for the committal stage of prosecuting murder and manslaughter charges and disclosure of evidence in particular matters.

12.2. As we explain in Chapter 10, these practice and procedure reforms aim to:

- improve the fairness and efficiency of relevant criminal processes and outcomes by promoting early consideration of context and issues, potentially reducing delays in finalising criminal proceedings
- address barriers to justice by improving access to relevant DFV evidence.

12.3. This chapter is in four parts. We begin by explaining the reform related to responsibility for murder and manslaughter committals and outlining the case for our recommended reform. We then consider the reform related to disclosure in the same way. We examine the human rights implications of our recommendations, before concluding with a brief discussion of some implementation issues.

Murder and manslaughter committals

Our reforms explained

12.4. **Recommendation 25** is that the ODPP has responsibility for murder and manslaughter committals. Currently, this is the responsibility of the QPS, other than in jurisdictions where the committals project operates (see below). The QPS would retain responsibility for prosecuting

murder and manslaughter charges until they are to proceed as a committal. At this point, responsibility would transfer to the ODPP.

12.5. Because there are inevitable resourcing implications, part of **Recommendation 25** is that the Government should provide adequate resourcing to support this change. The ODPP would require additional resourcing. The QPS would also be affected. However, because the QPS would have less responsibility for carriage of matters through the committal process, this should reduce its workload and associated expenses. Legal Aid Queensland would also need additional funding to be able to provide aid in a way that facilitates early defence involvement. This could potentially be based on the model used for involvement in the committals project.

12.6. This section first describes the current pre-trial process, then explains who is currently responsible for prosecuting murder and manslaughter committals, before detailing how the reforms would change the current position.

The current pre-trial process

12.7. Currently, after a murder or manslaughter charge is lodged in a Magistrates Court, it must proceed to the Supreme Court for trial or sentence. To proceed to the Supreme Court, the charge goes through a committal process after the initial appearance in the Magistrates Court. However, the committal process can be bypassed if the defence requests an ex-officio indictment. To do so the defendant must indicate that they will plead guilty and the ODPP must consent.[1]

12.8. The main purposes of the committal process are to inform the defendant of the case against them and to ensure there is sufficient evidence to justify the defendant standing trial.[2]

12.9. To assist with case management, Practice Direction No 10 of 2010 outlines the preferred timeframes for various steps at this phase of the process.[3]

12.10. There are different forms of committal process. The different approaches can affect the level of detail in the briefs of evidence required to be disclosed to the defence, the steps required and time taken at this phase. Where murder and manslaughter charges are contested, there are usually additional steps and longer time frames. This may include hearings to determine whether the prosecution should be required to call witnesses to give evidence at a committal hearing. It may also include argument about, and a requirement for the Magistrate to consider, whether there is sufficient evidence to commit the offence charged to a superior court at all, or to commit a different offence.

12.11. Legal Aid Queensland submitted, 'the fact that a murder conviction carries a mandatory life sentence, means that most matters are contested at a committal hearing.'[4] This affects the length of time these matters spend at this phase. One defence counsel we interviewed said:

> I wish that I could get a murder wrapped up in two years. But, you know, it doesn't ever seem to be happening that way. I'm sort of 18 months at the committal stage now and the cases are getting bigger and bigger.[5]

12.12. The extended periods at this phase of the pre-trial process combine with the time awaiting indictment presentation and the time before and at trial and verdict. Among other things, this extended timeframe can affect:

- the time that the defendant spends on remand, which is usually time spent in custody for a person charged with a homicide offence
- the stress for the deceased person's family.

Current responsibility for prosecution during committal process

12.13. Generally, the QPS Police Prosecution Services have responsibility for this phase of the process.[6] This means QPS prosecutors have responsibility for carriage of the matter and the associated prosecutorial decisions, including disclosure, responses to requests for witnesses to provide oral evidence at a committal hearing and court appearances until the matter has been committed.

12.14. It is theoretically possible for a QPS prosecutor to ask their Officer in Charge for authority to withdraw a charge or replace a charge for committal,[7] such as murder with manslaughter, because, on reviewing the brief of evidence, the prosecutor forms the view that there is insufficient evidence or that it is not in the public interest to continue the prosecution.

12.15. However, we heard that it was uncommon for police to negotiate on these types of matters. This is partly because the QPS Police Prosecution Services must not bind the ODPP in a subsequent proceeding.[8] For example, a defence counsel said:

> I had one out of [location] once and police prosecution said to me: 'Oh, this will be a manslaughter any day of the week.' But they wouldn't change the charge and get it committed up for sentence.[9]

12.16. There are exceptions, where the QPS does not have responsibility at the committal phase. The exceptions are regulated by memorandums of understanding or arrangements. These exceptions are:

- Where there is an agreement between the QPS and the ODPP that the ODPP will be responsible for the committal. These are ad hoc arrangements made, usually at the QPS's request, and the QPS can be responsible for the ODPP prosecutor's fees and travel expenses.[10]
- In Ipswich and in the Brisbane Central Magistrates Court, ODPP prosecutors prepare and appear in committal proceedings.[11] This is called the committals project (see below).

12.17. Once a murder or manslaughter charge has been committed to the Supreme Court, responsibility for carriage of the matter, disclosure and prosecution shifts from the QPS prosecutors to the ODPP. The ODPP generally has six months from the date the charge is committed within which to present the indictment in the Supreme Court.[12]

12.18. The ODPP decides whether to indict and for what offence, regardless of the offence that has been committed for trial or sentence.[13] For example, the ODPP may decide not to indict, even when a Magistrate committed a matter, or to discontinue a matter after an indictment is presented.

12.19. The Director's Guidelines encourage early negotiations that may result in a reduction of the seriousness or the number of charges with the purpose of securing a 'just result'.[14] Because of the seriousness of homicide or attempted murder cases, the Director's Guidelines require involvement in decisions about the charges by the Director or Deputy Director, in addition to the requirement to talk to the arresting police officer and seek the views of the victim's relatives. [15]

The committals project

12.20. To improve the efficiency of the criminal justice system through the early resolution of matters, the ODPP commenced a pilot project in Ipswich Magistrates Court in 1994 where ODPP prosecutors took over the work of QPS prosecutors in preparing for and conducting committal proceedings in that region.[16]

12.21. The project was extended to the Brisbane Central Magistrates Court in 1995–96. This part of the committals project involved:

- transfer of responsibility for conducting prosecutions of all matters listed for committal in Brisbane Central Magistrates Court from the QPS to the ODPP
- Legal Aid Queensland providing aid to all financially eligible defendants (without a merit test) to facilitate early defence involvement
- the development of protocols setting out how matters would proceed and time frames, negotiated between the ODPP, Legal Aid Queensland, the QPS and the Chief Magistrate.[17]

12.22. Over the course of the project in Brisbane, changes were made so that the ODPP was not required to appear at the initial mention of the indictable matter. This was due to the workload of the ODPP staff. Instead, QPS prosecutors resumed responsibility for these matters until a matter was adjourned for committal mention.[18] Further, budgetary constraints combined with the significant workload meant that the QPS took back responsibility for some committals.[19]

Changed responsibility under the reforms

12.23. Other reviews have consistently recommended the ODPP be responsible for prosecution earlier in the criminal justice process, particularly for committals.[20] These recommendations have been made both before and after establishment of the committals project. However, these recommendations have been conditional upon practicalities, location and adequate resourcing for the ODPP.[21]

Locations of QPS Police Prosecutions Services, ODPP offices and courts

In NSW, Victoria and South Australia, the ODPP, not the relevant police service, has responsibility for the committal process.[22] In Queensland, the ODPP does not have this responsibility State-wide. This may be because it is unique.

The Queensland ODPP has been said to be

> the most decentralised prosecution service in Australia, servicing regional and rural courts from as far north as Cape York and Thursday Island, as far west as Mt Isa and Cunnamulla, and south to the Gold Coast and Goondiwindi.[23]

There are nine ODPP offices in Queensland. They are in Brisbane, Cairns, Townsville, Rockhampton, Maroochydore, Ipswich, Toowoomba, Beenleigh and Southport.[24] The ODPP currently prosecutes in Queensland's 32 District Courts and 11 Supreme Courts,[25] as well as in some matters in Ipswich Magistrates Court, Brisbane Magistrates Court and Southport Magistrates Court.

Where the ODPP does not have an office in the location of a Supreme or District Court, such as Bundaberg, Mt Isa and Kingaroy, the indictments are prepared by the ODPP office responsible for that jurisdiction and representatives from the ODPP travel to appear in those locations.[26]

In comparison, the QPS has 31 different police prosecution services. They are in Brisbane, Bundaberg, Caboolture, Cairns, Charleville, Dalby, Emerald, Gladstone, Gold Coast, Gympie, Holland Park, Innisfail, Ipswich, Kingaroy, Logan, Mackay, Mareeba, Maryborough, Mount Isa, Murgon, Pine Rivers, Redcliffe, Richlands, Rockhampton, Roma, Sandgate, Sunshine Coast, Toowoomba, Townsville, Warwick and Wynnum.[27] These prosecutors service more than 120 Magistrates Courts in Queensland.[28]

12.24. In the 2023–24 Annual Report of the ODPP, the Director stated that, while it may be argued that the ODPP can play a greater role in Magistrate's Courts, 'without significant legislative change and significant increases to resourcing, it is not feasible to expand the ODPP's remit at this time given the size of the State'.[29]

12.25. Implementing **Recommendation 25** would inevitably increase the workload of the ODPP. Additional work that may result for ODPP prosecutors and support staff would include:

- considering the case at the committal stage
- considering and actioning requests for disclosure and for witnesses to attend at committal hearings
- appearing at and conduct of committal callovers, committal mentions, directions hearings and committal hearings.

12.26. The process evaluation of the committals project in Brisbane found that there were significant workload pressures that resulted in strains on ODPP resources and staff, particularly in the early months of the project. The number of cases that progressed through the project was much higher than expected. [30]

12.27. The workload of Victim Liaison Officers would also increase, as it is anticipated they would be required to support the families of deceased persons at an earlier stage of the process.

12.28. There would be increased costs associated with meeting the increased workload, as well as increased costs for staff travel, as the ODPP may become responsible for producing any witnesses at Magistrates Courts for these matters.[31]

12.29. Legal Aid Queensland's costs would also increase as appropriately experienced legal practitioners would need to be engaged at an earlier stage to consider and make decisions about the brief of evidence, make relevant submissions and negotiate with the ODPP.

12.30. Actual costs would depend on how this recommendation is implemented (see below). Some of the resources currently allocated to the QPS for these purposes could be reallocated to the ODPP. Further, there may be some cost offset for both the ODPP and Legal Aid Queensland because the extra time and cost of their involvement at the committal stage could result in subsequent time and cost savings post-committal. In the time costing analysis that was done as part of the evaluation of the Brisbane committal project, a key finding was:

> Allowing for data limitations, and the need to make a large number of assumptions … we feel fairly confident in concluding that, measured in terms of direct time inputs, the [Brisbane Central committals project] has been close to cost neutral.[32]

The case for reform

12.31. In our Consultation Paper we explored the potential for the ODPP to take carriage of homicide cases pre-committal. We noted that this may, among other things:

- facilitate the early identification of relevant issues and early guilty pleas
- improve efficiencies, such as avoiding unnecessary steps and hearings.[33]

12.32. During this review, stakeholders were generally in favour of the ODPP taking carriage of homicide matters pre-committal.[34] Both the Bar Association of Queensland and Legal Aid Queensland submitted that early involvement of the ODPP prior to committal could improve efficiencies and promote early negotiation and resolution.[35]

Facilitating effective processes and outcomes

12.33. In Chapter 11 we make several recommendations intended to promote early consideration of the complete context of a matter at the investigation stage. **Recommendation 25** further supports this idea, promoting earlier oversight at the prosecution stage for the most serious of offences.

12.34. Two of our guiding principles are relevant. Our first guiding principle is that the defences for murder 'should promote just outcomes and protect fundamental human rights including rights in criminal proceedings'.[36] Our fourth guiding principle is that 'the defences should better reflect circumstances involving domestic and family violence, including coercive control'.[37] Facilitating earlier identification of relevant issues may particularly support just outcomes for DFV victim-survivors who kill their abuser. Stakeholders in a regional area told us that if the ODPP had carriage of matters earlier it would allow for earlier identification of defendants who are DFV victim-survivors.

12.35. A defence counsel we interviewed (Research Project 5) explained the inefficiency that arises where a defendant is willing to negotiate a plea but the ODPP is not yet briefed because the file is with the Police Prosecutions Service.[38]

12.36. Early involvement of the ODPP could promote a defendant's right to a fair trial. As one Crown prosecutor explained:

> [I]f you've got one prosecutor from the start rather than someone who's just going to get it through the committal hearing, you're thinking big picture, you're thinking end game, you're making decisions for the long run rather than … it's going to get this to the next step.[39]

12.37. People with access to the committals project, and therefore ODPP involvement at an earlier stage, may be more likely to receive a just outcome. This means that people whose location of offending is in the more populated areas of Ipswich and Brisbane may experience advantages as compared to those who offend in other areas of the State.

12.38. We heard about the benefits experienced in committals project jurisdictions or where the ODPP has otherwise been involved in the committal process. Legal Aid Queensland submitted that:

> Experienced criminal law practitioners in [Legal Aid Queensland's] in-house Criminal Law Services Division report greater efficiencies in the conduct of a homicide committal hearing, including a better level of responsiveness and ability to progress issues such as disclosure, when the ODPP [has] carriage of the prosecution of homicide offences from the outset.
>
> The capacity and resources of the ODPP to enter into negotiations at an early stage is also of benefit.
>
> …
>
> The benefits of having the ODPP as the prosecuting agency from commencement of the case are that a greater level of disclosure takes place pre committal, and negotiations can commence earlier in proceedings.[40]

12.39. Evaluations at various stages of the committals project provide evidence of some early resolution arising from the ODPP taking carriage of matters pre-committal. However, these evaluations concern all offences, not just homicide offences.

12.40. An evaluation of the Ipswich project in 1995 found early resolution of matters through guilty pleas and:

> improved quality of case preparation by the ODPP, due to ODPP officers having a better understanding of the case characteristics and issues, and not being hindered in the preparation process by late or incomplete depositions and briefs of evidence.[41]

12.41. The results of the impact analysis from the evaluation of the Brisbane Central committals project in August 1996 found:

- a reduction in the proportion of committals for trial
- an increase in the proportion of cases in which the defendant indicated an intention to plead guilty at or prior to committal, although this was largely due to a marked rise in the use of ex-officio indictments
- an initial increase in the proportion of matters withdrawn prior to committal. While the rate of matters withdrawn returned to pre-project levels, this was said to 'indicate either that the ODPP's effectiveness as a filter declined or, more likely, that police had adjusted their behaviour and were less likely to proceed with cases that were evidentially weak.'[42]

12.42. The evaluation of the Brisbane Central committals project cautioned that:

> There is, as yet, no conclusive evidence that the [Brisbane Central committals project] has led to a reduction in higher court workload or reduced the incidence of late pleas of guilty and/or nolle prosequi in the higher courts.[43]

12.43. However, in 2024 the ODPP recognised that its active involvement in the committals project had resulted in some 'limited reduction in matters proceeding to the higher courts and the earlier resolution of matters'.[44]

Improving efficiencies

12.44. There are several inefficiencies and issues resulting from the current arrangements for committals, including:

- double handling because both the QPS Police Prosecution Service and ODPP review the brief of evidence and make decisions about the conduct of the case
- time pressures on the ODPP post-committal, to review the brief of evidence, explore avenues of additional evidence and consider resolution by an alternative charge.

12.45. Stakeholders in a regional area told us that the current process increases the number of people who have to be across the file and duplicates the work, whereas the evaluation of the Brisbane Central committals project in August 1996 found that legal practitioners positively regarded the project and the ODPP's role.[45]

12.46. We were told about the effect of the time pressures on the ODPP under the current system. For example, one of the Crown prosecutors that we interviewed said:

> The impediment [to indicting manslaughter rather than murder] is sometimes the amount of time we have between committal and presentation of the indictment. And if we haven't done the committal … [h]ow long it takes the police to give us all the material and consider it and … reducing a charge takes a lot of work because you've got to read everything carefully … [t]hink about it, think about the law. You've got to consult with family members, you've got to consult with the police. … you've got to get authority from … the Director. … So that itself is … quite a process.
>
> …

> I would generally expect that the conduct of a committal hearing would be conducted better by officers from the [ODPP] than [the Police Prosecution Service]. Absolutely. And the longer that you are … abreast of all the material, the better it is … in terms of delaying … the later progress of the matter in the higher courts because there doesn't have to be that delay.[46]

12.47. From the defence perspective, Legal Aid Queensland reiterated the benefit of acting in situations where the ODPP has carriage at committals:

> The ODPP has six months to present an indictment in the Supreme Court, so the benefits of expedient negotiations are well recognised by [Legal Aid Queensland's] practitioners to limit delay for these clients who are usually on remand. In [Legal Aid Queensland's] experience, these negotiations are often met with more success, in part because the ODPP has been directly engaged with the issues in contest by virtue of exposure to the evidence at the committal hearing.[47]

12.48. Some Crown prosecutors we interviewed were cautious, however, of the practical difficulties and stressed the importance of the way this recommendation would be implemented and the need for adequate resourcing to achieve the desired benefits.[48] The Queensland Council for Civil Liberties identified further practical issues for consideration, submitting:

> The current position at committal hearings even when the [ODPP] is prosecuting is that Legal Officers as opposed to Prosecutors are allocated to run the case at committal and Legal Officers have no authority and often lack the experience to be able to carry out the measures required by this proposal.
>
> This proposal, to be effective, will require the allocation of a Crown Prosecutor to the matter effectively from the outset and that prosecutor will have to remain as the prosecutor in the matter as changes of prosecutor almost always brings changes of prosecution approach and emphasis to cases.[49]

12.49. The need for adequate resourcing was not restricted to resourcing for the ODPP. One of the Crown prosecutors we interviewed articulated the problem:

> [W]e often are dealing with solicitors who [are] not willing to make decisions. And that's fair enough. They're like: 'Oh, well, we're [going] to wait [until] the [ODPP has presented an indictment] and then I'll get funding for counsel and then counsel will make these decisions'. So, you know, we're sort of stonewalled, I guess, in cases early on. Again, I think funding models are a problem there for people on legal aid.[50]

Disclosure of domestic violence evidence

Our reforms explained

12.50. **Recommendation 26** is that the disclosure provisions in the Criminal Code be amended to allow:

- a defendant charged with a domestic violence offence to request access to the complainant's domestic violence history
- a defendant in a criminal proceeding to request access to other relevant domestic violence evidence.

12.51. We recommend that this disclosure is made at the defendant's request.

12.52. For consistency and certainty, the amendments to the disclosure provisions should apply the same definitions of 'domestic violence offence' and 'domestic violence history' that apply to section 590AH of the Criminal Code.

Domestic violence history

In the context of disclosure, a person's domestic violence history is a QPS document that sets out all domestic violence protection orders or temporary protection orders/police protection notices made against a person in Queensland under the current and previous domestic violence legislation.[51]

It also lists any interstate domestic violence orders that are made against a person.

It includes details of orders that are no longer in force.

This document is distinct from a person's criminal history, which contains a record of criminal offences a person has been convicted of.

12.53. A defendant should be able to request access to other relevant evidence of domestic violence in all criminal proceedings, not just for domestic violence offences. Domestic violence evidence should be defined to include, but not be limited by, the definition in section 103CA of the Evidence Act.

Evidence of domestic violence

What might constitute evidence of domestic violence is very broad and will often depend on the individual circumstances of each case. However, the Evidence Act recognises that it might include:

- details of the history of a domestic relationship between two people
- details of any domestic violence committed by either person in a domestic relationship against the other.[52]

12.54. The ODPP and the QPS must be adequately resourced to respond to the disclosure requests for domestic violence history and other relevant domestic violence evidence.

12.55. We do not anticipate that the disclosure of domestic violence history would be onerous, given it is easily accessible by the QPS. A domestic violence history is generated automatically through processes inbuilt in the QPS QPRIME database.

12.56. However, the disclosure of other relevant domestic violence evidence may require additional funding. The QPS possesses a large amount of information. Obtaining, reviewing, redacting and disclosing other relevant evidence of domestic violence to the defendant may increase demands on prosecutorial resources and may require further coordination between the QPS and the ODPP. We heard from the QPS that this may be achieved by establishing a unit responsible for compiling relevant disclosure material.

12.57. However, there are several factors that would partly allay resourcing concerns:

- The disclosure provisions are limited to matters proceeding to trial, which includes the committal stage.[53] The majority of criminal matters resolve as a plea of guilty.[54]
- Disclosure is only required at the defendant's request.[55]

- Our recommendation is limited to 'relevant' evidence of domestic violence in criminal proceedings. This limitation to 'relevant' evidence is consistent with other provisions that allow the defendant to request disclosure.[56] The defendant would need to show the material is relevant, unless that is apparent on its face.

12.58. The next section explains the current disclosure rules before discussing the case for reform.

Current rules of disclosure

12.59. The Criminal Code establishes the prosecution's disclosure obligation in Queensland, in the context of the prosecution's fundamental obligation to 'ensure criminal proceedings are conducted fairly with the single aim of determining and establishing truth'.[57]

12.60. The prosecution must give a defendant full and early disclosure of evidence the prosecution will rely on in the proceeding and all things in its possession that would tend to help the defendant's case, unless disclosure of the material would be unlawful or contrary to the public interest.[58]

Possession of the prosecution

Something will be in the possession of the prosecution if it is in the possession of the:

- arresting police officer
- person appearing for the prosecution
- Director or, where the QPS is prosecuting, the QPS and the person appearing for the prosecution or the arresting police officer is aware of its existence and is, or would be, able to locate it without unreasonable effort.[59]

12.61. The prosecution must disclose certain things in its possession prior to committal or trial without the need for the defendant to request them, including, for example:

- the defendant's criminal history
- statements of the defendant
- witness statements of proposed prosecution witnesses
- any reports about relevant tests or forensic procedures
- anything else on which they intend to rely.[60]

12.62. Following a recommendation of the Taskforce,[61] the Criminal Code was amended to require the prosecution to give a defendant charged with a domestic violence offence a copy of their domestic violence history.[62]

12.63. In addition to the matters that the prosecution must disclose as a matter of course, the prosecution must also disclose some items at the defendant's request, as soon as practicable after the request is made.[63] For example:

- copies of proposed prosecution witness' criminal histories
- anything that may be adverse to the reliability or credibility of, or raise issues about the competence of proposed prosecution witnesses
- statements or other things that the prosecution does not intend to rely on.[64]

12.64. In 2023, the Evidence Act was amended to:

- broaden the admissibility of 'relevant evidence of domestic violence' to all criminal proceedings

- clarify that it was admissible whether it related to the defendant, the complainant or another person connected with the proceeding
- provide a non-exhaustive list of what may constitute evidence of domestic violence.[65]

12.65. This gave the prosecution a greater ability to put evidence of domestic violence before the court. However, corresponding amendments to the disclosure provisions were not made.

The case for reform

12.66. **Recommendation 26** would:

- provide clarity regarding disclosure, which may:
  - serve an educative function
  - lead to improved efficiency in the criminal justice process
- increase the fairness of criminal justice processes and promote just outcomes, removing some of the barriers to justice for DFV victim-survivors.

Providing clarity

12.67. A legislative requirement to facilitate disclosure of the complainant's domestic violence history and other relevant domestic violence evidence should prompt police, prosecution and legal representatives to consider the DFV history of both parties to an incident. This would help reduce the risk of misidentification and ensure prosecutors consider all evidence in developing their case theories.

12.68. The Bar Association of Queensland submitted that:

> If, for example, there is early disclosure which reveals a history of domestic violence, this can inform the decision as to how the matter will proceed to committal. In the experience of the Association's members, it can be difficult for defence counsel to obtain that evidence early in a matter.[66]

12.69. Early disclosure could assist a defendant who asserts they are the primary victim or that they offended because of being subjected to DFV, to make a submission to the prosecution to resolve the matter, without the need to require the expense of a committal or a trial.

12.70. Legal stakeholders told us that the disclosure provisions were not working effectively for domestic violence offences. Several stakeholders shared anecdotal experiences where they encountered resistance to their requests for disclosure by prosecution agencies. In some cases, this resulted in applications for court orders for disclosure. In others, the defendant made a tactical decision to wait until after the committal process so they could make the request to the ODPP.

12.71. It is unclear whether current disclosure provisions allow for the types of disclosure we recommend. We also heard conflicting views from prosecutors as to what material the prosecution must disclose under the existing provisions. Our recommendation clarifies the disclosure obligations.

Increasing fairness and just outcomes

12.72. In Chapters 3 and 11, we discuss the complexities arising in cases where a DFV victim-survivor uses resistive violence against their abuser or where they are misidentified as a predominant perpetrator of DFV.[67] Multiple barriers to justice exist for people who find themselves in this position. We also discuss how DFV victim-survivors often experience difficulties communicating their experiences to others, including their legal representatives.[68]

12.73. Amending the disclosure provisions would help a defendant establish the history of violence within the relationship and to access relevant defences, including self-defence or duress. This would promote just outcomes. The offences for which this may be relevant would not only be domestic violence offences. They would include offences such as fraud, where the defendant raises a history of domestic violence to support a defence of duress.[69]

12.74. Legal stakeholders raised concerns about unintended consequences of expanding disclosure provisions. Perpetrators of DFV may seek to rely on these disclosure provisions to undermine the credibility of DFV complainants, which may be problematic when consideration is given to the prevalence of misidentification of the perpetrator.[70] This may be a particular concern for Aboriginal and Torres Strait Islander women who are more likely to use resistive violence and be misidentified and subject to a protection order.[71] However, current provisions in the Evidence Act allow a judge to direct a jury about domestic violence.[72] The judge may inform the jury that people may react differently to domestic violence and that decisions about how to respond to domestic violence can be influenced by a variety of factors.[73] Those factors can include, among other things, social, cultural, economic or personal factors or inequities, the response of others to help-seeking in the past and their perceptions as to its effectiveness.[74] Such a direction provides some protection as it assists the jury to understand why a complainant has a domestic violence history. Implementation of **Recommendation 31** would strengthen this protection, as it would require such directions to be mandated.

12.75. Articulating that both the defendant's and the complainant's DFV history and other relevant DFV evidence may be disclosed would promote greater consistency in both the initial investigation and disclosure to the defence. This is important given the disparity in prosecution and defence resources for investigation. It is even more important to remove further barriers to justice for particularly vulnerable groups, such as DFV victim-survivors. The aim of providing greater equality and consistency in the criminal justice process is aligned with protecting the accused's fundamental human rights.

Human rights considerations

12.76. **Recommendations 25–26** are compatible with human rights. Several rights are promoted through these reforms and, where rights are limited, we consider the limitation to be reasonable and demonstrably justifiable.

12.77. **Recommendation 25** promotes rights in criminal proceedings by reducing delays, enabling early identification of issues and increasing the amount of time a defendant has to prepare their defence.[75] It also promotes the right to equal protection of the law without discrimination by enabling the ODPP to take early carriage of murder and manslaughter cases in all court jurisdictions, not only those involved in the committals project, namely Ipswich and Brisbane.[76] This upholds the concept of formal equality by ensuring everyone's matters are subject to the same procedures.

12.78. **Recommendation 26** promotes the right to recognition and equality before the law by assisting people from disadvantaged communities who are at risk of misidentification as DFV perpetrators to defend criminal charges.[77] It also promotes the right to a fair hearing and rights in criminal proceedings by improving the ability of defendants to access relevant evidence and respond to allegations made against them.[78]

12.79. The recommendation to expand prosecutorial disclosure obligations to include a complainant's domestic violence history and other relevant domestic violence evidence may limit a person's right to privacy and reputation, which includes the right to keep personal information private.[79] The purpose of this limitation is to ensure DFV victim-survivors charged

with criminal offences can access relevant information to provide context to their offending and increase their access to relevant defences. However, the effect of **Recommendation 26** is that disclosure is limited to circumstances where it is relevant, which would usually be domestic violence offending. This ensures the limitation is proportionate to the purpose of increasing access to justice for DFV victim-survivors. There are no less restrictive ways to achieve this purpose, and we consider this limitation to be reasonable and demonstrably justifiable in a free and democratic society based on dignity, equality and freedom.

Implementation

12.80. No legislative reform is required to implement **Recommendation 25**. However, it would require consideration of logistics, including:

- the timing of transfer of files
- communication between the ODPP and the QPS, including where QPS prosecutors may need appear in court on behalf of the ODPP
- availability of audio-visual equipment at courts
- circumstances in which legal practitioners should be permitted to appear remotely
- circumstances in which committal hearings could be transferred to a more convenient court.

12.81. Once agreed, these logistical changes would require:

- review of current arrangements and an updated memorandum of understanding between the ODPP and the QPS regarding prosecutorial responsibility
- review of and update to practice directions for homicide committals
- review of and update to the OPM and the Director's Guidelines
- review of Legal Aid funding arrangements.

12.82. As noted above, the approach to implementation would affect the resources required. Our recommendation is confined to murder and manslaughter committals. This would significantly limit additional burden on the ODPP and Legal Aid Queensland. The ODPP and Legal Aid Queensland already have arrangements for the conduct of murder and manslaughter committals in committals project jurisdictions.

12.83. It may be appropriate to implement this recommendation in stages, with a pilot in a remote area used to explore issues unique to such areas. Evaluation of the pilot would allow refinement of procedures before broader implementation.

12.84. Regardless of whether a staged approach is taken, it should be monitored and data collected to assess its effectiveness.

12.85. **Recommendation 26** would require legislative amendment to the Criminal Code. The amendments to implement this recommendation are not included in our Draft Bill. However, our Draft Bill could be expanded to include these reforms or they could be achieved through a separate criminal law practice and procedure reform Bill. There are benefits in implementing the reforms together.

12.86. If the Criminal Code is amended, the QPS would need to review and update its Operational Procedures Manual[80] and the ODPP would need to review and update the Director's Guidelines.[81]

12.87. The implementation of **Recommendation 26** is not contingent upon implementation of **Recommendation 25**. They can proceed separately.

References

1 Criminal Code (Qld) s 561; Office of the Director of Public Prosecutions (Qld), Director's Guidelines (30 June 2024) 10–15. The Director of Public Prosecutions has the power to issue guidelines under the Director of Public Prosecutions Act 1984 (Qld) s 11.

2 Queensland Police Service, Operational Procedures Manual (Issue 108, 1 October 2025) 374 [3.4.4].

3 Magistrates Court of Queensland, Practice Direction No 10 of 2010: Times, and Procedures from Callovers to Conclusion in Criminal Matters, 1 November 2010.

4 Legal Aid Queensland, Submission 31.

5 QLRC, Legal Profession Interviews (Research Project 5, 2025) Defence Counsel, Interview 9.

6 Queensland Police Service, Operational Procedures Manual (Issue 108, 1 October 2025) 377 [3.4.9].

7 Queensland Police Service, Operational Procedures Manual (Issue 108, 1 October 2025) 374 [3.4.4].

8 Queensland Police Service, Operational Procedures Manual (Issue 108, 1 October 2025) 460 [3.16.2].

9 QLRC, Legal Profession Interviews (Research Project 5, 2025) Defence Counsel, Interview 2.

10 Queensland Police Service, Operational Procedures Manual (Issue 108, 1 October 2025) 377 [3.4.9].

11 Michael Shanahan, Report for the Criminal Procedure Review—Magistrates Courts (Final Report, 2023) [5.9]. The ODPP is also involved in the committals for sexual offences in Southport, but given its limited scope, we will not consider that scheme further in this report.

12 Criminal Code (Qld) s 590.

13 Office of the Director of Public Prosecutions (Qld), Director's Guidelines (30 June 2024) 2–5.

14 Office of the Director of Public Prosecutions (Qld), Director's Guidelines (30 June 2024) 23.

15 Office of the Director of Public Prosecutions (Qld), Director's Guidelines (30 June 2024) 25. See at 26 regarding decisions to terminate prosecutions.

16 Director of Public Prosecutions (Qld), Annual Report 1 July 1995-30 June 1996 (Report, 1996) 22.

17 Criminal Justice Commission, Evaluation of Brisbane Central Committals Project (Report, August 1996) vii.

18 Criminal Justice Commission, Evaluation of Brisbane Central Committals Project (Report, August 1996) 12.

19 Criminal Justice Commission, Evaluation of Brisbane Central Committals Project (Report, August 1996) 13.

20 David Brereton and John Willis, The Committal in Australia (Australian Institute of Judicial Administration, 1990) 104 recommended that in Queensland 'subject to adequate resourcing, the Director of Public Prosecutions should take over the conduct of all committals'; GE Fitzgerald, Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (1989) 381–2 recommended that prosecution become the responsibility of the ODPP 'as far as practicable [and] except in remote localities'; Martin Moynihan, Review of the Civil and Criminal Justice System in Queensland (Final Report, 2008) 215 recommended the ODPP be given an increased role in prosecution of committal proceedings and in the long term take over responsibility for the prosecution of all committals in Queensland. However, it said it was imperative that the capacity of the ODPP to effectively carry out its work not be over-stretched or eroded.

21 GE Fitzgerald, Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (1989) 381–2; David Brereton and John Willis, The Committal in Australia (Australian Institute of Judicial Administration, 1990) 104.

22 'Committal Process', ODPP New South Wales (Web Page, 2025) <https://www.odpp.nsw.gov.au/prosecution-guidance/steps-in-the-prosecution-process/committal-process>; 'Our Role', Office of Public Prosecutions Victoria (Web Page) <https://www.opp.vic.gov.au/our-role/>; 'Committal', Government of South Australia Office of the Director of Public Prosecutions (Web page, 2021) <https://www.dpp.sa.gov.au/prosecuting-crimes/steps-in-a-major-indictable-prosecution/magistrates-court>.

23 Office of the Director of Public Prosecutions (Qld), Annual Report 2023–2024 (Report, 2025) 6.

24 Office of the Director of Public Prosecutions (Qld), Annual Report 2023–2024 (Report, 2025) 6.

25 'All Courthouses', Queensland Courts (Web Page, 7 October 2025) <https://www.courts.qld.gov.au/contacts/courthouses>.

26 Office of the Director of Public Prosecutions (Qld), Annual Report 2023–2024 (Report, 2025) 28.

[27] Note also that some of these services have more than one office: see Queensland Police Service, Police Prosecution Corps Contact List July 2023 <https://www.police.qld.gov.au/sites/default/files/2023-07/Prosecution-Corps-Contact-List.pdf>.

[28] 'All Courthouses', Queensland Courts (Web Page, 7 October 2025) <https://www.courts.qld.gov.au/contacts/courthouses>.

[29] Office of the Director of Public Prosecutions (Qld), Annual Report 2023–2024 (Report, 2025) 6.

[30] Criminal Justice Commission, Evaluation of Brisbane Central Committals Project (Report, August 1996) viii.

[31] Requirements for who bears the cost of civilian witness arrangements and expenses are outlined in Queensland Police Service, Operational Procedures Manual (Issue 108, 1 October 2025), [3.10.2] for Magistrates Courts, [3.10.5] for superior courts.

[32] Criminal Justice Commission, Evaluation of Brisbane Central Committals Project (August 1996) 68.

[33] QLRC, Review of Particular Criminal Defences: Equality and Integrity — Reforming Criminal Defences in Queensland (Consultation Paper, February 2025) 64 [399].

[34] QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 44 [277].

[35] Legal Aid Queensland, Submission 31; Bar Association of Queensland, Submission 42.

[36] QLRC, Review of Particular Criminal Defences: Our Guiding Principles for Reform (Background Paper No 2, 2024) 7.

[37] QLRC, Review of Particular Criminal Defences: Our Guiding Principles for Reform (Background Paper No 2, 2024) 12.

[38] QLRC, Legal Profession Interviews (Research Project 5, 2025) Defence Counsel, Interview 9.

[39] QLRC, Legal Profession Interviews (Research Project 5, 2025) Crown Prosecutor, Interview 6.

[40] Legal Aid Queensland, Submission 31.

[41] Criminal Justice Commission, Evaluation of Brisbane Central Committals Project (August 1996) 3.

[42] Criminal Justice Commission, Evaluation of Brisbane Central Committals Project (August 1996) ix.

[43] Criminal Justice Commission, Evaluation of Brisbane Central Committals Project (August 1996) x.

[44] Office of the Director of Public Prosecutions Queensland, Annual Report 2023/2024 (2024) 6.

[45] Criminal Justice Commission, Evaluation of Brisbane Central Committals Project (August 1996) viii.

[46] QLRC, Legal Profession Interviews (Research Project 5, 2025) Crown Prosecutor, Interview 2.

[47] Legal Aid Queensland, Submission 31.

[48] QLRC, Legal Profession Interviews (Research Project 5, 2025) Crown Prosecutor, Interview 2; Crown Prosecutor, Interview 6.

[49] Queensland Council for Civil Liberties, Submission 35.

[50] QLRC, Legal Profession Interviews (Research Project 5, 2025) Crown Prosecutor, Interview 6.

[51] Criminal Code (Qld) s 590AH(4); see also Domestic and Family Violence Protection Act 2012 (Qld) ss 23, 101, 171, 176A.

[52] Evidence Act 1977 (Qld) s 103CA(1).

[53] A committal proceeding is included in the definition of a 'relevant proceeding' which is defined in Criminal Code (Qld) s 590AD. Disclosure requirements only apply to relevant proceedings.

[54] From 2022–2023 to 2023–2024, out of 110 homicide and related offences, 42 matters were finalised through a guilty plea by the defendant. Australian Bureau of Statistics, 'Defendants Finalised, Queensland: Table 31 Defendants Finalised and with a Guilty Outcome, Summary Outcomes by Selected Principal Offence, Higher Courts – Queensland, 2022–23 to 2023–24' <https://www.abs.gov.au/statistics/people/crime-and-justice/criminal-courts-australia/2023-24#data-downloads>.

[55] Compare Criminal Code (Qld) s 590AH, which outlines the disclosure that must always be made and s 590AJ that describes the disclosure to be made upon request.

[56] See for example: Criminal Code (Qld) ss 590AJ(2)(e)–(f) which provide for disclosure of statements of things in the possession of the prosecution where they are relevant and s 590AH(2)(g) which limits disclosure of reports of tests or forensic procedures to those relevant to the proceeding.

[57] Criminal Code (Qld) s 590AB.

[58] Criminal Code (Qld) s 590AB(2).

59 Criminal Code (Qld) ss 590AE(2)–(3).

60 Criminal Code (Qld) s 590AH(2).

61 See recommendation 58 in: Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report 1, December 2021) vol 3, 682.

62 Criminal Code (Qld) s 590AH amended by Domestic and Family Violence (Combating Coercive Control) and Other Legislation Amendment Act 2023 (Qld) s 26.

63 Criminal Code (Qld) s 590AJ(2).

64 Criminal Code (Qld) s 590AJ(2).

65 Evidence Act 1977 (Qld) pt 6A div 1A, inserted by the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023 (Qld) s 64.

66 Bar Association of Queensland, Submission 42.

67 See also, QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 9 [27], 14–16 [60]–[67].

68 Chapter 11 and QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 6–7 [16].

69 For example, in R v Lentini [2018] QCA 168 the defendant argued duress where there was a history of DFV perpetrated by her husband and he had threatened to set her on fire if she did not go along with a fraudulent insurance claim.

70 Discussed further in QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 14–16 [60]–[67].

71 QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 15.

72 Evidence Act 1977 (Qld) pt 6A divs 1, 3.

73 Evidence Act 1977 (Qld) ss 103Z(2)(a), (2)(d).

74 Evidence Act 1977 (Qld) s 103ZC(2).

75 Human Rights Act 2019 (Qld) ss 32(2)(b)–(c).

76 Human Rights Act 2019 (Qld) s 15(3).

77 Human Rights Act 2019 (Qld) s 15.

78 Human Rights Act 2019 (Qld) ss 31(1), 32(g)–(h).

79 Human Rights Act 2019 (Qld) s 25.

80 Queensland Police Service, Operational Procedures Manual (Issue 108, 1 October 2025) 447 [3.14].

81 Office of the Director of Public Prosecutions (Qld), Director's Guidelines (30 June 2024) 39–44 [29].

CHAPTER 13

Trial reforms

Contents

Recommendations

R27 The special witness protections in the Evidence Act 1977 should be amended to:

(a) allow a court to deem a defendant who is a DFV victim-survivor a special witness where they give evidence about their experience of DFV in connection with the offence, and

(b) make explicit that a court can declare a person who identifies as an Aboriginal person and/or Torres Strait Islander person or a person from a culturally and linguistically diverse background a special witness where the court considers they may be disadvantaged as a witness.

R28 The Queensland Intermediary Scheme should apply to witnesses to homicide and domestic violence offences. To support this, Court Services should promote awareness of the Intermediary Scheme to relevant stakeholders and develop and implement a cultural safety framework in consultation with DFV victim-survivors and experts.

R29 The Government should establish a Domestic and Family Violence Expert Evidence Panel, modelled on the Sexual Offence Expert Evidence Panel.

R30 The Evidence Act 1977 should be amended to allow courts to receive evidence of traditional laws and customs of Aboriginal peoples and Torres Strait Islander peoples, except where its admission would be unfair to the person charged. Where such evidence is admitted, the judge must direct the jury about how to treat the evidence.

R31 The Evidence Act 1977 should be amended to require the judge to direct the jury:

(a) about domestic violence generally, if the proceeding involves evidence of domestic violence

(b) about self-defence in response to domestic violence if that is an issue in the proceeding

(c) about duress in circumstances of domestic violence if that is an issue in the proceeding.

R32 There should be a legislative requirement that, for jury trials:

(a) Counsel for the parties must, at the close of the evidence, inform the judge of all matters they believe are in issue, including any defences upon which they rely and any specific directions they request the judge give the jury.

(b) If the accused person is not legally represented, the judge must direct themselves as if the accused person informed the judge of all matters in issue and requested every direction be given to the jury that was open to the accused to request.

(c) The judge must:

i. give the jury all requested directions unless, after hearing from the parties, there are good reasons for not doing so

ii. not give the jury a direction not requested by a party unless, after hearing from the parties, there are substantial and compelling reasons for doing so.

Introduction

13.1. This chapter discusses our recommendations to reform practice and procedure for the conduct of criminal trials. We intend these recommendations to:

- enhance supports available to vulnerable defendants and witnesses during the trial process
- simplify and clarify the rules of evidence to allows relevant evidence to be admitted about:
  - the effects of DFV and myths and misconceptions about DFV
  - traditional laws and customs of Aboriginal peoples and Torres Strait Islander peoples
- simplify and improve directions to juries to allow them to apply the reformed defences more effectively.

13.2. We recommend six reforms aimed at simplifying and clarifying relevant criminal trial procedure, ensuring culturally informed and trauma-aware processes that protect people from re-traumatisation within the criminal justice system and support just outcomes.

13.3. While we are concerned to ensure the rights of defendants are protected and they are not re-traumatised during criminal trials, our focus is not confined to defendants and our reforms aim to safeguard the rights of all individuals engaged in criminal proceedings, whether as victim-survivor, defendant, family member or witness. We also seek to address systemic issues with the criminal justice system relevant to the application of the defences we are reviewing.

13.4. Our research and consultations show there are significant practice and procedure issues affecting the fair conduct and outcomes of criminal trials, with broader ramifications for the criminal justice system.

13.5. Notwithstanding the substantial focus on DFV and associated law and policy reforms in recent years, further work is still needed to address community misconceptions about DFV, including offending in the DFV context, and about the relevance, reliability and appropriate sources of customary law. Addressing these deficits is critical to ensuring the jury process works effectively, supporting jurors to understand relevant evidence and to apply the defences we have reviewed.

13.6. This chapter has three main sections. The first provides an overview of the six trial reforms we recommend and considers justifications for these reforms. We take an integrated approach, exploring how our reforms would:

- support just outcomes and improved efficiencies in criminal trials when relevant defences are raised
- simplify and clarify the law
- reduce or remove barriers to justice.

13.7. We then address human rights considerations before concluding with a discussion of the implications of our reforms.

Overview of reforms

Extending special witness protections

13.8. We recommend the Government amend the special witness provisions in the Evidence Act to expand and make explicit the circumstances in which the court can apply them (**Recommendation 27**).

13.9. The special witness provisions (sections 20B–21AAD of the Evidence Act) empower a court to make orders to support vulnerable people while they give evidence. If a court designates a person as a special witness, it can implement measures to help the witness give their best evidence. The measures can include allowing the person to give evidence from behind a screen or in a remote room or allowing them to have a support person when giving their evidence.[1]

13.10. The Evidence Act specifies several circumstances in which a court can designate a person as a special witness.[2] Our recommendation would expand those circumstances, to allow the court to designate a person as a special witness if:

- the person is charged with offending which they claim was in response to, in retaliation for, or otherwise related to their DFV victimisation
- the court is satisfied a person who identifies as an Aboriginal person or Torres Strait Islander person or is a person from a culturally and linguistically diverse community may be disadvantaged as a witness in comparison with members of the community generally.

13.11. Currently, a court can designate as a special witness a person who is the victim of an alleged offence of domestic violence.[3] However, the court cannot designate as a special witness a victim-survivor charged with an offence against their perpetrator. Our recommendation would correct this.

13.12. Our recommendation also responds to cultural and linguistic disadvantage by allowing the court to designate a person as a special witness if satisfied that an Aboriginal person, Torres Strait Islander person, or a person from a culturally and linguistically diverse community is likely to be disadvantaged as a witness.

Expanding the Queensland Intermediary Scheme

13.13. We recommend the Evidence Act is amended to make the Queensland Intermediary Scheme ('QIS') available to any witness, including a defendant, who gives evidence in proceedings for homicide and domestic violence offences (**Recommendation 28**).

13.14. The QIS aims to overcome communication barriers and create a more accessible justice system by facilitating the communication of evidence that may not otherwise be heard.[4]

13.15. It provides witness intermediaries to support vulnerable witnesses giving evidence in court, by ensuring police, lawyers and judges understand an individual witness' communication support needs.[5] The QIS can also provide intermediaries for vulnerable witnesses when they are interviewed by police during the investigation of the matter.[6]

13.16. Intermediary services are currently only available for eligible prosecution witnesses in child sexual offence matters.[7] Our recommendation would apply to any witness, including a defendant, who gives evidence in trials of homicide and domestic violence offences.

Establishing a DFV expert evidence panel

13.17. We recommend the Government establish a DFV expert evidence panel, modelled on the Sexual Offence Expert Evidence Panel, comprised of suitably qualified persons (**Recommendation 29**).

13.18. This recommendation builds on the Taskforce's recommendation to consider whether the Sexual Offence Expert Evidence Panel should include DFV proceedings.[8]

13.19. This recommendation would require amendment of the Evidence Act, to include a new division modelled on the existing provisions for the Sexual Offence Expert Evidence Panel.[9]

13.20. Our recommendation would not change the existing laws governing the admissibility of expert evidence of the nature and effect of DFV. Nor would it change laws governing a court's ability to exclude evidence where its admission would be unfair to the accused person.[10]

13.21. We recommend the DFV expert evidence panel be designed to allow members of the panel to give expert evidence about the matters specified in section 103CC of the Evidence Act. This is broader than the scope of evidence that can be given by members of the Sexual Offence Expert Evidence Panel.[11]

Section 103CC of the Evidence Act

This provision was enacted in response to a Taskforce recommendation.[12]

It clarifies that expert evidence about domestic violence may include evidence about:

- the nature and effects of DFV on people generally (general DFV expert evidence)
- the nature and effects of DFV on a particular person (defendant-specific DFV expert evidence).

13.22. In establishing a DFV expert evidence panel, the Government should have regard to the outcomes of the Government's statutory review of the Sexual Offence Expert Evidence Panel pilot program, as well as the views of relevant stakeholders. Stream 2 of the Sexual Offences Expert Evidence Panel is available for matters commenced after 20 September 2025. It should allow greater access to counterintuitive expert evidence about the social, psychological and cultural factors that may affect the behaviour of a person who has been, or alleges to be, the victim of a relevant sexual offence. This is designed to address persistent community misunderstandings in relation to sexual offences. Stream 2 would serve as a model for how a DFV expert evidence panel could operate.[13]

Admitting evidence of traditional laws and customs

13.23. Evidence of the traditional laws and customs of Aboriginal peoples and Torres Strait Islander peoples and their communities may be relevant to establishing a defence.[14]

13.24. While this type of evidence may be relevant, it is subject to challenge because of the hearsay and opinion evidence rules. The 'hearsay rule' is that any statement that a witness provides which simply repeats something told to them by someone else is not admissible as evidence that the statement is true.[15] Similarly, evidence of an opinion which is not based on 'expert knowledge' is usually not admissible.[16] The passing of knowledge through oral tradition and

uncertainty around who is considered an 'expert' can make it difficult to admit evidence of traditional laws and customs for Aboriginal peoples and Torres Strait Islander peoples.[17]

13.25. We recommend the Evidence Act be amended to allow the admission of evidence of traditional laws and customs of Aboriginal peoples and Torres Strait Islander peoples (**Recommendation 30**). Our recommendation is intended to ensure the defences we have reviewed are applied in a culturally informed way.

13.26. An exception to the hearsay and opinion rules in legislation would clarify and improve the basis for admitting such evidence. The provisions could be modelled on the exceptions proposed in the Uniform Evidence Law Report, which formed the basis for similar provisions enacted in the Commonwealth, Victoria, NSW, Tasmania, the ACT, Western Australia, South Australia and the Northern Territory.[18]

13.27. Our recommendation would allow courts to receive evidence of traditional laws and customs of Aboriginal peoples or Torres Strait Islander peoples, unless admitting that evidence would be unfair to the defendant. It would not restrict the court's general power to exclude evidence.[19] Our recommendation requires the judge to direct the jury about how to treat such evidence if admitted.

13.28. Amendments to the Evidence Act to give effect to our recommendation should:

- include a definition of 'traditional laws and customs' to include the customary laws, traditions, customs, observances, practices, knowledge and beliefs of a group (including a kinship group) of Aboriginal peoples or Torres Strait Islander peoples
- introduce an exception to the hearsay rule for evidence relating to the traditional laws and customs of Aboriginal peoples or Torres Strait Islander peoples
- introduce an exception to the opinion evidence rule for an opinion expressed by an Aboriginal person or Torres Strait Islander person about the existence, non-existence, or content of the traditional laws and customs of a group
- extend existing provisions about warnings and information to be provided to a jury regarding hearsay evidence to apply to evidence received under the recommended exceptions. This would include section 93C of the Evidence Act, which provides for the judge to warn a jury if there is a legitimate basis for finding that hearsay evidence admitted under the exception might be unreliable.

Mandatory jury directions

13.29. We recommend the Evidence Act be amended to require the judge to direct the jury about domestic violence, including self-defence or duress in circumstances of domestic violence, where it is relevant to the proceeding (**Recommendation 31**).

13.30. Unless after hearing from the parties the judge decides there are good reasons for not doing so, the judge would be required to direct the jury as follows:

- about domestic violence generally, if the proceeding involves evidence of domestic violence
- about self-defence in response to domestic violence if that is an issue in the proceeding
- about duress in circumstances of domestic violence if that is an issue in the proceeding.

13.31. The general direction to a jury about domestic violence and the direction to a jury about self-defence in response to domestic violence should be updated so the directions inform the jury of all relevant factors arising in the proceeding.

Defences left to juries

13.32. Currently, a trial judge must direct a jury to consider defences that fairly arise on the evidence.[20] This can increase the complexity of directions, obscure the real issues and promote appeals about the judge's directions to the jury. Our recommendation provides a process to confine jury directions to the real issues in a case, modelled on provisions in the Jury Directions Act 2015 (Vic).[21]

13.33. **Recommendation 32** would introduce a legislative requirement that:

- counsel for the parties must, at the close of the evidence, inform the judge of all matters they believe are in issue, including any defences upon which they rely and any specific directions they request the judge to give the jury
- if the accused person is not legally represented, the judge must direct the jury as if the accused person informed the judge of all matters in issue and requested every direction be given to the jury that it was open to the accused person to request
- the judge must:
  - give the jury all requested directions unless, after hearing from the parties, there are good reasons for not doing so
  - not give the jury a direction not requested by a party unless, after hearing from the parties, there are substantial and compelling reasons for doing so.

13.34. Our recommendation would:

- Ensure parties identify the real issues at trial, including the defences that an accused person is relying on. This would improve the assistance parties provide to trial judges and reduce the complexity of trials by ensuring only relevant defences are left for a jury's consideration.
- Ensure judges direct juries to consider the availability of the complete defence of self-defence first, before considering the availability of the reformed partial defence of killing in an abusive domestic relationship, where raised on the evidence.
- Limit appeal rights where parties make strategic decisions to not seek, or to not oppose, the giving of certain directions, particularly those pertaining to defences, unless the appeal court gives them leave to do so in the interests of justice.

The case for reform

Increasing access to justice

13.35. We intend all reforms discussed in this chapter to increase access to justice. The recommendations in this chapter do so in the following ways.

13.36. Our recommendations about expanding both the special witness protections **(Recommendation 27)** and the QIS **(Recommendation 28)** would address disadvantages faced by vulnerable witnesses.

13.37. Western assumptions about how language works, including conflicting answers and inconsistencies, are not necessarily the same for Aboriginal peoples and Torres Strait Islander peoples, impacting how their evidence in criminal proceedings is assessed and understood.[22] People from culturally and linguistically diverse backgrounds, for whom English may not be their primary language, also have similar sociolinguistic differences.[23]

13.38. These differences can give rise to many challenges. They may affect a defendant's ability to communicate effectively with their lawyer. They may be unable to provide full information about the circumstances of the offence. This may reduce their lawyer's ability to identify available defences. In addition, it can hinder their ability to effectively give evidence at trial.

13.39. Similarly, these differences can impede a witness' ability to understand questions asked of them while giving evidence, or their ability to communicate effectively with trial counsel, the court and the jury.

13.40. This has the potential to result in unjust outcomes as they struggle to recount what happened to them in a way that jurors can easily understand. Our recommendations would empower people who are particularly vulnerable in their interactions with the criminal justice system to give their account in a way the jury can properly understand, supporting evidence-based decisions.

13.41. The amendments to allow the admission of evidence of traditional laws and customs of Aboriginal peoples and Torres Strait Islander peoples **(Recommendation 30)** serve the same purpose. Currently, Aboriginal and Torres Strait Islander defendants face significant challenges in leading evidence of their traditional laws and customs in an admissible, non-objectionable manner.[24]

13.42. There are several contexts in the criminal justice system in which it may be necessary to adduce evidence of traditional laws and customs. In the context of our review, such evidence might inform the actions taken by a particular individual. It might equip the jury to assess whether a defendant's belief was genuine, by providing insight into the defendant's culture that they would not otherwise have. A jury's consideration of legal concepts relevant to defences and sentencing would be improved by supporting them to understand the relevant cultural context. This includes the relevance of culture and how it may shape legal concepts, including consent, duress and provocation.

Reducing risk of re-traumatisation

13.43. DFV victim-survivors face complex vulnerabilities and challenges when trying to tell their story at trial, particularly when affected by trauma.[25] This is compounded for Aboriginal victim-survivors, Torres Strait Islander victim-survivors and people from a culturally and linguistically diverse background.

13.44. By expanding the existing special witness provisions **(Recommendation 27)** to apply to people from these vulnerable communities, courts would be empowered to put supportive measures in place, tailored to the individual witness.

13.45. Witnesses and defendants in homicide and domestic violence matters can face similar risks of re-traumatisation in the criminal justice process. The purpose of the QIS was to alleviate these sorts of pressures on other vulnerable witnesses (child witnesses in sexual offence matters).

13.46. Intermediaries identify and implement strategies to ensure witnesses can give their best evidence.[26] The extension of the QIS to support witnesses giving evidence in proceedings for homicide and domestic violence offences **(Recommendation 28)** would assist to reduce the re-traumatisation of witnesses by the criminal justice process, including DFV victim-survivors who kill an abusive partner.

13.47. Although this chapter focuses on trial practice and procedure, the QIS is also available to police interviewing vulnerable witnesses.[27] We intend the reform to apply equally to their use of the scheme. This has flow on benefits for trials. Review of an intermediary scheme in another jurisdiction found the scheme was more effective where witness communication needs were supported throughout the criminal justice process.[28] We have heard during consultation that when police do use the QIS, they try to ensure the same intermediary is available to assist the same witness throughout the criminal justice process.

13.48. This has many benefits that would support just outcomes in matters. When questioned shortly after the killing, witnesses may be in a state of shock, highly emotional, intoxicated, or injured, and may be unable to provide a clear and accurate account of what happened when first questioned. This may be exacerbated by pre-existing vulnerabilities including poor mental health or cognitive impairment.

13.49. The defendant or a witness may give inconsistent accounts or be unable to recount the precise circumstances or sequence of events. Despite contemporary knowledge about the effects of trauma on memory and increasing evidence about the prevalence of traumatic brain injury in DFV victim-survivors, inconsistencies in a person's account of events may be used to attack the credibility of DFV victim-survivors.[29]

13.50. Access to the QIS would significantly improve the ability of a traumatised person to effectively communicate what happened and, if they are a defendant, to support access to defences.

Supporting evidence-based decision-making

13.51. Our reforms for criminal trials would support evidence-based decision-making by juries in DFV matters.

13.52. In Chapter 3 and Background Paper 3 we discuss the myths and misconceptions around DFV and its effect on the people who experience it, including the effect of social entrapment.[30] Myths surrounding DFV are significant barriers to justice because they can lead to victim-blaming, downplaying the severity of abuse, and a general lack of understanding and support from both the community and justice institutions. These myths create systemic issues, such as when perpetrators use them to minimise their actions in legal proceedings, or when victim-survivors hesitate to report out of fear they will not be believed. These misunderstandings also present a significant challenge to juries accepting, for example, why a woman experiencing coercive and financial abuse does not simply leave an abusive relationship, or that a male victim of DFV is telling the truth about his experiences when he had multiple opportunities to disclose his abuse in the past but failed to do so out of embarrassment.[31]

13.53. Our community attitudes research (Research Report 1) found that 'individual attitudes and knowledge about DFV influenced whether people thought DFV defendants should have a defence'.[32] While the survey results suggest an improved understanding of the nature and effect of DFV, there are still concerns about how well juries assess the necessity of a victim-survivor's defensive conduct:

> Queensland has low levels of understanding the impacts of non-physical DFV and the gendered impacts of DFV, [which] highlights the importance of providing expert witness testimony and evidence in court when matters involve DFV histories. This testimony could be essential for supporting juridical officers and juries to understand the impacts of DFV on victim-survivors, as well as the cognitive and emotional states of victim-survivors. [33]

13.54. Several submissions supported:

- the use of DFV expert evidence to address myths and misconceptions and to educate jurors about DFV[34]
- making it mandatory for judges to direct juries on the nature, effect and expected responses of DFV victim-survivors to challenge harmful stereotypes and misconceptions about DFV.[35]

13.55. Our recommendations to mandate certain jury directions **(Recommendation 31)** and for a DFV expert evidence panel **(Recommendation 29)** would promote jurors' understanding of the nature and effect of DFV, including for victim-survivors charged with an offence involving the use of defensive force against their abuser. Together, they would ensure that trials are not distorted by myths or misconceptions about DFV.

13.56. The recommendation to require the judge to give the relevant jury directions about domestic violence unless there is good reason not to, would ensure juries are assisted to properly consider the complete context for an offence.[36]

13.57. Our recommendation about a DFV expert evidence panel would contribute to the same outcome. It would increase access to expert evidence about the nature of DFV and the social, psychological and cultural factors that may affect the behaviour of a person who has been or alleges to be a DFV victim-survivor.

13.58. Currently, there must be a factual basis before an expert witness can give opinion evidence about the nature and effect of DFV on the defendant. Usually, this will require the defendant to give evidence.[37] This undermines the defendant's trial rights and may not be appropriate (see Background Paper 3).[38]

13.59. In consultations, a practitioner told us about a matter in which the defendant did not give evidence. This meant the defendant could not adduce defendant-specific DFV expert evidence at trial because the expert's report disclosed the defendant's instructions. DFV expert evidence about the nature and effect of DFV generally may have been more appropriate in that matter. Access to such evidence, while not specific to the defendant, would improve access to defences for such victim-survivors.[39]

13.60. Our recommendation would also address another barrier: cost. We heard in consultations and in interviews with legal practitioners (Research Project 5) that the cost of obtaining expert reports in DFV matters prevents many defendants from relying on expert evidence about the nature and effect of DFV at trial.[40] Our reform would provide access to expert reports at no cost to the defendant.

A simple, clear and effective trial process

13.61. The recommendations considered in this chapter promote a simpler, clearer and more effective criminal trial process.

13.62. Our recommendation about the special witness provisions **(Recommendation 27)** would remove any doubt about the court's power to designate as a special witness a DFV victim-survivor on trial for an offence that may have been an act of resistive violence against their abuser. It would also clarify the relevance of a person's cultural background to the special witness provisions.

13.63. In a similar vein, having a formal intermediary present to support eligible witnesses in homicide and domestic violence proceedings (**Recommendation 28**) would provide increased efficiencies for both the defendant and the complainant in taking evidence from witnesses who otherwise may have difficulty understanding complex questions and communicating clearly.

13.64. While our reforms to special witness provisions and the QIS are aimed primarily at alleviating disadvantage experienced by vulnerable witnesses, there is a systemic benefit in witnesses being able to give their evidence in a more cohesive and streamlined manner than they would if unsupported.

13.65. Reviews of intermediary schemes in other jurisdictions show the use of such schemes not only improves the quality of evidence, but also plays an educative role, encouraging simplified questioning and use of aids by police and prosecutors.[41] This has a flow on effect for other trials, as practitioners would be able to apply their experiences using the QIS to those matters where an intermediary is not available.

13.66. The introduction of a DFV expert evidence panel (**Recommendation 29**) would not change the law regarding the admissibility of expert evidence in respect to domestic violence. However, it would simplify the process for a court, prosecutor or defendant to access that evidence at trial.

13.67. By making specific provision about the evidence of traditional laws and customs of Aboriginal peoples or Torres Strait Islander peoples, **Recommendation 30** would simplify the intersection of such evidence with evidentiary rules for hearsay and opinion evidence.

13.68. Our recommendation mandating jury directions about domestic violence (**Recommendation 31**) would clarify the assistance a judge would provide to a jury and would reduce the need for lengthy legal arguments about the appropriateness of giving directions in a relevant matter. It has the in-built safeguard that judges would not be required to give the direction where it is not relevant or where there is a good reason not to do so (**Recommendation 32(c)**).

13.69. Our recommendation about legislating the process for determining what directions to make (where not mandated) provides clarity about procedure and the obligations on the parties and the trial judge. This would reduce the complexity of trials by requiring parties to identify the real issues at trial, ensuring only relevant defences are left for a jury's consideration, improve the assistance judges give juries and clarify the task for the jury (**Recommendation 32**).

13.70. Finally, our recommendation about a formal discussion between parties and the judge about jury directions (**Recommendation 32(a)**) would make the trial process more efficient and reduce appeals.

13.71. Currently, a judge must direct on all possible defences that fairly arise on the evidence. This means the judge must direct the jury about any defence open to the defendant on the view of the evidence most favourable to the defendant.[42] This obligation applies even where neither party has requested the direction or where the defence is contrary to the defendant's primary case or to evidence led by the defendant. This lengthens the trial process and complicates the jury's task. It can result in appeals on the basis the judge failed to direct on a defence, at odds with strategic decisions made by the defendant at trial. That might include defences that the defendant did not run at trial and did not ask the judge to give directions on.[43]

13.72. Without limiting a defendant's right of appeal, our recommendation would ensure the parties must identify the defences and other directions they want the judge to give to the jury and require the judge to consult the parties on any other directions the judge considers might be appropriate.

13.73. There are two key implications of this which would serve to improve the efficiency and effectiveness of the trial:

- It would ensure judges do not direct juries on defences (or other matters of law) that are not relevant. This would simplify the trial process, making it more efficient and effective.

- There should be less appeals on the basis that a judge failed to direct the jury on a matter, including an available defence, in circumstances where the defendant did not ask the trial judge to give the direction or opposed it being given.

Achieving legal consistency

13.74. Consistency in applying the law is a fundamental aspect of the rule of law. It reinforces public confidence and trust in the legal system. It fosters a sense of fairness and impartiality, provides stability by making the law predictable and allows people to understand their rights and obligations. Our reforms would contribute to consistency in the conduct of criminal trials in Queensland.

13.75. By broadening the qualifications for designation as a special witness, our recommendation about special witness protections would provide consistency in the law's protection of people likely to be disadvantaged as a witness, whether because of domestic violence or their cultural identity.

13.76. Queensland is now the only Australian jurisdiction without specific rules of evidence to facilitate the admission of evidence of traditional laws and practices of Aboriginal peoples and Torres Strait Islander peoples.[44] Our recommendation to support admission of this type of evidence would bring consistency with all other Australian jurisdictions.

13.77. Mandating jury directions in cases involving domestic violence would ensure juries are given the same information about the nature of domestic violence and how people who experience domestic violence respond, regardless of the location of a trial or the identity of the presiding judge.

13.78. Where directions are not mandated, our recommendation for a legislated process to decide which directions a judge should give to a jury would ensure a consistent procedural process regardless of charge, court or the identity of the judicial officer.

Human rights considerations

13.79. **Recommendations 27–32** are compatible with human rights. Several rights are promoted through our reforms.

13.80. All our reforms to criminal trial proceedings promote the right to recognition and equality before the law by improving procedural fairness for people who may otherwise experience unjust outcomes.[45]

13.81. The right to recognition and equality before the law for DFV victim-survivors and witnesses is promoted by extending special witness protections and expanding the Queensland Intermediary Scheme to ensure access to culturally safe and trauma-informed processes that minimise risk of further harm (**Recommendation 27-28**).[46] Enabling a court to declare a defendant who is a DFV victim-survivor a special witness (**Recommendation 27**) also promotes rights in criminal proceedings, including guarantees to obtain the attendance and examination of relevant witnesses under the same conditions as prosecution witnesses.[47]

13.82. An expert evidence panel for DFV, modelled on the Sexual Offence Expert Evidence Panel, would provide courts with specialised knowledge about the dynamics of DFV (**Recommendation 29**), helping to counteract myths and biases. This would also be achieved by amendments to jury directions about DFV that ensure jurors are educated on the complexities of DFV and their effects on defendants or other parties (**Recommendation 31**). These recommendations promote rights to equality for women, including Aboriginal women

and Torres Strait Islander women, women from culturally and linguistically diverse backgrounds and other disadvantaged communities.[48] They also promote the right to a fair hearing by improving the knowledge and competency of the court.[49]

13.83. Permitting evidence of traditional laws and customs would improve rights in criminal proceedings for Aboriginal peoples and Torres Strait Islander peoples (**Recommendation 30**).[50] This right is further promoted by ensuring this evidence is only admitted where it is fair for the defendant and, if admitted, is accompanied with jury directions about how to treat the evidence. This recommendation also promotes the cultural rights of Aboriginal peoples and Torres Strait Islander peoples by allowing evidence about their traditional law and customs to inform court decision-making.[51] Our recommendation is intended to ensure the defences we have reviewed are applied in a culturally informed way.

13.84. **Recommendation 32** improves jury directions and promotes the right to a fair hearing by improving the competency, independence and impartiality of the court.[52] It is structured in a way that does not limit a person's appeal rights, thereby promoting the right of a convicted person to appeal their conviction.[53]

Implications of our reforms

13.85. We acknowledge some recommendations discussed in this chapter have implications beyond the defences specified in our terms of reference. However, it is not practical to have different approaches to these matters depending on the defences raised in a proceeding. That would undermine our objective to simplify and clarify the operation of the defences we have reviewed.

13.86. Further, our reforms would have several implications beyond their expected direct impact on the improvement of the conduct of criminal trials.

13.87. The first is educative. Implementing our recommendations would affect not only the substantive law, but also the attitudes of and approaches taken by stakeholders heavily invested in the criminal law. In particular:

- Expanding the scope of special witness provisions and the QIS would prompt police and prosecutors to turn their minds to whether special witness applications need to be made in individual cases.
- Confirming that a DFV victim-survivor who is facing a charge arising from an act of resistive violence can avail themselves of the special witness provisions would prompt defence lawyers to consider applying those provisions in other cases.
- Establishing a DFV expert evidence panel would contribute to ongoing efforts among academics and social services systems to improve community understanding of and attitudes towards domestic violence and its effects on individuals and family groups in the community.
- Amending the Evidence Act to facilitate the admission of evidence of traditional laws and customs of Aboriginal peoples and Torres Strait Islander peoples would enhance the cultural capacity of community members and legal stakeholders by exposing them to information they might not have otherwise. This links to the recommendations discussed in Chapter 14.

13.88. The second key implication is resourcing. Some of our recommendations would not result in any significant additional impost on government agencies, community groups or other stakeholders. Reforms in that category include our recommendations to expand special

witness provisions, to amend the process for jury directions and to facilitate admission of evidence of traditional laws and customs.

13.89. Other reforms would require resourcing to be effectively implemented. In particular, additional funding would be required to expand the QIS and to establish a DFV expert evidence panel.

13.90. To expand the QIS as we recommend, additional intermediaries would have to be recruited and trained, with a focus on providing support to both child and adult witnesses, in the context of a wider range of offences.

13.91. The scheme is also geographically limited, applying only in Brisbane and Cairns.[54] To overcome wider access to justice issues, it would be ideal for the QIS to expand its operations to apply State-wide. This is beyond the scope of our terms of reference.

13.92. The DFV expert evidence panel should be established using a similar process and take into account the outcomes of the current review of the Sexual Offence Expert Evidence Panel pilot program.

13.93. Some of our reforms would have operational implications. For example, Court Services could manage both the QIS and the DFV expert evidence panel. In establishing this, Court Services would need to promote the QIS to relevant stakeholders and develop and implement a cultural safety framework in consultation with DFV victim-survivors and experts.

13.94. Court Services should develop an awareness campaign about the QIS, its functions and services for the ODPP, QPS, Legal Aid Queensland, the Aboriginal and Torres Strait Islander Legal Service, the Bar Association of Queensland and the Queensland Law Society.

13.95. Likewise, Court Services should develop information and education sessions for legal stakeholders about the DFV expert evidence panel modelled on those delivered during the rollout of the Sexual Offence Expert Evidence Panel Project.

13.96. These resourcing and operational requirements do not undermine the case for reform. The reforms address critical deficits in current processes. Viewed holistically, they are anticipated to improve aspects of the justice system including efficiency, which would have positive financial implications.

References

1 Evidence Act 1977 (Qld) s 21A(2).

2 Evidence Act 1977 (Qld) s 21(1).

3 Evidence Act 1977 (Qld) s 21(1)(e).

4 Evidence Act 1977 (Qld) s 21AZM(1); Explanatory Notes, Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019 (Qld) 8–9.

5 Evidence Act 1977 (Qld) ss 21AZM(1), 21AZR; Explanatory Notes, Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019 (Qld) 8–9.

6 Queensland Courts, Queensland Intermediary Scheme: Everybody Deserves to be Heard (Fact Sheet, September 2023).

7 Evidence Act 1977 (Qld) s 21AZJ(1)(b); Evidence Regulation 2017 (Qld) regs 2A(2)–(4).

8 Women's Safety and Justice Taskforce, Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System (Report No 2, 2022) vol 1, 353.

9 Evidence Act 1977 (Qld) pt 6B div 4.

10 Evidence Act 1977 (Qld) s 130.

11 Evidence Act 1977 (Qld) s 103ZZGB.

12 Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 3, 697.

13 'Sexual Offence Expert Evidence Panel', Queensland Courts (Web Page, 24 October 2025) <https://www.courts.qld.gov.au/services/sexual-offence-expert-evidence-panel>.

14 Australian Law Reform Commission, NSW Law Reform Commission, Victorian Law Reform Commission, Uniform Evidence Law (Report, December 2005) 651–2.

15 Subramaniam v Public Prosecutor [1956] 1 WLR 965, 970; David Field, William van Caenagem and Clair Duffy, Queensland Evidence Law (LexisNexis, 6th ed, 2022) 291 [9.2].

16 David Field, William van Caenagem and Clair Duffy, Queensland Evidence Law (LexisNexis, 6th ed, 2022) 361–2 [11.3]–[11.6].

17 Australian Law Reform Commission, NSW Law Reform Commission, Victorian Law Reform Commission, Uniform Evidence Law (Report, December 2005) 650–1.

18 Evidence Act 1995 (Cth) ss 72, 86; Evidence Act 2011 (ACT) ss 72, 78A; Evidence Act 1995 (NSW) ss 72, 78A; Evidence (National Uniform Legislation) Act 2011 (NT) ss 72, 78A; Evidence Act 1929 (SA) s 34ZA; Evidence Act 2001 (Tas) ss 72, 78A; Evidence Act 2008 (Vic) ss 72, 78A; Similar provisions have been enacted in Western Australia but have not yet commenced: Evidence Act 2025 (WA) ss 86, 93; See also Australian Law Reform Commission, NSW Law Reform Commission, Victorian Law Reform Commission, Uniform Evidence Law (Report, December 2005) 672, 707.

19 Evidence Act 1977 (Qld) s 130.

20 R v Lefoe [2024] QCA 240, [80].

21 Jury Directions Act 2015 (Vic) ss 11–16.

22 Diana Eades, 'Taking Evidence from Aboriginal Witnesses Speaking English: Some Socio-Linguistic Considerations' (2015) 126 Precedent 44, 46.

23 Roland Sussex, 'Intercultural Communication and the Language of the Law' (2004) 78 Australian Law Journal 530, 538–40; Jieun Lee, 'When Linguistic and Cultural Differences Are Not Disclosed in Court Interpreting' (2009) 28(4) Multilingua 379, 396–7.

24 Australian Law Reform Commission, NSW Law Reform Commission, Victorian Law Reform Commission, Uniform Evidence Law (Report, December 2005) 648–9; 662–5.

25 Centre for Women's Justice, Women Who Kill: How the State Criminalises Women We Might Otherwise Bury (Report, February 2021) 83, 87–9; Australasian Institute of Judicial Administration, 5.11. Trauma-Informed Judicial Practice (National Domestic Violence Benchbook, August 2025) <https://dfvbenchbook.aija.org.au/article/1080291>.

[26] Evidence Act 1977 (Qld) ss 21AZM(1), 21AZR; Explanatory Notes, Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019 (Qld) 8–9.

[27] Queensland Courts, Queensland Intermediary Scheme: Everybody Deserves to be Heard (Fact Sheet, September 2023).

[28] South Australian Law Reform Institute, Providing a Voice to the Vulnerable: A Study of Communication Assistance in South Australia (Report No 16, September 2021) xxv.

[29] QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 17, 30, 40.

[30] Chapter 3, 'Community and professional understandings of DFV'; QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 30–1.

[31] Centre for Women's Justice, Women Who Kill: How the State Criminalises Women We Might Otherwise Bury (Report, February 2021) 27–9, 79–80.

[32] QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 100–02.

[33] QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) 102.

[34] Queensland Sexual Assault Network, Submission 26; Queensland Council of Social Services, Submission 28; Red Rose Foundation, Submission 33; Women's Legal Service Queensland, Submission 37; Sisters Inside, Submission 45.

[35] Queensland Sexual Assault Network, Submission 26; Red Rose Foundation, Submission 33; Women's Legal Service Queensland, Submission 37; Rachel Dioso-Villa and Caitlin Nash, Submission 38; Bar Association of Queensland, Submission 42; Sisters Inside, Submission 45.

[36] Evidence Act 1977 (Qld) ss 103T–103V, 103Z–103ZD.

[37] R v Rowan (A Pseudonym) (2024) 278 CLR 470, 496, [73]; R v Runjanjic & Kontinnen (1991) 56 SASR 114, 120.

[38] QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 36–7.

[39] Patricia Easteal, Kate Hughes, and Jacki Easter, 'Defences: Battered Women and Duress' (1993) 18(3) Alternative Law Journal 139, 139; Centre for Women's Justice, Women Who Kill: How the State Criminalises Women We Might Otherwise Bury (Report, February 2021) 83, 89.

[40] QLRC, Legal Practitioner Insights (Research Project 5, 2025) Supreme Court Judge, Interview 6; Defence Counsel, Interviews 2, 3.

[41] Judy Cashmore and Rita Shackel, Evaluation of the Child Sexual Offence Evidence Pilot: Final Outcome Evaluation Report (Report, August 2018) 3–4.

[42] Pemble v The Queen (1971) 124 CLR 107, 117–18; Stevens v The Queen (2005) 227 CLR 319, 342 [68]; R v Lefoe [2024] QCA 240, [80]–[81].

[43] R v Baden-Clay (2016) 258 CLR 308; R v MEB [2024] QCA 188; R v Kuzmenko [1968] QWN 24.

[44] Evidence Act 1995 (Cth) ss 72, 86; Evidence Act 2011 (ACT) ss 72, 78A; Evidence Act 1995 (NSW) ss 72, 78A; Evidence (National Uniform Legislation) Act 2011 (NT) ss 72, 78A; Evidence Act 1929 (SA) s 34ZA; Evidence Act 2001 (Tas) ss 72, 78A; Evidence Act 2008 (Vic) ss 72, 78A. Similar provisions have been enacted in Western Australia but have not yet commenced: Evidence Act 2025 (WA) ss 86, 93.

[45] Chapter 10, 'Our reform lens'.

[46] Human Rights Act 2019 (Qld) s 15, 32(2)(j).

[47] Human Rights Act 2019 (Qld) s 32(2)(h).

[48] Human Rights Act 2019 (Qld) s 15(5); Appendix H, 'Right to recognition and equality before the law'.

[49] Human Rights Act 2019 (Qld) s 31(1).

[50] Human Rights Act 2019 (Qld) s 32(2).

[51] Human Rights Act 2019 (Qld) s 28(2).

[52] Human Rights Act 2019 (Qld) s 31(1).

[53] Human Rights Act 2019 (Qld) s 32(4).

[54] Evidence Act 1977 (Qld) s 21AZJ(1)(b); Evidence Regulation 2017 (Qld) regs 2A(2)–(4). The QIS is available in the Supreme and District Courts at Brisbane and Cairns only. However, in the Magistrates Court, it is available at Caboolture, Cleveland, Cooktown, Redcliffe and Thursday Island, in addition to Brisbane and Cairns.

CHAPTER 14

Training and resourcing reforms

Contents

Recommendations

R33 There should be a comprehensive training framework about DFV, cultural capability and barriers to accessing justice faced by disadvantaged communities. The Government should:

(a) improve training for the Queensland Police Service, the Office of the Director of Public Prosecutions and related criminal justice personnel

(b) partner with the Queensland Law Society and the Bar Association of Queensland to improve training for legal practitioners

(c) facilitate heads of jurisdiction of the Queensland courts to review and implement training opportunities for judicial officers.

R34 The Government should increase funding for legal and advocacy services providing support to people who are parties to criminal justice proceedings. This should include specialist services for DFV victim-survivors and for people from disadvantaged communities who face barriers to justice, including Aboriginal peoples and Torres Strait Islander peoples, people with disability, people from culturally and linguistically diverse backgrounds and people from the LGBTQIA+ community.

R35 The Government should fund Community Justice Groups to provide submissions and court support services to Aboriginal peoples and Torres Strait Islander peoples in the Supreme and District Courts.

Introduction

14.1. This chapter discusses our recommended training and resourcing reforms.

14.2. We intend our reforms to improve outcomes and address barriers to justice for disadvantaged communities through key resourcing and capacity-building measures. This is necessary to ensure all Queenslanders can access criminal defences on an equal basis.

14.3. In Chapter 3, we explore the research findings that some disadvantaged communities are at greater risk of experiencing DFV, particularly people with intersecting identities. We consider the unique experiences of DFV people from disadvantaged communities can have. We consider their heightened risks of experiencing discrimination, increased if they belong to more than one marginalised community.[1] We discuss barriers to justice that can negatively influence a person's engagement with the criminal justice system and affect the fairness of the outcome they receive.[2] We consider the unique and additional barriers to justice that people from diverse and disadvantaged communities can face. This includes Aboriginal peoples and Torres Strait Islander peoples, people with disability, people from culturally and linguistically diverse backgrounds and people from the LGBTQIA+ community.

14.4. Understanding the needs of people from disadvantaged communities and addressing barriers to justice is critical to reforming Queensland's criminal defences. It is particularly relevant for DFV victim-survivors who interact with the criminal justice system, given the likelihood that they will belong to at least one marginalised community. We are committed to ensuring that our recommended reforms do not have disproportionate effects on diverse and

disadvantaged groups and we have considered measures that may be needed to mitigate any unintended consequences.[3]

14.5. Our review has found a need to improve the way people who work in the criminal justice system interact with people who experience DFV and with people from diverse and disadvantaged communities. **Recommendation 33** aims to enhance the knowledge and skills of criminal justice stakeholders to support their work with DFV victim-survivors, Aboriginal peoples and Torres Strait Islander peoples and people from other diverse and disadvantaged communities. It would support better outcomes by improving the experiences of people who interact with the justice system and by enhancing investigation, prosecution and court decision-making processes.

14.6. We have heard that legal and advocacy support is not available to everyone who needs it. A lack of legal and advocacy support can significantly affect a person's experience and outcomes in the criminal justice system. This is heightened for people from diverse and disadvantaged communities. Inadequately funding legal and advocacy services results in an increased rate of self-represented litigation, delay, lack of culturally relevant information to assist court decision-making and other barriers to justice. **Recommendation 34** aims to support just outcomes for all Queenslanders and increase efficiency in the criminal justice system by increasing funding for legal and advocacy services.

14.7. Court processes must be culturally responsive to ensure just outcomes for Aboriginal peoples and Torres Strait Islander peoples. Cultural competency in the criminal justice system is a significant issue. While Community Justice Groups across Queensland play an important role in increasing cultural competency through cultural reports and court support services, they are significantly under-resourced to do this work and are not funded to provide cultural reports as submissions to the Supreme and District Courts. **Recommendation 35** aims to enable all courts to be assisted by Community Justice Groups and ensure these groups are appropriately resourced to provide submissions and court support services in all courts.

14.8. Our reforms recognise and seek to complement and build on existing successful initiatives and services. For example, the Community Justice Group program provides cultural support and advice to Magistrates and Murri Courts during criminal proceedings involving an Aboriginal person or Torres Strait Islander person.[4] The National Access to Justice Partnership provides free legal assistance to people experiencing financial disadvantage.[5] However, limited funding means that these programs are restricted in their scope and capacity.

14.9. This chapter has five sections. The first three sections discuss our recommendations for reform and the reasons why reform is needed. We then consider how our reforms protect and promote human rights. The chapter concludes by exploring the implications of our recommended reforms.

Training

Our recommendation to improve training

14.10. **Recommendation 33** is for the Government and specific stakeholders to review and improve training for people who work in the criminal justice system about:

- the nature and impact of DFV
- cultural capability

- the unique experiences of, and barriers to justice faced by, disadvantaged communities.

14.11. People who work in the criminal justice system include police, prosecutors, legal practitioners, and judicial officers. Disadvantaged communities include Aboriginal peoples and Torres Strait Islander peoples, people with disability, people from culturally and linguistically diverse backgrounds and people from the LGBTQIA+ community. Others include people with poor mental health, people experiencing socio-economic disadvantage, people living in rural, regional, and remote areas, children and young people and older people. As we discuss in Chapter 3, people with intersecting identities also experience a greater likelihood of facing barriers to justice.[6]

14.12. Training should be, as a minimum:

- Designed to include localised and place-based content from cultural groups, including Aboriginal and Torres Strait Islander Elders.
- Co-designed and co-delivered by people with lived experience and their representative organisations. This includes people with lived experience of DFV and people belonging to the identified priority groups.
- Culturally responsive, evidence-based and trauma informed, and designed to support effective communication, including in relation to reporting crimes and giving evidence.
- Ongoing.

14.13. Training on the nature and impact of DFV should address common misconceptions about DFV and include topics such as how to recognise coercive control and ongoing patterns of abuse, how to identify the primary aggressor and understanding the social entrapment framework.[7] It should also include how to recognise DFV in diverse communities. It should be informed by expertise from the DFV and relevant sectors, including the DFV peak body, the Queensland Domestic Violence Service Network.

14.14. Training in cultural capability must be led by the expertise of Aboriginal peoples and Torres Strait Islander peoples and their organisations. It should include content on the systemic factors that continue to drive the disproportionate representation of Aboriginal peoples and Torres Strait Islander peoples in the criminal justice system, including systemic racism and bias, social and economic disadvantage and the ongoing effects of colonisation and intergenerational trauma.[8] As recommended by the Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence, training to build cultural capability and cultural sensitivity should be targeted, meaningful and ongoing and delivered by Aboriginal and Torres Strait Islander experts.[9] If resourced appropriately, Community Justice Groups could be invited to deliver this training.

14.15. Training on the unique experiences of, and barriers to justice faced by, disadvantaged groups should draw upon findings from the Law Council of Australia's 'The Justice Project'.[10] This report provides an extensive review of the barriers to justice facing people experiencing social and economic disadvantage in Australia. It made 59 recommendations to improve the justice system's efficacy. Training should also draw upon findings from relevant inquiries that have heard directly from people with lived experience, including the Taskforce and the Disability Royal Commission.[11]

14.16. When reviewing and improving training for QPS, ODPP and related criminal justice personnel, the Government should liaise with relevant divisions responsible for training. This includes the First Nations Division and Multicultural Affairs Unit within QPS. Within the ODPP, it includes its Women's Safety and Justice Project which is leading the implementation of relevant Taskforce recommendations, including those relating to training on DFV and cultural capability.

14.17. Training for legal practitioners should be reviewed in partnership with the Bar Association of Queensland, the Queensland Law Society and their relevant committees.[12] Other relevant stakeholders that should be consulted include the Law Council of Australia. In 'The Justice Project' final report, the Law Council of Australia accepted responsibility for:

> conducting a stocktake of the professional development training and other tailored resources available to assist the legal profession to build cultural competence, service accessibility and a more informed understanding of the diverse needs of people experiencing disadvantage.[13]

14.18. When improving training, stakeholders should consider whether:

- existing training opportunities are voluntary and if so, whether this is appropriate
- there are barriers to accessing existing training, such as a lack of funding or insufficient time due to large workloads
- accessing training and relevant resources is actively encouraged by people in leadership positions
- relevant training is provided as discrete opportunities or as ongoing professional development
- training is meaningfully tailored to a person's role.

14.19. Training on DFV, cultural capability and barriers to justice should not be siloed and should recognise the intersecting identities of people who experience DFV, cultural exclusion and barriers to justice.

The need to improve training

Current training is inconsistent or insufficient

14.20. While recent improvements to training are apparent, they are inconsistent or insufficient to effect system-wide change.

14.21. Recent inquiries have recommended improvements to training for people who work in the criminal justice system on topics including DFV and cultural capability.[14] As a result of these recommendations, some criminal justice stakeholders have made positive changes to their training to improve the skills and capabilities of their workforce. For example:

- QPS has improved several of its courses in relation to DFV and cultural capability. It has also introduced a new two-day cultural capability training course for all police and staff.[15]
- ODPP has held training on DFV, sexual violence and gendered issues affecting women and girls across Queensland and has commenced drafting a cultural capability framework.[16]
- A Legal Professional Development Working Group has been established and is developing information resources to support legal training on DFV and coercive control. A new Training Support and Coordination Service will also develop foundational modules and schedule training opportunities for legal practitioners.[17]

14.22. Discrete training initiatives are also occurring. For example, there is an annual, half-day cultural awareness training for court staff, associates and judges in Cairns. The training is delivered by a local community Elder, tailored to the region and the context of the court.

14.23. These changes are important and show a willingness of key actors in the criminal justice system to improve their capacity to meet the needs of victim-survivors and people from disadvantaged communities.

14.24. Implementation progress reports of Taskforce recommendations suggest there is room for improvement. For example, the most recent implementation progress report found that QPS cultural capability training could be further enriched by engaging local Community Justice Groups and Elders to provide local context.[18]

14.25. Stakeholders we spoke with highlighted a need for better training for criminal justice personnel. Feedback we received suggests:

- changes have been implemented inconsistently across the criminal justice system
- there is variation in the quality and frequency of training provided
- there tends to be a focus on initial training with few opportunities for ongoing professional development
- there are gaps in the content of training and some topics receive little attention.

14.26. Legal Aid Queensland told us that improved and ongoing training for people who work in the criminal justice system on trauma-informed practice and cultural competency is needed:

> [Legal Aid Queensland] supports investment in continued training of police officers who undertake interviews in these contexts. Training should embed an understanding of trauma-informed interview techniques, to uncover an accurate version and relevant background, and avoid the limitations of a traditional incident-focussed approach.
>
> [Legal Aid Queensland] notes that this is particularly important in the context of interviews with a DFV victim survivor from a culturally diverse community and from within an Aboriginal and/or Torres Strait Islander community. Training should include cultural competency modules, so that cultural norms and environments are properly considered in informing a best practice approach.[19]

14.27. The Victims' Commissioner supported our proposal for ongoing professional development on contemporary understanding of DFV for police, legal practitioners, specialist service providers and judicial officers:

> These key criminal justice actors need to be able to understand social entrapment theory, identify patterns of coercive control and recognise the devastating effect of domestic and family violence on victims' behaviour, wellbeing and safety. Professional development should also be evaluated to understand effectiveness and inform future training.[20]

14.28. Stakeholders identified several limitations of existing training, including:

- the lack of place-based content
- generic content not tailored to a person's role
- lack of ongoing training
- training not being made available to all personnel.

14.29. When training is inadequate, it can lead to inappropriate and ineffective interactions between law enforcement agencies and people who interact with the criminal justice system. The Australian Law Reform Commission's recent inquiry into justice responses to sexual violence found that a complainant's experience of a criminal trial can depend greatly upon the individual skills of, and approach taken by, the judicial officer. The Commission noted:

> A judicial officer proactively implementing trauma-informed practices and procedures can make the complainant's experience of the criminal trial less traumatising. The opposite can be retraumatising, and lead to the view that justice has not been done.[21]

14.30. The Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited recommended 'specific and detailed cultural training for people enforcing the law' and cautioned that

> [W]ithout culturally informed and transparent application of the law, there is a risk that enforcement of such laws may further marginalise Aboriginal and Torres Strait Islander families and undermine efforts to build trust and support within these communities with state and federal Government.[22]

14.31. The need for cultural capability training is particularly pressing in regional and remote areas. Stakeholders also identified the need for cultural capability training to:

- address systemic bias and racism
- be tailored to the specific community
- be co-designed and led by Aboriginal and Torres Strait Islander communities
- be provided in the context of DFV to decrease misidentification of the person most in need of protection at DFV incidents.[23]

14.32. There are several resources available to enhance awareness of barriers to justice and to support people working in the criminal justice system to work effectively with people from disadvantaged communities. For example, the Equal Treatment Benchbook contains information on ethnic, religious, spiritual and linguistic diversity and Aboriginal and Torres Strait Islander peoples.[24] The OPM contains a chapter on police interactions with 'persons who are vulnerable, disabled or who have cultural needs'.[25] The effect of these resources is enhanced when it is supported by regular training, co-designed and co-delivered by people with lived experience, and when its use is actively encouraged by people in leadership and supported by the broader organisational culture.[26]

14.33. Recent improvements to training offered by some criminal justice stakeholders should be evaluated and may inform change for other criminal justice stakeholders. We therefore suggest the Government, in consultation with all relevant stakeholders, map the different approaches of various organisations and facilitate information-sharing on best practice approaches where appropriate.

Our understanding of DFV has evolved

14.34. As we discuss in Chapter 3, contemporary understandings of DFV have evolved.[27] We now know that DFV includes non-physical forms of violence and coercive control. We know that DFV is complex, multifaceted and gendered, uniquely affects children and people from diverse and disadvantaged communities and carries a significant lethality risk. It is vital that people working in the criminal justice system who directly interact with victim-survivors and people who use violence have a deep understanding of DFV and its causes, including how it can present in diverse communities. Training should be ongoing to ensure content reflects developments in research and best-practice approaches.

Diverse communities experience DFV differently and face unique barriers to justice

14.35. As we discuss in Chapter 3, certain groups of people are particularly vulnerable to experiencing DFV and can experience DFV in unique ways. A person's experience of DFV is affected by their personal characteristics, identities and life experiences. This includes current or previous experiences of sexism, racism, homophobia and ableism.[28] These factors can affect a person's ability to escape violence and use strategies to reduce the impact of abuse.

14.36. Understanding how DFV presents in diverse and disadvantaged communities is an essential component of effectively responding to DFV. A recent review has found that abusers can 'prey upon points of diversity and difference to further their abuse'.[29] These differences are not always recognised or understood by the justice system and related services.[30] People who work in the criminal justice system therefore require training on these differences to ensure the justice system responds appropriately and supports just outcomes. For example:

- **Aboriginal peoples and Torres Strait Islander peoples** are at greater risk of experiencing isolation, particularly in remote areas. They are more likely to experience threats from their abuser to be reported to authorities such as child protection.[31] They are more likely to use 'resistive violence'.[32] Aboriginal and Torres Strait Islander victim-survivors are less likely to report violence due to fear of police, limited access to culturally safe services and communication barriers.[33]
- **People with disability** experience more DFV than people without disability and women with disability are particularly vulnerable to abuse.[34] Abusers often target a victim-survivor's disability-related needs, including controlling their access to medication, mobility or communication aids.[35] People with disability also experience threats of institutionalisation, forced sterilisation and the use of restrictive practices.[36] Barriers to seeking help include inaccessible DFV services, reliance on an abuser for care or support and difficulties understanding the nature of the abuse.[37]
- **People from culturally and linguistically diverse backgrounds** can have different attitudes and understandings of gender roles, families and relationships.[38] Some cultures are less likely to report DFV due to expectations that women 'submit' to their husbands and a desire to avoid bringing shame to themselves and their family.[39] Some forms of violence are also influenced by a person's visa status or cultural background, such as visa abuse, dowry abuse, reproductive coercion or female genital mutilation.[40] People from culturally and linguistically diverse backgrounds may also struggle to report DFV to authorities due to language barriers, reliance on an abuser for residency and a lack of access to mainstream services such as Centrelink or Medicare due to visa conditions.[41]
- **People from the LGBTQIA+ community** are likely to experience some form of intimate partner violence during their lifetime.[42] This includes identity-based abuse which can include denying a person access to gender-affirming care, hate crimes such as 'corrective rape', threatening to 'out' the person's sexuality, HIV or intersex status, or being forced into conversion therapy. Barriers to accessing DFV support include discrimination, the use of heteronormativity and cisgenderism within services that fail to accurately identify abusers and the historical framing of DFV as 'violence against women' which may exclude some people from accessing services, such as transgender men and non-binary people.[43]

14.37. Marginalised communities also experience other forms of disadvantage which can compound the complexity of their legal needs and create barriers to justice.[44] Stigma and negative community attitudes can also influence how people who work in the criminal justice system respond to certain communities and can perpetuate disadvantage for these communities.[45] For example:

- **Aboriginal peoples and Torres Strait Islander peoples** face multiple barriers to justice linked to the historic and ongoing effects of colonisation. These include distrust of authorities, racial profiling and over-policing of Aboriginal peoples and Torres Strait Islander peoples and a lack of cultural competency in the justice system. We discuss this further in Chapter 3.[46]

- **People with disability** may experience police interactions as threatening.[47] Authorities may misinterpret behaviours associated with a person's disability as aggressive and court processes and buildings can be inaccessible. Inadequate processes to identify disability can also prevent people with disability from accessing appropriate supports, adjustments and diversionary options.[48]
- **People from culturally and linguistically diverse backgrounds** may be unaware of local laws, have limited English and inadequate access to legal advice and interpreter services. These barriers are particularly relevant for people in immigration detention, children and young people who are victims of forced marriages and people who have been trafficked or exploited.[49]
- **People from the LGBTQIA+ community** also experience barriers to accessing justice due to historic experiences of marginalisation and discrimination.[50] This includes distrust of police and authorities which can mean LGBTQIA+ people may be less likely to report violence to police.

14.38. The Commonwealth Government's recent 'Rapid Review of Prevention Approaches' to gender-based violence recommended:

> [A]ll governments prioritise the experiences of communities that are marginalised especially Aboriginal and Torres Strait Islander people, migrant and refugee communities, women and children with disabilities, LGBTQIA+ people, older women and regional and remote communities in implementing all of the recommendations in this report. Addressing gender-based violence for communities experiencing intersecting forms of marginalisation lays the foundation for population-wide success. Where applicable, implementation should involve a genuine and sustained co-design approach to ensure that affected communities are identifying priorities of greatest urgency and value to them.[51]

14.39. Many stakeholders provided feedback about the need to improve access to justice for disadvantaged communities. Stakeholders acknowledged that Aboriginal peoples and Torres Strait Islander peoples, particularly female DFV victim-survivors, face difficulties in accessing criminal defences.[52]

14.40. Some stakeholders also explicitly identified a need for greater training for judges and criminal justice personnel on the needs and experiences of distinct communities. For example, the LGBTI Legal Service submitted:

> In order to promote fairness and appropriate justice outcomes for all defendants impacted by domestic and family violence, it is imperative that both QPS and the judiciary are able to accurately identify the perpetrator of that violence in all instances. This is particularly important when one or both parties identify as LGBTIQA+, or the violence and control specifically exploits vulnerabilities relating to gender identity or expression, intersex status and sexuality.[53]

14.41. Stakeholders recognised the need for training to be appropriately developed and delivered. The LGBTI Legal Service submitted:

> We propose that the Commission's report recommends that, as a supplement to other reforms in this area … training on the proper identification of domestic violence in LGTBIQA+ relationships is delivered to QPS and the judiciary, by an appropriately qualified, LGBTIQA+ community-controlled legal and/or domestic violence organisation.[54]

14.42. Similarly, the Queensland Council of Social Service submitted:

> [A]ny training, education and resourcing needed to appropriately support victim-survivors for people with disability, the LGBTQIA+ community and culturally and

linguistically diverse backgrounds should also stem from consultation with those communities and be co-designed with them.[55]

14.43. Training criminal justice personnel on the unique needs and experiences of disadvantaged communities, including how they experience DFV and the barriers to justice they face, would help to ensure the justice system appropriately recognises and responds to the diverse experiences and needs of its users.

Legal and advocacy funding

Our recommendation to increase legal and advocacy funding

14.44. **Recommendation 34** is that the Government increase funding for culturally responsive and accessible legal and advocacy services that provide support during criminal law proceedings. This includes increased funding for specialist services for DFV victim-survivors and specialist services tailored to meet the needs of disadvantaged communities identified above. Increased funding should also be provided to Community Legal Centres Queensland as the peak body for the Queensland legal assistance sector.

14.45. Legal advice and representation services are provided through the National Access to Justice Partnership,[56] a joint five-year agreement to fund legal assistance services between the Commonwealth and state and territory governments. The program aims to enhance access to justice for 'people experiencing vulnerability and experiencing financial disadvantage' who are unable to afford private legal representation.[57] It focuses on services for women and children who are escaping DFV and on culturally appropriate services for Aboriginal peoples and Torres Strait Islander peoples.

14.46. Legal services funded under the National Access to Justice Partnership are delivered by Legal Aid Queensland, Community Legal Centres, the Aboriginal and Torres Strait Islander Legal Service, as well as women's legal services and family violence prevention legal services throughout Queensland.[58]

14.47. Advocacy organisations and Community Legal Centres across Queensland provide non-legal support to people during criminal justice proceedings. Advocacy services can complement legal assistance services by supporting people to understand their rights and access support, including legal representation, during criminal law proceedings. They remove barriers to engaging with the justice system, such as assisting people to apply for legal aid funding and help to address the underlying causes of offending by referring people to community services. Relevant services include:

- Youth Advocacy Centre's Family Support Service, which supports young people to attend court and can provide a report for the court where appropriate.[59]
- Queensland Advocacy for Inclusion's Justice Support Program, which supports people with cognitive impairment who are involved with the criminal justice system, including by helping them to access legal support and communicate effectively with their lawyer.[60]

14.48. Funding increases should be informed by consultations with the legal assistance, advocacy and DFV sectors regarding the level of demand for their services, the level of unmet need and any opportunities for further investment. Funding should be adequate, sustainable and long-term.

Limitations of current funding

Support is not available for all who need it

14.49. Underfunding of legal assistance services is chronic yet demand for these services continues to increase.[61] Community Legal Centres Australia reported that inadequate indexation and increases to award wages has meant funding has decreased in real terms.[62]

14.50. The 2025–2026 Queensland Budget contained increased investment in the legal assistance and advocacy sectors.[63] Evidence suggests, and stakeholders have confirmed, that more funding is required to meet ongoing demand.

14.51. On average, community legal centres report needing an additional 12 Full-Time Equivalent staff to respond to growing demand in their communities, yet many have unfilled vacancies.[64] This is partly due to funding limitations but also attributable to challenges recruiting and retaining experienced staff due to comparatively low wages and the challenging nature of the work. These issues are worse in regional and remote parts of Queensland.[65]

14.52. The independent review of the National Legal Assistance Partnership 2020–25 (now the National Access to Justice Partnership) highlighted the 'neglect of Australia's legal assistance sector' and recommended an entirely new funding distribution model to overcome failings of the existing model.[66] For example, the review noted that some service providers have introduced means testing to ration their services. While this is a reasonable response to growing demand, it still excludes people who are genuinely in need.[67]

14.53. Similarly, the Law Council of Australia identified a cohort of people they referred to as 'the missing middle'.[68] These people are ineligible for legal assistance yet cannot afford to pay for a private lawyer. They found that, while 14% of people fall under the poverty line, only 8% of the population is eligible for legal aid grants, leaving many unable to access legal advice or representation at all.[69]

14.54. Many stakeholders shared concerns that legal services were not available to everyone who needed them. They also noted the need to increase culturally competent and appropriate legal representation through specialist providers, including providers with specialist DFV expertise.[70]

14.55. Inadequate funding for the Aboriginal and Torres Strait Islander Legal Service means that not all Aboriginal peoples and Torres Strait Islander peoples can access culturally appropriate legal representation. Aboriginal peoples and Torres Strait Islander peoples often struggle to access culturally appropriate legal advice and face significant pressures to plead guilty, further compounded where the person is held on remand before trial.[71]

14.56. A lack of alternative service providers due to limited funding can also leave people without legal representation when there is a conflict of interest with a relevant provider.[72] While privately funding a lawyer may theoretically be an option, this can be extremely costly and is not a viable option for people who experience social and economic disadvantage.

14.57. Stakeholders also noted the need for increased resourcing for support services, particularly in rural and remote locations,[73] including social workers, probation and parole officers and behavioural change programs.[74]

14.58. Inadequate funding for advocacy services is a concern regularly raised by community and advocacy services and their representative organisations.

Available support is limited in scope

14.59. Insufficient funding for legal assistance services can result in large workloads and affect a lawyer's ability to build rapport with vulnerable clients, limiting the lawyer's opportunity to obtain accurate and meaningful instructions. It can also limit the use of culturally appropriate and accessible communication strategies and result in a pragmatic plea of guilty by a defendant.

14.60. Limited funding may also restrict lawyers' ability to provide face-to-face advice. They may instead rely upon alternative methods of communication, such as videoconferencing or teleconferencing. This can be inadequate or inaccessible to some people, including when a language interpreter is required or when a client requests that a support person is present.

14.61. Legal Aid Queensland submitted:

> In the experience of LAQ lawyers, many prisoners may be illiterate and innumerate, have intellectual disabilities, mental health conditions, neurodevelopmental disorders, substance use disorders, impairments in their memory and adaptive functioning, or a combination of the above. Those clients are better served by being able to review documents in the company of their lawyers.[75]

14.62. The Law Council of Australia identified the importance of face-to-face service delivery:

> Face-to-face advice is often critical and should not be overlooked as policymakers engage with technological options for legal service delivery. Technology is helping to reach many people in need, but at the same time, marginalised people often experience digital exclusion.[76]

Lack of tailored services

14.63. Communities that experience additional barriers to justice benefit from legal assistance and advocacy services tailored to their needs. The National Access to Justice Partnership recognises this and specifies a list of priority groups who are more likely to:

> [E]xperience legal problems, less likely to seek assistance and less able to access services. These cohorts are also often impacted by intersectionality … which requires legal assistance providers to deliver a complex array of person-centred and culturally safe services, including interpreters.[77]

14.64. The purpose of the priority group list is to ensure state and territory governments target their services towards people who fall within one or more of the listed cohorts, noting that services can still assist people who fall outside of these groups. The independent review of the former National Legal Assistance Partnership recommended expanding the list of priority groups to include women, LGBTQIA+ people, people living below the poverty line, recent migrants, refugees and asylum seekers and veterans and serving personnel.[78]

14.65. Stakeholders recognised the need for increased access to specialist services, including support services for child victim-survivors[79] and specialist DFV and culturally competent advocacy support services for victim-survivors during police interviews to assist with disclosures of abuse.[80]

14.66. Access to specialist services is also needed for other groups, including people with cognitive disability.[81] The Justice Support Program assists people with a cognitive impairment to find legal representation, communicate their disability-related needs to criminal justice stakeholders, understand court information and access services.[82] It is a State-wide service yet only receives funding for one full-time advocate.[83]

Consequences of insufficient funding

14.67. Access to legal assistance is fundamental to a fair and efficient justice system. Well-funded legal and advocacy services improve the safety of victim-survivors, especially women and children in family law and domestic violence matters.[84] Services that engage in a trauma-informed and culturally appropriate way have also been found to increase the likelihood of compliance with orders.[85]

14.68. Insufficient funding for legal assistance services has implications for individuals and the effective operation of the criminal justice system. This includes increased rates of self-representation, delay and exacerbation of other system issues.

Self-representation

14.69. A lack of access to legal assistance can result in people representing themselves during court proceedings. While this may be the person's preference, the Criminal Procedures Review found it was more likely to occur because of limited availability of legal aid funding.[86]

14.70. Self-representation in criminal matters is undesirable for both the defendant and the court system. The defendant usually lacks the training, knowledge and impartiality of a lawyer to effectively uphold their rights and interests. Judicial officers and court staff are required to expend limited resources explaining processes and legal terminology to ensure the person has a fair trial.[87]

Delay

14.71. If defendants struggle to access legal representation or have frequently changing lawyers, this can contribute to long delays in resolving cases. This increases trauma for victim-survivors and their families and can lead them to withdraw complaints. It can also cause defendants to spend prolonged periods on remand and may result in pragmatic pleas of guilty, particularly where significant time in custody has already been served.[88] Lengthy delays can also affect the recollection of witnesses and potentially the reliability of their evidence.

Workforce challenges

14.72. Inadequately funded legal assistance also creates workforce capacity challenges. In its submission to the National Legal Assistance Partnership review, Community Legal Centres Queensland identified the 'juniorisation' of the workforce as a particular challenge, where resources are used to regularly train junior staff while experienced staff leave for higher paying jobs elsewhere.[89] Other challenges include regular vacancies, additional work pressures and increased staff burnout due to vicarious trauma, stress and inadequate remuneration.[90]

Community Justice Groups

Our recommendation to fund and expand Community Justice Groups

14.73. **Recommendation 35** is that the Government fund Community Justice Groups to provide submissions and court support services to Aboriginal peoples and Torres Strait Islander peoples in the Supreme and District Courts.

14.74. This reform would resource Community Justice Groups to:

- provide culturally relevant information to the Supreme and District Courts to assist their decision-making and improve their cultural capability
- support Aboriginal peoples and Torres Strait Islander peoples interacting with the courts to experience greater cultural safety.

14.75. The preparation of bail and sentencing submissions through cultural reports is a core court-related activity of Community Justice Groups. Where an offender or defendant is an Aboriginal person or Torres Strait Islander person, the Bail Act and sentencing guidelines in the Penalties and Sentences Act authorise a Community Justice Group representative from the person's community to make submissions relevant to a bail application or sentencing.[91] A submission, which is sometimes referred to as a cultural report and can be written or oral, includes information about:

- the defendant or offender's relationship to their community
- any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the defendant or offender
- any considerations relating to programs and services established for defendants or offenders in which the Community Justice Group participates.[92]

14.76. Community Justice Groups are non-government organisations that provide practical support to Aboriginal and Torres Strait Islander people in contact with the justice system. They are run by local community members, including Elders, volunteers and Respected Persons, who provide court support services such as the preparation and presentation of bail and sentencing submissions, refer victims and offenders to services and provide cultural advice on justice-related issues.[93] They also deliver services at other points in the justice system, including prevention, awareness and education initiatives, visiting people in custody and supporting their transition back into community.[94]

14.77. A three-year independent evaluation of the Community Justice Group Program, completed in 2023 by Myuma, found that Community Justice Groups have a profoundly positive affect on the way many Magistrates and Murri Courts operate in Queensland.[95] This is consistent with feedback we received from stakeholders in consultations. Funding Community Justice Groups appropriately to provide cultural support in all courts would support just outcomes by removing cultural barriers and supporting culturally informed judicial decision-making.

14.78. Funding would be needed to build the capacity and skills of Community Justice Groups to expand the delivery of their services to the Supreme and District Courts.[96]

The need for culturally responsive court processes

14.79. Culturally responsive court processes help Aboriginal peoples and Torres Strait Islander peoples interacting with the criminal justice system to experience cultural safety (see above). We heard from stakeholders that Aboriginal peoples and Torres Strait Islander peoples typically do not experience cultural safety when engaging with the criminal justice system as a victim-survivor or offender for several reasons.

14.80. Stakeholders we consulted shared that many Aboriginal peoples and Torres Strait Islander peoples lack trust in the criminal justice system, including because of a perception of bias and racism. One defence counsel recounted a decision faced by a client about whether to plead guilty to manslaughter or proceed to trial and rely on self-defence as a complete defence to murder. They highlighted the disincentive to proceed to trial, stating:

> [I]t's a fact of life that white juries in Brisbane are less sympathetic to First Nations defendants.[97]

14.81. Another stakeholder shared that:

> The justice system is not broken, [it's] working as intended – to lock First Nations people up – but the question is how we amend [the] framework so it doesn't do that anymore.[98]

14.82. We heard consistent accounts of the difficulties Aboriginal peoples and Torres Strait Islander peoples, particularly women DFV victim-survivors, experience when interacting with the criminal justice system that limit or disincentivise their involvement and result in manifestly unjust outcomes.[99] We heard that the criminal justice system does not recognise or respond well to key barriers faced by victim-survivors engaging with the system. For example, Aboriginal women and Torres Strait Islander women who are victim-survivors of DFV may not engage with the criminal justice system because they experience shame, or because of cultural lore, family loyalty, fear of future harm, fear of authority, fear of the removal of children, fear of incarceration of their partner (particularly where the family is reliant on the partner's income), lack of support and communication barriers.[100]

14.83. Legal Aid Queensland stated that a multi-faceted approach was needed to increase access to justice for Aboriginal peoples and Torres Strait Islander peoples, including through the provision of resources to overcome language barriers.[101]

14.84. Culturally responsive court processes are necessary, particularly given the over-representation of Aboriginal peoples and Torres Strait Islander peoples in the criminal justice system. We discuss this further in Chapter 3.[102] There is also concern that recent legislative changes in the DFV and policing context will lead to increased criminalisation of Aboriginal peoples and Torres Strait Islander peoples.[103] The need for culturally responsive court processes is arguably greater now than ever before. This is apparent in the Better Justice Together strategy 2024–31, which aims to improve the ability of the justice system to be culturally responsive and free from all forms of racism[104], and initiatives like My Justice Journey, which aims to promote culturally appropriate and rehabilitative sentencing decisions.[105]

Unique role of Community Justice Groups

14.85. Community Justice Groups support the criminal justice system to create cultural safety for Aboriginal peoples and Torres Strait Islander peoples.[106] They provide a community-based response to justice-related issues for Aboriginal peoples and Torres Strait Islander peoples.

14.86. Supporting Community Justice Groups is a key objective under the Better Justice Together strategy. The strategy states:

> Community sees the role of Elders and Respected Persons, such as Community Justice Groups, who are grounded in communities, as best positioned to support communities, and increased support and resourcing is required to enhance this.[107]

14.87. Flexible funding agreements enable Community Justice Groups to utilise cultural leadership and tailor their services to suit the needs of the local community.[108]

14.88. Myuma's independent evaluation of the Community Justice Group Program found compelling evidence of positive outcomes across all initiatives undertaken by Community Justice Groups, including those focused on prevention, early intervention, supporting people in court, in custody and during transition back into community. Myuma found that:

- Community Justice Groups supported court outcomes to be more culturally informed.
- Judicial officers reported that Community Justice Groups had helped them to develop their cultural competency and understanding.

- Aboriginal peoples and Torres Strait Islander peoples felt respected and heard during the court process, increasing their confidence in the criminal justice system. Community Justice Groups supported them to have a better understanding of court processes and feel empowered to make informed choices.
- Community Justice Groups reduced recidivism rates by helping to address underlying causes of offending behaviour.[109]

14.89. Stakeholders expressed support for Community Justice Groups and identified ways in which they were improving court decision-making. We heard that Aboriginal and Torres Strait Islander defendants may disclose information to an Elder from a Community Justice Group while they are preparing a cultural report that might not otherwise be disclosed to their defence lawyer. Even if information is disclosed to a defence lawyer, we heard that Community Justice Groups provide a different perspective and can help judicial officers have a more holistic understanding of a person's circumstances.

14.90. In consultations, a regional judicial officer told us information shared by Community Justice Groups with courts is extremely valuable and directly impacts outcomes, including whether a defendant receives a custodial sentence, or the conditions imposed on a probation order.

14.91. We also heard from regional police that Community Justice Groups provide important contextual information to criminal justice personnel. For example, they inform police about sorry business and provide judicial officers with information about a person's family circumstances, level of support to assist with rehabilitation and the relationship histories of relevant parties to a matter.

14.92. Despite these positive outcomes, the Myuma report expressed concerns about the sustainability of Community Justice Groups, noting their 'broad range of activities, high expectations from the community and other agencies, reliance on volunteer members, and limited operational funding'.[110]

14.93. We heard similar concerns from stakeholders during consultations. The Myuma report highlighted the unmet capacity development needs of Community Justice Groups and recommended a new peak body be established and tasked with addressing this need.[111] During consultations with justice groups and court support officers in city and regional areas, we heard that other challenges include staff burnout, a lack of available Elders to support the work of Community Justice Groups, a lack of formal training, expectations to deliver services that are the responsibility of other agencies and a need for more Community Justice Group co-ordinators.

14.94. Stakeholders reiterated that Community Justice Groups provide services beyond the scope of their service agreements to fill gaps in service delivery. We also heard that some Community Justice Groups provide court support in District Courts despite a lack of funding. As one stakeholder told us during consultation:

> They never say no to their own mob, but it takes them away from the core business that they are funded for.

14.95. Myuma's evaluation and stakeholders we spoke with also emphasised a need for building capacity and capability of Community Justice Groups and funding to support this.[112] Increased funding would enable capacity and capability development and could increase the scope of Community Justice Groups to continue achieving just outcomes in more communities and across all Queensland courts, including the Supreme and District Courts.

14.96. Community Justice Groups are also well-positioned to deliver cultural capability training (**Recommendation 33**). This would enable the training to include localised content, be co-designed and co-delivered by people with lived experience and focus on culturally responsive

communication strategies between Aboriginal peoples and Torres Strait Islander peoples and criminal justice stakeholders.

14.97. As judicial officers and defence lawyers can choose whether to seek input from Community Justice Groups, opportunities for Community Justice Groups to enhance court decision-making can depend upon the cultural capability of individual criminal justice stakeholders. During consultations, a judicial officer emphasised the importance of cultural capability training for judicial officers, stating:

> Training for judicial officers about these issues is important and they don't really get any, frankly. Some people don't read history or have a deep knowledge of these things. Without [cultural capability] training and information, you are never going to have consistency in approach.

14.98. While judges are required by legislation to take into account cultural considerations when sentencing an Aboriginal person or Torres Strait Islander person,[113] the preparation of a cultural report is not required by legislation. The extent to which a judicial officer sees value in asking a Community Justice Group to prepare a cultural report to assist their decision-making therefore varies and would likely be enhanced by greater cultural capability training.

14.99. Other mechanisms that would help to ensure culturally responsive court processes include:

- meaningful engagement with community-controlled organisations
- increased funding for specialist legal services for Aboriginal peoples and Torres Strait Islander peoples, including enhancing their geographical coverage in rural and remote parts of Queensland
- the adoption of an intersectional approach that acknowledges and responds to the needs of Aboriginal and Torres Strait Islander people with disability.[114]

Human rights considerations

14.100. **Recommendations 33–35** are compatible with human rights. Several rights are promoted through these reforms.

14.101. All three recommendations promote the right to recognition and equality before the law by removing barriers in the criminal justice system that disproportionately affect certain groups of people, including Aboriginal peoples and Torres Strait Islander peoples, people with disability, people from culturally and linguistically diverse backgrounds and people from the LGBTQIA+ community, helping to ensure that everyone is treated equally before the law.

14.102. **Recommendation 33** promotes:

- Cultural rights, including the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples through the training of criminal justice personnel in cultural capability. Increased cultural awareness would likely increase the use of language interpreters and culturally safe communication practices by criminal justice stakeholders.
- The right to a fair hearing by improving the skills and knowledge of prosecutors, defence lawyers and judicial officers through training that increases the competence of the court.
- The right to humane treatment when deprived of liberty by increasing the skills and knowledge of criminal justice personnel, particularly police and corrections staff, to ensure people deprived of their liberty are treated with humanity and respect.

- The right to protection from torture and cruel, inhuman or degrading treatment or punishment by supporting criminal justice personnel to avoid acting in ways that cause harm or denies a person's basic needs.

14.103. **Recommendation 34** promotes the right to a fair hearing by reducing delays and demand on court resources. Increasing access to legal representation also promotes rights in criminal proceedings by helping to ensure a person charged with a criminal offence has access to a lawyer.

14.104. **Recommendation 35** also promotes the cultural rights of Aboriginal peoples and Torres Strait Islander peoples by ensuring their right to enjoy, maintain and develop their cultural identity is factored into court processes and decision-making. The provision of culturally relevant, contextual information in a cultural report, such as information relating to a defendant's family history, circumstances and level of support, also promotes the right to protection of families and children.

14.105. Implementation of **Recommendations 33–35** would not limit human rights.

Implications of reform

Aligning reforms with current initiatives

14.106. Implementation of **Recommendations 33–35** would need to align with current work already underway to improve access to justice for DFV victim-survivors and people from disadvantaged communities.

14.107. The Taskforce made several recommendations in relation to training criminal justice personnel about DFV, some of which have been actioned or are currently in progress and all of which are 'in different stages of development across the legal stakeholders'.[115] Implementation of **Recommendation 33** should complement and build on this work, noting that its scope extends beyond the Taskforce recommendations and includes comprehensive training on cultural capability and the barriers to justice facing people from disadvantaged communities for QPS, ODPP, legal practitioners and judicial officers.

14.108. The Government is currently considering other related recommendations, such as whether to establish an independent Queensland Judicial Commission to coordinate and provide training for judicial officers.[116] If a Judicial Commission is established, it would be well placed to assist heads of jurisdiction of Queensland courts to provide opportunities for the training outlined in **Recommendation 33** for judicial officers.

14.109. The Government's ongoing consideration of its response to the Disability Royal Commission could inform or be affected by the implementation of these recommendations. The Government's response includes a commitment to piloting a disability stream as part of the Court Link program in the Brisbane Magistrates Court. This program will likely require training for relevant criminal justice personnel on the experiences of people with disability, including on the barriers to justice faced by people with disability. The QPS's Disability Service Plan 2023–26 also includes several initiatives to improve inclusion within its service delivery, such as providing disability training to employees.[117]

14.110. The Government is considering the recommendations from Myuma's independent evaluation of the Community Justice Group program. Implementation of **Recommendation 35** should occur in consultation with Community Justice Groups, local Elders and Respected Persons and be coordinated with, and be complementary to, the Government's implementation of Myuma's recommendations.

14.111. As we discuss in Chapter 3, broader strategies including the Better Justice Together strategy 2024–2031 and the Queensland Disability Plan 2022–2027 are also relevant due to their focus on addressing the drivers of overrepresentation of Aboriginal peoples and Torres Strait Islander peoples and people with disability in the criminal justice system.[118]

Funding and resources

14.112. **Recommendations 33–35** have funding and resourcing implications.

14.113. Implementation of **Recommendation 33** would require Government resources to review current training, consult with relevant stakeholders to develop a comprehensive framework for training and to implement and deliver improved training opportunities for government-based stakeholders. It would also require time and resources from the QPS, ODPP, Queensland Law Society, Bar Association of Queensland and the heads of jurisdiction of each Queensland court to engage in consultation and to implement any recommended changes to their training programs. This includes ensuring adequate resources to deliver and support attendance by relevant personnel at training. People with lived experience and their representative organisations who are consulted in the development or co-delivery of training should be remunerated for their involvement.

14.114. The Taskforce implementation progress report noted that the training courses delivered by the Queensland Law Society and Bar Association of Queensland have 'reached the capacity of their capabilities'.[119] They may require assistance to coordinate and collaborate with other criminal justice stakeholders to implement this recommendation.

14.115. Improved training and a greater understanding of DFV may lead to lengthier and more complex police investigations. This may have resourcing implications for QPS.

14.116. **Recommendation 34** recommends increasing the Government's contribution to the National Access to Justice Partnership as well as increasing funding for advocacy organisations and services that support people to understand their rights and access support during criminal proceedings.

14.117. Expanding the scope of the Community Justice Group Program to include the provision of cultural support in the Supreme and District Courts would require increased funding of the Community Justice Group Program. To give effect to **Recommendation 35**, increased funding should be sufficient to resource a second coordinator position for each Community Justice Group. New service agreements with Community Justice Groups are due to commence from 1 July 2026 and present an opportunity to trial an expanded model of service delivery within the Supreme and District Courts.

14.118. The Community Justice Group Program is funded by the Department of Justice and service agreements are managed by the Indigenous Justice Program which is situated within the Magistrates division of Court Services. If Community Justice Groups are funded to deliver services within the Supreme and District Courts, the Indigenous Justice Program may need expansion or a separate Indigenous Justice Program for these courts may need to be established.

References

[1] Queensland Human Rights Commission, Building Belonging: Review of Queensland's Anti-Discrimination Act 1991 (Final Report, July 2022) 50.

[2] Chapter 3, 'Access to justice'.

[3] QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 33–4.

[4] Department of Justice and Attorney-General (Qld), Community Justice Group Program Guidelines (Guidelines, 1 July 2023).

[5] National Access to Justice Partnership Agreement Between the Commonwealth of Australia and States and Territories, Signed November 2024 (Agreement, 2024).

[6] Chapter 3, 'Systemic barriers and intersectionality'.

[7] See generally QLRC, Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025).

[8] Queensland Government, Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024-2031 (Strategy, July 2024) 15.

[9] Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence: A Call for Change (Report, November 2022) 218; Queensland Government, Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024–2031 (Strategy, July 2024) 18.

[10] Law Council of Australia, The Justice Project (Final Report, August 2018) <https://lawcouncil.au/justice-project/final-report>.

[11] Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021); Women's Safety and Justice Taskforce, Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System (Report No 2, 2022); Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, 2023).

[12] For example, the Bar Association of Queensland's Legal Education (Continuing Professional Development) Committee, Indigenous Affairs Committee and Access to Justice Committee. Other examples include Queensland Law Society's Access to Justice/Pro Bono Law Committee, Continuing Professional Development Committee and First Nations Consulting Committee.

[13] Law Council of Australia, The Justice Project (Final Report, August 2018) <https://lawcouncil.au/justice-project/final-report> Recommendation and Priorities, 5.

[14] See for example recommendations 23−4, 34, 40−1, 43, 48 and 51 in: Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) lv–lxvi and recommendations 27−8, 66−8, 96, and 116 in: Women's Safety and Justice Taskforce, Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System (Report No 2, 2022) 15–29 and recommendations 14, 16−17, 28, 32, 41−2, 49, 59 in: Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence: A Call for Change (Report, November 2022) 23–9.

[15] Office of the Independent Implementation Supervisor (Qld), Women's Safety and Justice Taskforce Reforms (Biannual Progress Report No 5, November 2024) 42.

[16] Office of the Director of Public Prosecutions Queensland, Annual Report 2023–2024 (Report, 2024) 42.

[17] Office of the Independent Implementation Supervisor (Qld), Women's Safety and Justice Taskforce Reforms (Biannual Progress Report No 5, November 2024) 95.

[18] Office of the Independent Implementation Supervisor (Qld), Women's Safety and Justice Taskforce Reforms (Biannual Progress Report No 5, November 2024) 45.

[19] Legal Aid Queensland, Submission 31.

[20] Office of the Victims' Commissioner, Submission 32.

[21] Australian Law Reform Commission, Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence (Final Report No 143, January 2025) 233–4 [7.19].

[22] Queensland Aboriginal and Torres Strait Islander Child Protection Peak, Submission 27.

[23] QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 46.

[24] Supreme Court of Queensland, Equal Treatment Benchbook (Benchbook, 2016).

[25] Queensland Police Service, Operational Procedures Manual (Manual Issue No 108, 1 October 2025) ch 6.

[26] Queensland Human Rights Commission, Strengthening the Service: Independent Review of Workplace Equality in the Queensland Police Service (Report, 2024) 75–9.

[27] Chapter 3, 'What we know about DFV'.

[28] Rapid Review Expert Panel, Unlocking the Prevention Potential: Accelerating Action to End Domestic, Family and Sexual Violence (Report, August 2024) 39.

[29] Rapid Review Expert Panel, Unlocking the Prevention Potential: Accelerating Action to End Domestic, Family and Sexual Violence (Report, August 2024) 39.

[30] Law Council of Australia, The Justice Project (Final Report, August 2018) <https://lawcouncil.au/justice-project/final-report> Introduction and Overview, 28.

[31] Rapid Review Expert Panel, Unlocking the Prevention Potential: Accelerating Action to End Domestic, Family and Sexual Violence (Report, August 2024) 39.

[32] Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence: A Call for Change (Report, November 2022) 244.

[33] QLRC, Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper 3, February 2025) 11.

[34] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Criminal Justice and People with Disability (Final Report, 2023) vol 8, 327.

[35] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Criminal Justice and People with Disability (Final Report, 2023) vol 8, 14.

[36] Australian Institute of Health and Welfare, 'Population Groups: People with Disability', Family, Domestic and Sexual Violence (Web Page, 30 July 2025) <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/people-with-disability>.

[37] Australian Institute of Health and Welfare, 'Population Groups: People with Disability', Family, Domestic and Sexual Violence (Web Page, 30 July 2025) <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/people-with-disability>.

[38] Australian Institute of Health and Welfare, 'Population Groups: People from Culturally and Linguistically Diverse Backgrounds', Family, Domestic and Sexual Violence (Web Page, 30 July 2025) <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/cald>.

[39] Australian Institute of Health and Welfare, 'Population Groups: People from Culturally and Linguistically Diverse Backgrounds', Family, Domestic and Sexual Violence (Web Page, 30 July 2025) <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/cald>.

[40] Australian Institute of Health and Welfare, 'Population Groups: People from Culturally and Linguistically Diverse Backgrounds', Family, Domestic and Sexual Violence (Web Page, 30 July 2025) <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/cald>.

[41] Australian Institute of Health and Welfare, 'Population Groups: People from Culturally and Linguistically Diverse Backgrounds', Family, Domestic and Sexual Violence (Web Page, 30 July 2025) <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/cald>.

[42] Australian Institute of Health and Welfare, 'Population Groups: LGBTIQA+ People', Family, Domestic and Sexual Violence (Web Page, 30 July 2025) <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/lgbtiqa-people>.

[43] Australian Institute of Health and Welfare, 'Population Groups: LGBTIQA+ People', Family, Domestic and Sexual Violence (Web Page, 30 July 2025) <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/lgbtiqa-people>.

[44] Law Council of Australia, The Justice Project (Final Report, August 2018) 27 <https://lawcouncil.au/justice-project/final-report> Introduction and Overview, 52–3.

[45] Queensland Human Rights Commission, Building Belonging: Review of Queensland's Anti-Discrimination Act 1991 (Final Report, July 2022) 53.

[46] Chapter 3, 'Our approach and what we heard from stakeholders'.

[47] The Public Advocate (Qld), Adults with Cognitive Disability in the Queensland Criminal Justice System: Policing (Discussion Paper No 1, April 2024) 11.

[48] The Public Advocate (Qld), Adults with Cognitive Disability in the Queensland Criminal Justice System: Courts (Discussion Paper No 2, February 2025) 19.

[49] Law Council of Australia, The Justice Project (Final Report, August 2018) <https://lawcouncil.au/justice-project/final-report> Introduction and Overview, 29.

[50] Law Council of Australia, The Justice Project (Final Report, August 2018) <https://lawcouncil.au/justice-project/final-report> Introduction and Overview, 23.

[51] Rapid Review Expert Panel, Unlocking the Prevention Potential: Accelerating Action to End Domestic, Family and Sexual Violence (Report, August 2024) 18.

[52] QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 45.

[53] LGBTI Legal Service, Submission 15.

[54] LGBTI Legal Service, Submission 15.

[55] Queensland Council of Social Service, Submission 28.

[56] Previously called the National Legal Assistance Program.

[57] 'Federal Financial Relations', National Access to Justice Partnership (Web Page, 4 November 2025) <https://federalfinancialrelations.gov.au/agreements/national-access-justice-partnership>.

[58] National Access to Justice Partnership Agreement Between the Commonwealth of Australia and States and Territories, Signed November 2024 (Agreement, 2024) [8].

[59] 'Family Support Service', Youth Advocacy Centre (Web Page) <https://yac.net.au/family-support-service/>.

[60] 'Justice Support Program', Queensland Advocacy for Inclusion (Web Page, 2025) <https://qai.org.au/criminal-justice/>.

[61] Community Legal Centres Australia, A Sector in Crisis: State of the Sector 2022-23 Survey Report (Report, March 2024) 4.

[62] Community Legal Centres Australia, A Sector in Crisis: State of the Sector 2022-23 Survey Report (Report, March 2024) 4.

[63] 'Queensland Budget Analysis 2025-2026', Queensland Council of Social Service (Web Page, 26 June 2025) <https://www.qcoss.org.au/publication/queensland-budget-2025-26-our-analysis/>.

[64] Community Legal Centres Australia, A Sector in Crisis: State of the Sector 2022-23 Survey Report (Report, March 2024) 5.

[65] Community Legal Centres Australia, A Sector in Crisis: State of the Sector 2022-23 Survey Report (Report, March 2024) 5.

[66] Warren Mundy, Independent Review of the National Legal Assistance Partnership (Final Report, March 2024) i.

[67] Warren Mundy, Independent Review of the National Legal Assistance Partnership (Final Report, March 2024) iii.

[68] Law Council of Australia, The Justice Project (Final Report, August 2018) <https://lawcouncil.au/justice-project/final-report> Introduction and Overview, 39.

[69] Law Council of Australia, The Justice Project (Final Report, August 2018) <https://lawcouncil.au/justice-project/final-report> Introduction and Overview, 39.

[70] QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 46.

[71] QLRC, Equality and Integrity: Reforming Criminal Defences in Queensland (Consultation Paper, February 2025) 59.

[72] QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 46.

[73] Legal Aid Queensland, Submission 31.

[74] QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 47.

[75] Legal Aid Queensland, Submission 31.

[76] Law Council of Australia, The Justice Project (Final Report, August 2018) <https://lawcouncil.au/justice-project/final-report> Introduction and Overview, 39.

[77] Dr Warren Mundy, Independent Review of the National Legal Assistance Partnership (Final Report, May 2024) 9.

[78] Recommendation 8 in: Warren Mundy, Independent Review of the National Legal Assistance Partnership (Final Report, March 2024) 74.

[79] Victims' Commissioner, Submission 32.

[80] Red Rose Foundation, Submission 33.

81 The Public Advocate (Qld), Adults with Cognitive Disability in the Queensland Criminal Justice System: Courts (Discussion Paper No 2, February 2025) 35.

82 'Justice Support Program', Queensland Advocacy for Inclusion (Web Page) <https://qai.org.au/criminal-justice/>.

83 Queensland Advocacy for Inclusion, Annual Report 2022-23 (Report, 2023) 24.

84 Rapid Review Expert Panel, Unlocking the Prevention Potential: Accelerating Action to End Domestic, Family and Sexual Violence (Report, August 2024) 9.

85 Rapid Review Expert Panel, Unlocking the Prevention Potential: Accelerating Action to End Domestic, Family and Sexual Violence (Report, August 2024) 9.

86 Michael Shanahan AM, Criminal Procedure Review Magistrates Court (Summary Report, 2023) vol 1, 51.

87 Michael Shanahan AM, Criminal Procedure Review Magistrates Court (Summary Report, 2023) vol 1, 52.

88 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 48.

89 Community Legal Centres Queensland, Annual Report 2023−2024 (Report, November 2024) 5.

90 Community Legal Centres Queensland, Annual Report 2023−2024 (Report, November 2024) 5.

91 Penalties and Sentences Act 1992 (Qld) s 9(2)(p); Bail Act 1980 (Qld) s 15(1)(f).

92 Penalties and Sentences Act 1992 (Qld) s 9(2)(p); Bail Act 1980 (Qld) s 15(1)(f).

93 Department of Justice and Attorney-General, Community Justice Group Program Guidelines (Guideline, 1 July 2023) 6.

94 Department of Justice and Attorney-General, Community Justice Group Program Guidelines (Guideline, 1 July 2023) 6.

95 The Myuma Group, Evaluation of Community Justice Groups (Final Report, November 2023) 91.

96 See Recommendation 1 in: The Myuma Group, Evaluation of Community Justice Groups (Final Report, November 2023) 19.

97 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 47.

98 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 47.

99 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 47.

100 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 47.

101 Legal Aid Queensland, Submission 31.

102 Chapter 3, 'Over-representation in the criminal justice system'.

103 The Myuma Group, Evaluation of Community Justice Groups (Final Report, November 2023) 190.

104 Queensland Government, Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024−2031 (Strategy, 2024) 23.

105 Cam, Emma, 'Cultural Focus on Justice Reform', Townsville Bulletin (Web Page, 30 October 2025). The My Justice Journey initiative aims to support culturally appropriate and rehabilitative sentencing decisions by ensuring courts recognise a defendant's progress in counselling, drug and alcohol programs, parenting support or voluntary income management.

106 The Myuma Group, Evaluation of Community Justice Groups (Final Report, November 2023) 91.

107 Queensland Government, Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024–2031 (Strategy, July 2024) 23.

108 Department of Justice and Attorney-General (Qld), Community Justice Group Program Guidelines (Guidelines, 1 July 2023) 4.

109 The Myuma Group, Evaluation of Community Justice Groups (Final Report, November 2023) 10–11.

110 The Myuma Group, Evaluation of Community Justice Groups (Final Report, November 2023) 7.

111 The Myuma Group, Evaluation of Community Justice Groups (Final Report, November 2023) 9.

112 See Recommendation 1 in: The Myuma Group, Evaluation of Community Justice Groups (Final Report, November 2023) 19.

113 Penalties and Sentences Act 1992 (Qld) s 9(2)(oa); Youth Justice Act 1992 (Qld) s 150(3)(ha). See also Bugmy v The Queen (2013) 249 CLR 571.

114 Law Council of Australia, The Justice Project (Final Report, August 2018) <https://lawcouncil.au/justice-project/final-report> Introduction and Overview, 20.

115 Office of the Independent Implementation Supervisor (Qld), Women's Safety and Justice Taskforce Reforms (Biannual Progress Report No 5, November 2024) 74.

116 Office of the Independent Implementation Supervisor (Qld), Women's Safety and Justice Taskforce Reforms (Biannual Progress Report No 5, November 2024) 76.

117 Queensland Police Service, Disability Service Plan (Report, 2023) 8.

118 Chapter 3, 'Over-representation in the criminal justice system'.

119 Office of the Independent Implementation Supervisor (Qld), Women's Safety and Justice Taskforce Reforms (Biannual Progress Report No 5, November 2024) 74.

PART 8

Realising the reforms

CHAPTER 15

Assessing whether reforms are effective

Contents

Recommendation

R36 The Government should, no earlier than five years and no later than 10 years from the commencement of any reform recommended in this report, refer to the Queensland Law Reform Commission:

(a) a review of the operation of reforms

(b) a review of the partial defence of diminished responsibility and a review to clarify the role of intoxication in the Criminal Code.

Introduction

15.1. It is important to review laws to ensure they operate effectively and remain relevant to the community. These evaluations provide the opportunity to assess whether implemented reforms operate harmoniously across legislation and in practice. A review of implemented reforms also allows for issues not identified in the original terms of reference to be considered.

15.2. This chapter focuses on the importance of reviewing implemented recommendations to ensure the reforms are effective. We also identify two aspects of the Criminal Code that should be the subject of future reviews: the partial defence of diminished responsibility and the role of intoxication in the Criminal Code.

15.3. This chapter has three sections. The first section discusses our recommendation that the Commission review the operation of the reforms we recommend in this report. The second section discusses our recommendation for a review of diminished responsibility and intoxication in the Criminal Code. The chapter concludes with an analysis of the human rights considerations of our recommendations.

Reviewing recommended reforms

Our reforms explained

15.4. We recommend that the Commission reviews the operation of reforms recommended in this report following their implementation (**Recommendation 36(a)**). This would help ensure that our reforms are operating as anticipated and are achieving the desired policy intent. We also recommend that this future review investigates and provides recommendations on the partial defence of diminished responsibility (section 304A) and the role of intoxication in the Criminal Code (**Recommendation 36(b)**). This review should happen no earlier than five years and no later than 10 years after implementation.

15.5. We also recommend monitoring and review of our reforms to the defence of domestic discipline (**Recommendations 19 and 20**). We discuss this in Chapter 9 in conjunction with our recommendations for reform of that defence.[1]

15.6. During consultation, stakeholders provided feedback about the implementation of our recommendations. We heard that any reform of criminal defences must be done carefully and that post-implementation reviews could act as a safeguard to ensure the reforms were

operating as intended. Reviewing reforms is consistent with best practice. It responds to the challenges and risks associated with implementing law reforms.[2]

15.7. Referring such a review to the Commission is consistent with our statutory functions, which include taking and keeping Queensland's laws under review to contribute to its systematic development and reform.[3]

15.8. A future review would benefit from court data with consistently recorded demographic information and access to other court material including, for example, sentencing submissions. Inconsistencies in how demographic information was recorded in court data limited our understanding during this review of how defences operate for some communities.

Case for reform

Reforming criminal defences demands care and review

15.9. Review mechanisms to evaluate law reform are key to good law-making. Without set review timelines, deficiencies in the law may only attract attention after their failure is well established. Lack of review also means lawmakers do not have an opportunity to understand what makes law reform work well.[4]

15.10. Our guiding principles for reform include developing recommendations that promote just outcomes and protect human rights, including criminal procedural rights.[5] Changes to criminal defences require careful review and evaluation to ensure this reform objective is met.

15.11. Stakeholders told us that because of the interdependent relationship between the mandatory penalty for murder, self-defence and the partial defences, piecemeal reform would compromise the protections afforded by self-defence and partial defences.[6] The Bar Association of Queensland agreed that there was an imperative for reform but advocated for a staged approach with evaluations to ensure protections were not lost.[7]

15.12. Our reforms are designed to ensure the law is clear and easy to understand. Review of implemented recommendations after they have been in effect for a period would provide an opportunity to determine if the broad objectives and the policy intent of our reforms have been achieved. As we discuss in Chapter 3, our reforms take place in a broader context of law reform and change. A future review would assess whether our reforms:

- operate effectively alongside any other relevant reforms
- achieve the goal of enhancing clarity, consistency and coherence within the Criminal Code.

Implementation

15.13. The timing of this future review should balance the need to allow for jurisprudence on the reformed laws to develop with the importance of checking laws are operating effectively within a reasonable timeframe. Acknowledging this, we recommend a timespan in which the Government should commence the review rather than prescribing a set date.

15.14. As previously discussed, stakeholders emphasised the importance of implementing our recommendations as a package of reforms. Consequently, a future review should occur between five and 10 years from the date of the commencement of our recommended reforms.[8]

15.15. We recommend implementing practice and procedure reforms (**Recommendations 21–35**) alongside our recommended legislative reforms. Ideally, the combined effect of all reforms

would be best assessed after full implementation. However, we recognise that some practice and procedure reforms require consultation, planning and/or codesign prior to implementation and the effects of others may not be apparent within five to 10 years after the commencement of legislative reforms. On balance, we consider initiating the future review within a five to 10 year timeframe to be appropriate.

Reviewing diminished responsibility and intoxication

Our reforms explained

15.16. We recommend the Government refer to the Commission a review (**Recommendation 36(b)**:

- of the partial defence of diminished responsibility (section 304A)
- to clarify the role of intoxication in the Criminal Code (section 28).

15.17. This review is intended to ensure that the partial defence of diminished responsibility[9] and the consideration of intoxication[10] in the Criminal Code are fair and effective and that they operate consistently with our reforms. For these reasons, we recommend this review is undertaken at the same time as the review of our implemented reforms (**Recommendation 36(a)**).

15.18. Just outcomes are connected to a defendant's criminal responsibility. The Criminal Code presumes that every defendant is of 'sound mind' unless proven otherwise.[11] A defendant is presumed to have capacity to choose whether to offend. This presumption is reflected in capacity-based defences which allow a defendant to argue they had no capacity, or that their capacity was substantially impaired.[12] The relationship between capacity and criminal responsibility is a relevant consideration for the partial defence of diminished responsibility.

15.19. While the partial defence of diminished responsibility and considerations of insanity and intoxication are all related to the concept of capacity, they also have distinguishing features. A future review that evaluates implemented reforms would be enhanced by considering the relationships between diminished responsibility and intoxication to ensure they operate consistently.

What is capacity?

A person of 'sound mind' is considered to have capacity to be criminally responsible for an act or omission under the Criminal Code.[13]

To have capacity a person needs to understand what they are doing, be able to control their own actions or know that they ought to not do an act or make an omission.[14]

A person can lack capacity at the time of offending because of a mental illness, intoxication or immature age.[15]

What is diminished responsibility?

Diminished responsibility (section 304A) is a partial defence to murder that allows a defendant to be found guilty of manslaughter if they can demonstrate that, at the time of a killing, they suffered an 'abnormality of mind' that substantially impaired their capacity to understand or control their actions and self-awareness about their actions. A finding of diminished responsibility does not mean the defendant lacked an intent to kill. Whether the defendant

suffered an abnormality of mind causing a substantial impairment is a question decided by a jury having considered any evidence provided by expert medical witnesses.[16]

Diminished responsibility can be contrasted with the defence of insanity,[17] which requires that the defendant was totally deprived of capacity and self-awareness. The defence of insanity is a complete defence that can be raised as a defence to all offences, whereas diminished responsibility can only be raised as a defence to murder.[18]

It is recognised that a key purpose of diminished responsibility is to protect defendants from mandatory life imprisonment for murder in circumstances where their reduced culpability, due to their impaired capacity and self-awareness, does not justify this sentencing outcome.[19]

Case for a review of diminished responsibility

15.20. Our case for reviewing the partial defence of diminished responsibility draws on our consultation proposal to introduce a trauma-based partial defence, arguments in support of our reforms to provocation (**Recommendations 12–13**) and findings from other law reform commissions that have considered diminished responsibility.

Our review findings and recommendations support a review of diminished responsibility

15.21. We do not recommend an alternative trauma-based partial defence as a new way to reflect reduced capacity in the DFV context, as originally considered in our Consultation Paper.[20] We heard from stakeholders that a trauma-based partial defence would create complexity and would not improve access to defences for people who offend in the context of DFV.[21] Stakeholders said it would be preferable to improve access to other defences and embed trauma-informed practice through other reforms.[22]

15.22. Our terms of reference did not ask us to review the partial defence of diminished responsibility.[23] For this reason, we did not propose reforms to the defence in our Consultation Paper. The relevance of diminished responsibility to the policy concerns behind our review emerged through our research and engagement with stakeholders. This was primarily in relation to the operation of provocation defences, which also relate to capacity. We heard that concerns about provocation defences can also apply to diminished responsibility (see Chapter 7). For example, there were concerns of gender bias and that diminished responsibility, which is broadly defined, reduces criminal responsibility in circumstances that do not reflect contemporary community standards and understandings of human behaviour.

15.23. A few stakeholders referred expressly to diminished responsibility. Hemming noted that not including diminished responsibility in the terms of reference was a 'significant omission'.[24] Burton recommended that diminished responsibility be removed from the Criminal Code.[25] The Bar Association of Queensland noted that the test of 'substantial impairment' in diminished responsibility is vague and difficult to apply.[26]

15.24. We also identified concern that diminished responsibility may become a replacement defence for killing on provocation following the repeal of this defence (**Recommendation 12**). This would undermine the policy intent of repealing the killing on provocation defence.

15.25. Other law reform bodies have also considered the appropriateness of diminished responsibility with respect to DFV homicides or more broadly.[27] They have consistently recommended against the introduction of diminished responsibility, with few exceptions. Gender bias in the defence has been considered to varying degrees.

15.26. The Victorian Law Reform Commission recommended against introducing a partial defence of diminished responsibility because it was not consistent with its recommendation to not introduce the defence of provocation.[28] Similar links between the defences were also drawn by the Model Criminal Code Committee and the South Australian Law Reform Institute.[29] Hemming drew on this comparative perspective to indicate a similar logic could apply in Queensland.[30]

15.27. The Victorian Law Reform Commission and South Australian Law Reform Institute also identified concerns that diminished responsibility may be used by men who kill their partners in the context of DFV. This supported their recommendation to not introduce diminished responsibility.[31]

15.28. When providing feedback on the proposed trauma-based partial defence, stakeholders also expressed concern that DFV perpetrators who kill their partners could exploit a trauma-based partial defence by relying on histories of trauma.[32] A corresponding concern explored in other law reform commission reports is that a defendant can engage in 'expert shopping' to obtain evidence to demonstrate 'abnormality of mind'.[33] In part this is made possible because of the definitional breadth of 'abnormality of mind'. This reflects concerns noted by a few stakeholders that the scope of trauma in a trauma-based partial defence is too difficult to define.[34]

15.29. The Law Commission of England and Wales did not agree that diminished responsibility may be inappropriately used in DFV relationships, or that there was a gendered bias in the use of the defence.[35] However, a more recent report from the Law Commission of England and Wales noted male defendants were slightly more successful in raising a partial defence of diminished responsibility than female defendants.[36]

15.30. In our literature research, we found a statistical correlation between mental health conditions and use of intimate partner violence by men.[37] We also found case examples of male defendants raising the defence of diminished responsibility after killing their partners and family members (see below). As understandings and awareness of mental health and DFV continue to develop, there may be further insights into DFV homicides and diminished responsibility. A future review would provide the opportunity to better understand the nature of this relationship between diminished responsibility and DFV homicides.

DFV homicides and diminished responsibility — The Queen v Brown (Qld)[38]

Brown killed his wife by stabbing her approximately 40 times after they argued about her moving out and ending the care she provided to him. Diminished responsibility was accepted, based on evidence of a narcotic dependency causing 'neurotic depression' and resulting 'ange to a pathological degree' during the killing. After Brown was released on parole, he killed his second wife by strangulation after she notified corrective services of his threats.[39]

DFV homicides and diminished responsibility — R v GBU (Qld)[40]

GBU killed his ex-wife after a minor argument. He was originally charged with murder but the charge was downgraded to manslaughter (domestic violence offence) after the Mental Health Court found he had diminished responsibility at the time of the offence. Their finding was based on evidence he was suffering from a drug-induced psychotic illness brought on by a history of persistent drug use.

15.31. The Law Reform Commission of Western Australia recommended against introducing diminished responsibility. It reached this recommendation without considering evidence for gender bias or use of the defence in a DFV context. It was sufficiently concerned that diminished responsibility was not consistent with criminal law principles, notably because of its inconsistency with manslaughter as unintentional killing, and that it is more appropriate to consider reduced capacity at sentencing.[41] Reports from other law reform commissions have similarly recognised that diminished responsibility is inconsistent with manslaughter or should be considered at sentencing.[42]

15.32. Review of the partial defence of diminished responsibility is required to ensure that outcomes from this review are consistent with the policy intent. The future review would address reform gaps by consulting with stakeholders and the broader community and conducting research to understand the current operation and suitability of the partial defence. Reviewing diminished responsibility alongside a review of our implemented reforms would allow us to understand how diminished responsibility is operating in a reformed criminal defences context. A future review would provide the opportunity to better understand the nature of this relationship between diminished responsibility and DFV.

Understanding the relevance of diminished responsibility for vulnerable defendants is important

15.33. A justification for a partial defence of diminished responsibility is 'fair and just labelling', which recognises that people who may fall short of relying on the defence of insanity, but have reduced capacity, should not be convicted of murder.[43]

15.34. A future review of diminished responsibility should identify whether it effectively protects and supports vulnerable defendants. This includes whether the criminal justice system appropriately utilises a therapeutic and supportive lens or ensures defendants have access to appropriate services.

15.35. The scope of 'abnormality of mind' for diminished responsibility captures a broad range of conditions, including poor mental health and cognitive disability. Social determinants of mental health, which 'encompass the set of structural conditions to which people are exposed across the life course, from conception to death, which affect individual mental health outcomes', help us to understand how and why there are 'mental health disparities within and between populations'.[44] These structural conditions include factors such as deep and entrenched disadvantage and social exclusion experienced by some communities or groups, including Aboriginal peoples and Torres Strait Islander peoples.[45]

15.36. Intersecting disadvantage may mean these groups have additional barriers to accessing support and justice. This gives rise to consideration of equity concerns about whether the partial defence of diminished responsibility is offering effective protection for these groups.

15.37. The South Australian Law Reform Institute ultimately recommended against introducing diminished responsibility but also recorded concern from stakeholders that Aboriginal peoples and Torres Strait Islander peoples may benefit from the partial defence of diminished responsibility.[46]

Diminished responsibility in the DFV context

15.38. In the DFV context, diminished responsibility may inappropriately fixate on psychiatric and medical evidence. This may replicate the 'battered woman syndrome', which is an approach to framing women who kill in the DFV context that is inconsistent with contemporary understanding.[47] Our women who kill research (Research Project 4) identified diminished responsibility as the second most common sentencing basis for women who were convicted of

manslaughter for killing a current or former intimate partner.[48] A more appropriate consideration is whether the actions of the defendant were reasonable in the social context, which would be considered under our reformed test for self-defence (**Recommendation 6**).[49]

Evidence as a barrier for defendants

15.39. A defendant ordinarily relies on expert evidence to support the partial defence of diminished responsibility.[50] In Queensland a defendant may argue diminished responsibility in criminal proceedings, or they may be referred to the Mental Health Court.[51] In both jurisdictions, the question of whether the defendant had diminished responsibility is decided on the balance of probabilities.[52]

15.40. A decision in the Mental Health Court is made by a single judge of the Supreme Court, with input from assisting clinicians.[53] A referral to the Mental Health Court must be supported by a psychiatric or clinical report.[54]

15.41. In providing feedback about our consultation proposal to introduce a trauma-based partial defence, stakeholders noted concerns about the difficulties vulnerable defendants would have obtaining evidence of relevant trauma or DFV.[55] This may be because the defendant is in a regional or remote location or because they are an Aboriginal person or Torres Strait Islander person with barriers to accessing services. Similar concerns may be relevant to vulnerable defendants seeking to access the diminished responsibility defence.

15.42. Other law reform commissions have found that evidence of diminished responsibility is a challenge for juries. The task for juries is to make a finding of diminished responsibility as a legal, rather than medical, question.[56] It is recognised that juries are capable of considering expert evidence to determine criminal responsibility and that this ensures community standards apply.[57] Requirements for juries to consider psychiatric reports can, however, be complex and create confusion.[58]

15.43. In other law reform commission reviews, psychiatrists have highlighted the 'profound mismatch' between the legal framework of diminished responsibility and medical or psychiatric knowledge.[59]

15.44. The defence can also raise practical issues that can cause delay or complexity in the resolution of matters. For example, mental health referrals or assessments may increase timeframes.[60] The Law Reform Commission of Western Australia reported that in cases where diminished responsibility is raised, matters tend to be settled by plea negotiations that include clinicians, judges and legal counsel.[61] The Law Reform Commission of Western Australia stated that:

> These data show that the majority of cases alleging diminished responsibility are in fact never assessed by a jury. This would appear to undermine the argument that diminished responsibility enhances community participation in (and acceptance of) the justice system by leaving decisions about an accused's level of culpability to a jury.[62]

The intersection with the forensic system

15.45. In Queensland, if the Mental Health Court finds someone has diminished responsibility, the original charge of murder must be discontinued and the proceeding may be continued for another relevant offence.[63] The Mental Health Court may also make a forensic order, which recognises that a defendant who has been charged with a serious offence is of 'unsound mind' or is not fit for trial due to their mental health.[64] A forensic order authorises a person's detention in an authorised mental health service while they are treated to protect community safety.[65] Concerns have been raised about this framework. [66]

15.46. A future review could examine how a defendant who is found to have diminished responsibility interacts with the Mental Health Act[67] and whether they receive appropriate therapeutic supports, having regard to their right to recognition and equality before the law. This may determine whether a defendant with a finding of diminished responsibility is treated equally, or differently, to a defendant who is not found to have diminished responsibility at the time of offending.

15.47. These considerations support a future review of diminished responsibility to ensure that the law offers appropriate protection and support for vulnerable members of the community and defendants.

Case for a review of intoxication

15.48. **Recommendation 36(b)** also proposes a review of how intoxication is considered in the Criminal Code, to identify an appropriate and effective way to clarify the law.

Clarifying the role of intoxication for defences would be beneficial

15.49. **Recommendations 3 and 11** clarify how intoxication applies to the reformed defences of self-defence and duress. These recommendations reflect case law interpretations and make intoxication easier to understand and apply. An appropriate next step is to clarify the role of intoxication for criminal responsibility more broadly.

15.50. Other jurisdictions provide appropriate models to consider. The Northern Territory and ACT legislation and the Model Criminal Code all contain a similar provision that explains how intoxication applies to defences, as well as how it is to be interpreted and how it applies for offences of basic intent and negligence.[68] In Victoria, the Crimes Act 1958 (Vic) clarifies how intoxication relates to self-defence, duress and extraordinary emergency.[69]

15.51. The Crimes Act 1958 (Vic) also provides an explanation for how intoxication applies to sexual offences where a defendant raises the defence of mistake of fact that consent was provided.[70] It provides that a defendant cannot reasonably believe they had obtained consent for sex when they are voluntarily intoxicated. This reflects other legislative changes to ensure appropriate standards of obtaining consent during sex are maintained.[71]

15.52. In Queensland, Taskforce recommendations led to amendments to rule out any consideration of voluntary intoxication when a defendant seeks to rely on mistake of fact about consent.[72] This recommendation was based, in part, on a previous report of this Commission.[73]

15.53. In South Australia, amendments have clarified that voluntary intoxication cannot be a consideration when a defendant argues that their belief was necessary and reasonable in the context of DFV homicide.[74] Chapter 5 discusses reasonableness and necessity in the context of lethal defensive force. We have not excluded access to the reformed section 304B partial defence because of voluntary intoxication as we anticipate the relationship threshold prevents perpetrators of DFV who kill in dissociative states because of alcohol and other drug ('AOD') from relying on the defence.

15.54. A review would build on recent cases and law reform developments. It would clarify issues related to intoxication, identify policy-based exceptions and ensure amendments to the Criminal Code are harmonious and consistent with recent reforms, including:

- the offence of unlawful striking causing death, introduced into the Criminal Code in 2014, which aimed to address alcohol and drug-related violence[75]
- our recommended repeal of the partial defence of killing on provocation (**Recommendation 12**). This is another partial defence that addresses reduced capacity

in the context of murder, although it is based on loss of self-control because of an emotional response to circumstances, rather than an abnormality of mind.[76]

Intoxication is complex and requires holistic review

15.55. Stakeholders noted that intoxication is a complex topic and simplistic legal responses can perpetuate disadvantage.[77] A future review is an opportunity to consider, more broadly, how intoxication applies across the Criminal Code and how it affects individuals and the community.

15.56. The scope of the review could include consideration of whether intoxication should be defined[78] or whether the Code should clarify what is meant by being 'substantially affected' by intoxication.[79] This would address the concern identified by the Queensland Mental Health Commission that the criminal justice system can perpetuate stigma and discrimination where laws about AOD use are not specific.[80]

15.57. A review of intoxication would respond to policy considerations reflected in **Recommendations 3** and **11**. Our reformed self-defence and duress defences (see our Draft Bill) allow consideration of voluntary intoxication in limited circumstances.[81] These circumstances reflect stakeholder feedback that any clarification of intoxication should recognise that:

- disallowing all consideration of voluntary intoxication would overlook the complexity of AOD use and have a disproportionate effect on communities with high levels of marginalisation and alcohol and drug consumption[82]
- where AOD consumption plays a role in violence, that consumption should not excuse the violence.[83]

15.58. A review could investigate the link between violence and alcohol and drug consumption. The Queensland Network of Alcohol and Other Drug Agencies ('QNADA') submitted that the relationship between AOD use and offending is complex and poorly understood.[84] Improving our understanding of AOD and offending would inform recommendations on how the law should respond to intoxication and improve the connections between criminal responsibility principles and intoxication. This approach would better respond to vulnerable defendants and improve accountability. Vulnerable defendants could be people who use AOD in the context of DFV and sexual violence because of social marginalisation or other reasons.

15.59. Clarifying the link between intoxication and criminal responsibility may require investigation into community attitudes about intoxication and violence. Other law reform reports noted that juries are rarely sympathetic towards defendants who use AOD and that defendants who are intoxicated when offending have difficulty making out arguments of self-defence.[85] This was also confirmed by QNADA who noted that 'stigma and discrimination also impact women and girls who use substances and are engaged with the criminal justice system'.[86]

15.60. Though preliminary, these findings support a review to recommend a modern approach to intoxication and offending in the Criminal Code. This requires holistic examination of the law as well as investigation into community attitudes and understanding.

The Commission should undertake the review

15.61. The Commission is well positioned to undertake the recommended reviews.

15.62. Independent research and consultation are important for a review of complex areas of the law that intersect with community values and expectations. Our consultation expertise, including our trauma-informed and culturally aware approach, and established relationships with key

stakeholders positions us to integrate insights from doctrinal research with quantitative and qualitative research findings. Our expertise in mixed methods research equips us to obtain and balance a range of different forms of evidence and advise the Government on legally and socially complex issues where there may be divergent views on appropriate reform.

15.63. Our independence also supports our capacity to provide a clear evidence base for reform. This independence and our open and transparent approach to consultation has enhanced our relationships with stakeholders and our ability to listen and appropriately balance multiple, intersecting views and considerations.

15.64. We take an inclusive approach to stakeholder consultation, encouraging and supporting people across Queensland to engage in law reform, including people from diverse and disadvantaged communities. Where a future review concerns communities who may have negative institutional experiences, stakeholders input is critical.

15.65. Finally, the knowledge, insights and relationships built during this review would be beneficial to a future review. This combination of independence, expertise and a commitment to inclusive and informed consultation makes us the appropriate body to undertake this important review.

Human rights considerations

15.66. **Recommendation 36** promotes human rights.

15.67. Without scheduled reviews, laws may have unintended or negative consequences, including for certain groups of people. A review of the operation of reforms would help ensure our recommendations are working effectively and achieving their intent. This includes ensuring that our reforms are promoting the human rights identified in this report and are not unreasonably limiting others.

15.68. A future review of the partial defence of diminished responsibility and intoxication would promote the right to recognition and equality before the law by reviewing the operation of these defences and how they impact disadvantaged communities, including Aboriginal peoples and Torres Strait Islander peoples, people with disability, people from culturally and linguistically diverse backgrounds and other communities who experience barriers to justice. A future review would also enable other rights that are currently limited by the operation of these defences to be identified and would recommend reforms to promote human rights.

References

1 Chapter 9, 'Monitoring and review'.

2 Australian Law Reform Commission, Legislation Framework for Corporations and Financial Services Regulation: Post-Legislative Scrutiny (Background No FSL8, May 2023) 1 [2]–[4].

3 Law Reform Commission Act 1968 (Qld) s 10.

4 Australian Law Reform Commission, Legislation Framework for Corporations and Financial Services Regulation: Post-Legislative Scrutiny (Background No FSL8, May 2023) 1 [2]–[4].

5 Chapter 1; QLRC, Review of Particular Criminal Defences: Our Guiding Principles for Reform (Background Paper No 2, July 2024) 7.

6 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 22 [122].

7 Bar Association of Queensland, Submission 42. See also Legal Aid Queensland, Submission 31; Red Rose Foundation, Submission 33.

8 Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill).

9 Criminal Code (Qld) s 304A.

10 Criminal Code (Qld) s 28.

11 Criminal Code (Qld) s 26.

12 QLRC, Review of Particular Criminal Defences: Our Guiding Principles for Reform (Background Paper 2, 2024) 8 [18].

13 Criminal Code (Qld) s 26.

14 Criminal Code (Qld) s 27.

15 Criminal Code (Qld) ss 27, 28, 29. The term 'mental illness' is used here to refer to 'mental disease or natural mental infirmity' which are the terms used in section 27.

16 Soraya Ryan et al, Carter's Criminal Law of Queensland (LexisNexis, 26th ed, 2024) 461–2 [s 304A.25]–[s 304A.30].

17 Criminal Code (Qld) s 27.

18 Queensland Courts, 100. Diminished Responsibility: S 304A (Supreme and District Courts Criminal Directions Benchbook, March 2025) [100.2].

19 Law Commission of England and Wales, Partial Defences to Murder (Final Report, 6 August 2004) 26 [2.59]; Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, 2007) 257; South Australian Law Reform Institute, The Provoking Operation of Provocation: Part 2 (Report No 11, April 2018) 110 [12.3.1].

20 QLRC, Review of Particular Criminal Defences: Equality and Integrity — Reforming Criminal Defences in Queensland (Consultation Paper, February 2025) 43–6.

21 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 27–8 [164]–[166].

22 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 28 [167]–[170].

23 The related defence of insanity is identified in Women's Safety and Justice Taskforce, Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland (Report No 1, 2021) vol 2, 258.

24 Andrew Hemming, Submission 1.

25 Kelley Burton, Submission 12.

26 Bar Association of Queensland, Submission 42.

27 NSW Law Reform Commission, Partial Defences to Murder: Diminished Responsibility (Report No 82, 1997); Law Commission of England and Wales, Partial Defences to Murder (Final Report, 6 August 2004); Victorian Law Reform Commission, Defences to Homicide (Final Report, October 2004); Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007); South Australian Law Reform Institute, The Provoking Operation of Provocation: Stage 1 (Report, April 2017); South

Australian Law Reform Institute, The Provoking Operation of Provocation: Stage 2 (Report No 11, April 2018).

28 Victorian Law Reform Commission, Defences to Homicide (Final Report, October 2004) 242 [5.131].

29 Model Criminal Code Officers, Chapter 5: Fatal Offences Against the Person (Discussion Paper, June 1998) 129; South Australian Law Reform Institute, The Provoking Operation of Provocation: Stage 2 (Report No 11, April 2018) 117 [12.4.26].

30 Andrew Hemming, Submission 1.

31 Victorian Law Reform Commission, Defences to Homicide (Final Report, October 2004) 242 [5.131]; South Australian Law Reform Institute, The Provoking Operation of Provocation: Stage 2 (Report No 11, April 2018) 117 [12.4.25]–[12.4.26].

32 Queensland Sexual Assault Network, Submission 26; Red Rose Foundation, Submission 33.

33 Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, 2007) 254; South Australian Law Reform Institute, The Provoking Operation of Provocation: Part 2 (Report No 11, April 2018) 114 [12.4.13].

34 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 28 [171]–[174].

35 Law Commission of England and Wales, Partial Defences to Murder (Final Report, 6 August 2004) 90–1 [5.32]–[5.42].

36 Law Commission of England and Wales, Defences for Victims of Domestic Abuse Who Kill Their Abusers (Background Paper, 20 January 2025) 25.

37 Karlee O'Donnell et al, Ten to Men Insights #3: The Use of Intimate Partner Violence Among Australian Men (Report, 2025) 3.

38 R v Brown [1993] QCA 330.

39 Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 258.

40 R v GBU [2025] QCA 196.

41 Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 259.

42 On the view that diminished responsibility should be considered at sentencing: Model Criminal Code Officers, Chapter 5: Offences Against the Person (Discussion Paper, June 1998) 127; Victorian Law Reform Commission, Defences to Homicide (Final Report, October 2004) 241 [5.123]–[5.124]; South Australian Law Reform Institute, The Provoking Operation of Provocation: Part 2 (Report No 11, April 2018) 119 [12.6.1]. On the concern about how diminished responsibility, as a category of intentional killing, is ultimately treated as manslaughter: Law Commission of England and Wales, Partial Defences to Murder (Final Report, 6 August 2004) 91–2 [5.43].

43 Law Commission of England and Wales, Partial Defences to Murder (Final Report, 6 August 2004) 85 [5.18]; NSW Law Reform Commission, Partial Defences to Murder: Diminished Responsibility (Report No 82, 1997) 32–3 [3.18]. Compare with South Australian Law Reform Institute, The Provoking Operation of Provocation: Part 2 (Report No 11, April 2018) 118 [12.5.2].

44 James B Kirkbride et al, 'The Social Determinants of Mental Health and Disorder: Evidence, Prevention and Recommendations' (2024) 23(1) World Psychiatry 58, 58.

45 Commonwealth of Australia, National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing: 2017-2023 (Framework, February 2017) 7. In addition to mental health, social and emotional wellbeing are also influenced by social determinants of health.

46 South Australian Law Reform Institute, The Provoking Operation of Provocation: Stage 2 (Report No 11, April 2018) 124–5 [12.7.7] fn 858.

47 QLRC, Review of Particular Criminal Defences: Understanding Domestic and Family Violence and Its Role in Criminal Defences (Background Paper No 3, February 2025) 25–6 [122]–[123].

48 QLRC, Women Who Kill (Research Project 4, 2025). 5 of the 26 women convicted of manslaughter for killing a current or former intimate partner between July 2010 and April 2024 were sentenced on the basis of diminished responsibility, the second most common sentencing basis after lack of intent.

49 Chapter 4, 'The current law does not support access to justice in DFV contexts'.

50 Noting that on a charge of murder, the defendant must prove the partial defence: Criminal Code (Qld) s 304A(2).

51 Mental Health Act 2016 (Qld) s 110(2).

52 R v Smith (aka Stella) (2021) 8 QR 338, 343 [8]; Mental Health Act 2016 (Qld) s 685(2).

53 Mental Health Act 2016 (Qld) ss 638(1)–(2).

54 Mental Health Act 2016 (Qld) s 111(3).

55 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 27–8 [164]–[166].

56 South Australian Law Reform Institute, The Provoking Operation of Provocation: Stage 2 (Report No 11, April 2018) 111–12 [12.4.5]–[12.4.6].

57 NSW Law Reform Commission, Partial Defences to Murder: Diminished Responsibility (Report No 82, 1997) 27–8 [3.11].

58 R v Chayna (1993) 66 A Crim R 178, 180.

59 Law Commission of England and Wales, Partial Defences to Murder (Final Report, 6 August 2004) 92–3 [5.44]; Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 258.

60 NSW Law Reform Commission, Partial Defences to Murder: Diminished Responsibility (Report No 82, 1997) 65 [3.87]; Law Commission of England and Wales, Partial Defences to Murder (Final Report, 6 August 2004) 89–90 [5.30]–[5.31].

61 Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 255–6.

62 Law Reform Commission of Western Australia, Review of the Law of Homicide (Final Report No 97, September 2007) 256.

63 Mental Health Act 2016 (Qld) s 120.

64 Mental Health Act 2016 (Qld) ss 131–132.

65 Mental Health Act 2016 (Qld) ss 130(2), 134.

66 Queensland Advocacy for Inclusion, Submission to the Queensland Law Reform Commission, Nominate Law Reform Topics (February 2025) (February 2025) 16–19; The Public Advocate (Qld), Adults with Cognitive Disability in the Queensland Criminal Justice System: The Forensic System (Mental Health and Disability) (Discussion paper No 3, August 2025) 19.

67 Mental Health Act 2016 (Qld).

68 Criminal Code (Cth) s 8.4; Criminal Code 2002 (ACT) s 33; Criminal Code (NT) s 43AU.

69 Crimes Act 1958 (Vic) s 322T.

70 Crimes Act 1958 (Vic) s 34AJ.

71 Explanatory Memorandum, Crimes Amendment (Non-Fatal Strangulation) Bill 2023 (Vic) 6, 14.

72 Criminal Code (Qld) s 348A(2). See also: Explanatory Notes, Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023 (Qld) 9.

73 Our relevant finding was that Queensland courts tend to disagree that a defendant who is voluntarily intoxicated could form a reasonable belief that there was consent to sex: QLRC, Review of Consent Laws and the Excuse of Mistake of Fact (Report No 78, 2020) 190 [7.116].

74 Criminal Law Consolidation Act 1935 (SA) s 15(2a), as inserted by Criminal Law Consolidation (Defences—Intoxication) Amendment Act 2025 (SA) s 3(2).

75 Safe Night Out Legislation Amendment Act 2014 (Qld) s 14; Explanatory Notes, Safe Night Out Legislation Amendment Bill 2014 (Qld) 1.

76 Criminal Code (Qld) s 304.

77 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025) 15 [72].

78 Julia Quilter et al, The Significance of 'Intoxication' in Australian Criminal Law (Trends and Issues in Crime and Criminal Justice Report No 546, May 2018) 2–3.

79 Joseph Lelliott and Rebecca Wallis, Submission 22; Women's Legal Service Queensland, Submission 37; Bar Association of Queensland, Submission 42.

[80] Queensland Mental Health Commission, Changing Attitudes, Changing Lives: Options to Reduce Stigma and Discrimination for People Experiencing Problematic Alcohol and Other Drug Use — Options for Reform (Report, March 2018) 24.

[81] Criminal Code (Defences and Excuses) Amendment Bill 2025 (QLRC Draft Bill) cls 6, 11.

[82] Queensland Sexual Assault Network, Submission 26; Queensland Council of Social Services, Submission 28; Zoe Rathus, Submission 29; Legal Aid Queensland, Submission 31; Queensland Advocacy for Inclusion, Submission to the Office of the Victims' Commissioner, Review of the Charter of Victims' Rights (28 March 2025); Red Rose Foundation, Submission 33; Bar Association of Queensland, Submission 42; QLRC, Legal Practitioner Insights (Research Project 5, 2025) Defence Counsel, Interview 2; Defence Counsel, Interview 3.

[83] Queensland Network of Alcohol and Other Drug Agencies, Submission 11.

[84] Queensland Network of Alcohol and Other Drug Agencies, Submission 11.

[85] Tasmania Law Reform Institute, Review of the Law Relating to Self-Defence (Final Report No 20, October 2015) 19–29.

[86] Queensland Network of Alcohol and Other Drug Agencies, Submission 11.

Appendices

Appendix A: Our terms of reference

Terms of Reference

A review of the defences and excuses in the Criminal Code

Background

The Criminal Code provides for a range of defences and excuses. Some generally apply to any offence against the statute law of Queensland, such as insanity and compulsion. Others are limited to particular types of offences, such as self-defence, provocation, and killing for preservation in an abusive relationship.

In March 2021, the Palaszczuk Government established the independent Women's Safety and Justice Taskforce (the Taskforce), chaired by the Honourable Margaret McMurdo AC. The first report released by the Taskforce in December 2021, was titled *Hear her voice: Report one, Addressing coercive control and domestic and family violence in Queensland* (the report).

The Taskforce examined a range of defences and excuses in the context of coercive control and domestic and family violence (DFV) in Queensland. The Taskforce recommended, at recommendation 71, that the Attorney-General refer the defences and excuses in the Criminal Code, for independent review. The recommendation states that the review should particularly consider the defences of provocation, self-defence, and killing for preservation in an abusive domestic relationship.

In making this recommendation, the Taskforce highlighted a number of issues with respect to the current operation of specific defences and excuses. For example, the Taskforce identified that the partial defence of killing for preservation in an abusive relationship had not been used successfully before a jury in any reported case. The Taskforce was also concerned that the partial defence of provocation 'is still being used by perpetrators of domestic violence to reduce their culpability at law for killing their partners in a jealous rage', citing the High Court decision in *Peniamina v R* (2020) 385 ALR 367. The Taskforce considered that the defence of provocation should be reviewed in conjunction with a review of the mandatory sentence of life imprisonment for murder, the existence of which is consistently used to justify retaining the defence.

The Queensland Government in principle supported this recommendation in its response to the report released on 10 May 2022.

As the Criminal Code defences and excuses apply to a very broad range of offending and offenders, the Taskforce acknowledged that any reform to the defences and excuses and the mandatory penalty of life imprisonment for murder will affect cases far beyond DFV.

Terms of reference

[1] I, YVETTE MAREE D'ATH, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence (Attorney-General), refer to the Queensland Law Reform Commission (the Commission) pursuant to section 10 of the *Law Reform Commission Act 1968* for review and investigation, the operation of defences and excuses in the Criminal Code.

Scope

[2] The Commission is asked to examine the following defences and excuses in the Criminal Code:

(a) the defence of self-defence (sections 271 and 272), and specifically:

i. whether it should be clarified and simplified or expanded to cover circumstances when a victim of DFV (including of coercive control) acts reasonably to protect themselves from a perpetrator; and

ii. whether the defence should distinguish between provoked and unprovoked assaults and whether it should be limited to circumstances of assault against a person.

(b) the excuse of provocation for an offence involving an assault (sections 268 and 269) and the partial defence to murder of provocation (section 304), and specifically whether either or both should be repealed or amended;

(c) the partial defence of killing for preservation in an abusive domestic relationship (section 304B); and

(d) the defence of domestic discipline (section 280).

[3] The Commission is also asked to consider the mandatory penalty of life imprisonment for the offence of murder, its impact on the operation of those defences and excuses and whether it should be removed. The Commission is invited to collaborate with the Queensland Sentencing Advisory Council on this aspect of the review.

[4] The Commission is not asked to examine or have regard to the age of criminal responsibility (section 29) or double jeopardy (section 17) as part of this referral.

[5] The Commission is asked to make recommendations on:

(a) whether there is a need for reform of the law, practices or procedures relating to those defence or excuses;

(b) whether the mandatory penalty of life imprisonment for the offence of murder should be removed; and

(c) any other matters the Commission considers relevant having regard to the issues relating to the referral.

[6] If the Commission recommends reform of the relevant Criminal Code provisions, or other legislative reforms, the Commission is asked to prepare draft legislative provisions based on its recommendations, noting that the decision whether or not to progress those recommended reforms is a matter for the Queensland Government.

[7] In making its recommendations on those defences and excuses, the Commission should have regard to:

(a) the findings and recommendations of the Taskforce;

(b) the nature and impacts of DFV and criminal conduct on victims and survivors, and their families;

(c) existing legal principles of criminal responsibility;

(d) the need to ensure Queensland's criminal law reflects contemporary community standards;

(e) the need for Queensland's criminal law to ensure just outcomes by balancing the interests of victims and accused persons;

(f) the experiences of victims and survivors, and their families, in the criminal justice system;

(g) the views and research of relevant experts, including those with specialist expertise in relation to criminal law, DFV, and the experience of victims and survivors;

(h) recent developments, legislative reform, and research in other Australian and international jurisdictions;

(i) the compatibility of the recommendations with the *Human Rights Act 2019* (including balancing the rights of victims and accused persons); and

(j) any other matters that the Commission considers relevant having regard to the issues relating to the referral.

[8] In conducting its review, the Commission should consult experts with specialist expertise in DFV and the impacts of criminal conduct on victims and survivors.

Consultation

The Commission shall consult with:

(a) legal stakeholders;

(b) people who have experienced DFV or who have been the victim of other criminal conduct, and relevant bodies that work with or represent victims and survivors, or the family of victims, of DFV and other offences;

(c) Aboriginal and Torres Strait Islander stakeholders;

(d) the public generally; and

(e) any group or individual, in or outside Queensland, the Commission considers relevant having regard to the issues relating to the referral.

Timeframe

The Commission is to provide its final report, including any draft legislative provision/s and/or information required to give effect to its recommendations, to the Attorney-General no later than 1 December 2025.

Dated the 15th of November 2023.

YVETTE D'ATH MP

Attorney-General and Minister for Justice and

Minister for the Prevention of Domestic and Family Violence

Appendix B: Extract of current laws

All references are to the Criminal Code.

Self-defence

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.

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.

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.

Killing for preservation in an abusive domestic relationship

304B Killing for preservation in an abusive domestic relationship

(1) A person who unlawfully kills another (the ***deceased***) under circumstances that, but for the provisions of this section, would constitute murder, is guilty of manslaughter only, if—

(a) the deceased has committed acts of serious domestic violence against the person in the course of an abusive domestic relationship; and

(b) the person believes that it is necessary for the person's preservation from death or grievous bodily harm to do the act or make the omission that causes the death; and

(c) the person has reasonable grounds for the belief having regard to the abusive domestic relationship and all the circumstances of the case.

(2) An ***abusive domestic relationship*** is a domestic relationship existing between 2 persons in which there is a history of acts of serious domestic violence committed by either person against the other.

(3) A history of acts of serious domestic violence may include acts that appear minor or trivial when considered in isolation.

(4) Subsection (1) may apply even if the act or omission causing the death (the response) was done or made in response to a particular act of domestic violence committed by the deceased that would not, if the history of acts of serious domestic violence were disregarded, warrant the response.

(5) Subsection (1)(a) may apply even if the person has sometimes committed acts of domestic violence in the relationship.

(6) For subsection (1)(c), without limiting the circumstances to which regard may be had for the purposes of the subsection, those circumstances include acts of the deceased that were not acts of domestic violence.

(7) In this section—

domestic violence see the Domestic and Family Violence Protection Act 2012, section 8.

Compulsion and duress

31 Justification and excuse – compulsion

(1) A person is not criminally responsible for an act or omission, if the person does or omits to do the act under any of the following circumstances, that is to say –

(a) in execution of the law;

(b) in obedience to the order of a competent authority which he or she is bound by law to obey, unless the order is manifestly unlawful;

(c) when the act is reasonably necessary in order to resist actual and unlawful violence threatened to the person, or to another person in the person's presence;

(d) when—

(i) the person does or omits to do the act in order to save himself or herself or another person, or his or her property or the property of another person, from serious harm or detriment threatened to be inflicted by some person in a position to carry out the threat; and

(ii) the person doing the act or making the omission reasonably believes he or she or the other person is unable otherwise to escape the carrying out of the threat; and

(iii) doing the act or making the omission is reasonably proportionate to the harm or detriment threatened.

(2) However, this protection does not extend to an act or omission which would constitute the crime of murder, or an offence of which grievous bodily harm to the person of another, or an intention to cause such harm, is an element, nor to a person who has by entering into an unlawful association or conspiracy rendered himself or herself liable to have such threats made to the person.

...

Provocation

268 Provocation

(1) The term provocation, used with reference to an offence of which an assault is an element, means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under the person's immediate care, or to whom the person stands in a conjugal, parental, filial, or fraternal, relation, or in the relation of master or servant, to deprive the person of the power of self-control, and to induce the person to assault the person by whom the act or insult is done or offered.

(2) (2)When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.

(3) A lawful act is not provocation to any person for an assault.

(4) An act which a person does in consequence of incitement given by another person in order to induce the person to do the act, and thereby to furnish an excuse for committing an assault, is not provocation to that other person for an assault.

(5) An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.

269 Provocation to assault

(1) A person is not criminally responsible for an assault committed upon a person who gives the person provocation for the assault, if the person is in fact deprived by the provocation

of the power of self-control, and acts upon it on the sudden and before there is time for the person's passion to cool, and if the force used is not disproportionate to the provocation and is not intended, and is not such as is likely, to cause death or grievous bodily harm.

(2) Whether any particular act or insult is such as to be likely to deprive an ordinary person of the power of self-control and to induce the ordinary person to assault the person by whom the act or insult is done or offered, and whether, in any particular case, the person provoked was actually deprived by the provocation of the power of self-control, and whether any force used is or is not disproportionate to the provocation, are questions of fact.

304 Killing on provocation

(1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation, and before there is time for the person's passion to cool, the person is guilty of manslaughter only.

(2) Subsection (1) does not apply if the sudden provocation is based on words alone, other than in circumstances of an exceptional character.

(3) Also, subsection (1) does not apply, other than in circumstances of an exceptional character, if—

(a) a domestic relationship exists between 2 persons; and

(b) one person unlawfully kills the other person (the ***deceased***); and

(c) the sudden provocation is based on anything done by the deceased or anything the person believes the deceased has done—

(i) to end the relationship; or

(ii) to change the nature of the relationship; or

(iii) to indicate in any way that the relationship may, should or will end, or that there may, should or will be a change to the nature of the relationship.

(4) Further, subsection (1) does not apply, other than in circumstances of an exceptional character, if the sudden provocation is based on an unwanted sexual advance to the person.

(5) For subsection (3)(a), despite the Domestic and Family Violence Protection Act 2012, section 18(6), a domestic relationship includes a relationship in which 2 persons date or dated each other on a number of occasions.

(6) Subsection (3)(c)(i) applies even if the relationship has ended before the sudden provocation and killing happens.

(7) For proof of circumstances of an exceptional character mentioned in subsection (2) or (3) regard may be had to any history of violence that is relevant in all the circumstances.

(8) For proof of circumstances of an exceptional character mentioned in subsection (4), regard may be had to any history of violence, or of sexual conduct, between the person and the person who is unlawfully killed that is relevant in all the circumstances.

(9) On a charge of murder, it is for the defence to prove that the person charged is, under this section, liable to be convicted of manslaughter only.

(10) When 2 or more persons unlawfully kill another, the fact that 1 of the persons is, under this section, guilty of manslaughter only does not affect the question whether the unlawful killing amounted to murder in the case of the other person or persons.

(11) In this section—

unwanted sexual advance, to a person, means a sexual advance that—

(a) is unwanted by the person; and

(b) if the sexual advance involves touching the person—involves only minor touching.

Examples of what may be minor touching depending on all the relevant circumstances—

patting, pinching, grabbing or brushing against the person, even if the touching is an offence against section 352(1)(a) or another provision of this Code or another Act.

Prevention of repetition of insult

270 Prevention of repetition of insult

It is lawful for any person to use such force as is reasonably necessary to prevent the repetition of an act or insult of such a nature as to be provocation to the person for an assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

Sentencing for murder

305 Punishment of murder

(1) Any person who commits the crime of murder is liable to imprisonment for life, which can not be mitigated or varied under this Code or any other law or is liable to an indefinite sentence under part 10 of the Penalties and Sentences Act 1992.

(2) If the person is being sentenced—

(a) on more than 1 conviction of murder; or

(b) on 1 conviction of murder and another offence of murder is taken into account; or

(c) on a conviction of murder and the person has on a previous occasion been sentenced for another offence of murder;

the court sentencing the person must make an order that the person must not be released from imprisonment until the person has served a minimum of 30 or more specified years of imprisonment, unless released sooner under exceptional circumstances parole under the Corrective Services Act 2006.

(3) Subsection (2)(c) applies whether the crime for which the person is being sentenced was committed before or after the conviction for the other offence of murder mentioned in the paragraph.

(4) If—

(a) the person killed was a police officer at the time the act or omission that caused the person's death was done or made; and

(b) the person being sentenced did the act or made the omission that caused the police officer's death—

(i) when—

(A) the police officer was performing the officer's duty; and

(B) the person knew or ought reasonably to have known that he or she was a police officer; or

(ii) because the police officer was a police officer; or

(iii) because of, or in retaliation for, the actions of the police officer or another police officer in the performance of the officer's duty;

the court sentencing the person must make an order that the person must not be released from imprisonment until the person has served a minimum of 25 or more specified years of imprisonment, unless released sooner under exceptional circumstances parole under the Corrective Services Act 2006.

(5) The Penalties and Sentences Act 1992, section 161Q also states a circumstance of aggravation for the crime of murder.

Domestic discipline

280 Domestic discipline

It is lawful for a parent or a person in the place of a parent, or for a schoolteacher or master, to use, by way of correction, discipline, management or control, towards a child or pupil, under the person's care such force as is reasonable under the circumstances.

Diminished responsibility

304A Diminished responsibility

(1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, is at the time of doing the act or making the omission which causes death in such a state of abnormality of mind (whether arising from a condition of arrested or retarded development of mind or inherent causes or induced by disease or injury) as substantially to impair the person's capacity to understand what the person is doing, or the person's capacity to control the person's actions, or the person's capacity to know that the person ought not to do the act or make the omission, the person is guilty of manslaughter only.

(2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section liable to be convicted of manslaughter only.

(3) When 2 or more persons unlawfully kill another, the fact that 1 of such persons is by virtue of this section guilty of manslaughter only shall not affect the question whether the unlawful killing amounted to murder in the case of any other such person or persons.

Appendix C: Consultation proposals and questions

Self-defence, compulsion, and duress

Proposals

P1 Repeal sections 271, 272, 273 of the Criminal Code and replace with a provision that provides that a person acts in self-defence if:

(a) the person believes that the conduct was necessary –

i. in self-defence or in defence of another or

ii. to prevent or terminate the unlawful deprivation of liberty of themselves or another and

(b) the conduct is a reasonable response in the circumstances as the person perceives them.

The provision should also provide:

(c) Self-defence should only be available as a defence to murder where the person believes their conduct is necessary to defend themselves or another from death or serious injury.

(d) Self-defence does not apply if –

i. the person is responding to lawful conduct and

ii. the person knew the conduct was lawful.

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

P2 The new self-defence provision should provide that evidence that the defendant experienced domestic violence (as defined in section 103CA Evidence Act 1977) is relevant to an assessment of self-defence. It should further provide that the person may believe that the person's conduct is necessary in self-defence, and the conduct may be a reasonable response in the circumstances as the person perceives them, even if:

(a) the person is responding to a non-imminent threat of harm or

(b) the use of force is in excess of the force involved in the harm or threatened harm.

P3 The new self-defence provision should provide that self-defence is not available where the person's belief that their actions were necessary and reasonable was substantially affected by self-induced intoxication.

Questions

Q1 What are your views on proposal 1?

Q2 For the purposes of proposal 1:

(a) how should 'serious injury' be defined?

(b) should a non-exhaustive list of factors be included to assist in determining whether the person claiming self-defence has acted reasonably?

Q3 What are your views on proposal 2?

Q4 What are your views on proposal 3?

Q5 In light of proposals 1 and 2 (about self-defence), should the defence of compulsion in section 31(1)(c) of the Criminal Code be repealed?

Q6 In light of proposals 1 and 2 (about self-defence), are changes to the defence of duress in section 31(1)(d), and the exclusions in section 31(2), of the Criminal Code required?

Killing for preservation in an abusive domestic relationship

Proposal

P4 The partial defence of killing for preservation in an abusive domestic relationship in section 304B of the Criminal Code should be repealed.

Question

Q7 What are your views on proposal 4?

Killing on provocation

Proposal

P5 The partial defence of killing on provocation in section 304 of the Criminal Code should be repealed.

Question

Q8 What are your views on proposal 5?

New partial defences to murder

Questions

Q9 Should the Criminal Code be amended to add a new trauma-based partial defence to murder that applies when a victim-survivor of domestic violence kills their abuser? How should this be framed?

Q10 Should the Criminal Code be amended to add a new partial defence to murder that applies where the defendant has acted excessively in self-defence and, if so, should the defence apply:

(a) only in the context of DFV where the person in most need of protection kills their abuser or

(b) generally?

Mandatory life sentence for murder

Questions

Q11 Should the mandatory life sentence for murder be:

(a) retained for all murders

(b) retained but only for particular cases

(c) replaced with a presumptive life sentence or

(d) replaced with a maximum life sentence?

Q12 Should the minimum non-parole periods for murder be:

(a) retained

(b) amended to allow a discount for a guilty plea or cooperation with law enforcement authorities, or both

(c) replaced with a presumptive non-parole period or

(d) replaced with an entirely discretionary approach to setting the non-parole period?

Q13 Do you have a preferred approach when combining reforms to the head sentence and non-parole period?

Provocation to assault

Proposal

P6 The defence of provocation in section 269 of the Criminal Code should be amended so that the defence does not apply to domestic violence offences as defined in section 1 of the Criminal Code.

Question

Q14 What are your views on proposal 6?

Prevention of repetition of insult

Proposal

P7 The defence of prevention of repetition of insult in section 270 of the Criminal Code should be amended so that the defence only applies to offences of which assault is an element and does not apply to domestic violence offences as defined in section 1 of the Criminal Code.

Question

Q15 What are your views on proposal 7?

Practice and procedure reforms

Questions

Q16 What reforms are needed to criminal law practice and procedure to improve access to appropriate defences by DFV victim-survivors who offend?

Q17 What reforms are needed to criminal law practice and procedure to facilitate:

(a) early identification of self-defence in criminal investigations and prosecutions

(b) early resolution of criminal prosecutions?

Q18 What reforms are needed to criminal law practice and procedure to facilitate the admission of evidence about the nature and impact of DFV on victim-survivors who offend?

Q19 What reforms are needed to criminal law practice and procedure to improve access to justice for Aboriginal peoples and Torres Strait Islander peoples?

Q20 Are reforms needed to majority verdicts in murder and manslaughter cases?

Domestic discipline

Question

Q21 Do you support:

(a) option 1: repeal section 280 of the Criminal Code or

(b) option 2: limiting the application of section 280 (and if so, how) or

(c) some other approach?

Appendix D: List of interviews and consultations

Stakeholder	Stakeholder type	Consultation location
The Honourable Chief Justice Bowskill, His Honour Chief Judge Devereaux SC and Chief Magistrate Brassington	Legal practitioners and judicial officers	Brisbane
Retired Supreme Court Judge	Legal practitioners and judicial officers	Brisbane and online
Women's Safety and Justice Project, Office of the Director of Public Prosecutions	Legal practitioners and judicial officers	Brisbane
Queensland Sentencing Advisory Council	Independent statutory bodies	Brisbane
Academic 1	Academics	Online
Chief Magistrate Brassington	Legal practitioners and judicial officers	Brisbane
Legal Aid Queensland	Legal practitioners and judicial officers	Online
Bar Association of Queensland	Legal practitioners and judicial officers	Online
Office of the Victims' Commissioner	Independent statutory bodies	Online
Domestic and Family Violence Death Review Unit, Coroners Court of Queensland	Government departments and agencies	Online
Queensland Homicide Victims' Support Group	Community support and advocacy organisations	Online
Parole Board Queensland	Government departments and agencies	Online
Women's Legal Service Queensland	Legal practitioners and judicial officers	Online
Academic 2	Academics	Online
Queensland Teachers Union	Community support and advocacy organisations	Online
Academic 3	Academics	Online
Queensland Family and Child Commission	Independent statutory bodies	Online
Queensland Law Society	Legal practitioners and judicial officers	Online

Stakeholder	Stakeholder type	Consultation location
Office of the Director-General, Department of Education	Government departments and agencies	Online
Individual 1	Individual	Online
Launch event	Legal practitioners and judicial officers, independent statutory bodies, governmental departments and agencies, community support and advocacy organisations, legal practitioners, academics and individuals	Brisbane and online
First Nations Justice Office	Government departments and agencies	Cairns and online
Office of the Director of Public Prosecutions	Legal practitioners and judicial officers	Cairns
North Queensland Women's Legal Service	Legal practitioners and judicial officers	Cairns
Cairns Regional Domestic Violence Service	Community support and advocacy organisations	Cairns
Warringu Aboriginal and Torres Strait Islander Corporation	Aboriginal peoples and Torres Strait Islander peoples and organisations	Cairns
Bar Association of Queensland	Legal practitioners and judicial officers	Brisbane
Remote Indigenous Women's Shelter Network	Aboriginal peoples and Torres Strait Islander peoples and organisations	Brisbane
Queensland Indigenous Family Violence Legal Service	Legal practitioners and judicial officers	Brisbane and online
End Physical Punishment of Australian Children	Community support and advocacy organisations	Online
Queensland Human Rights Commission	Independent statutory bodies	Brisbane
Academic 4	Academics	Brisbane and online
Department of Aboriginal and Torres Strait Islander Justice Programs and Partnerships	Government departments and agencies	Brisbane and online
Courts Performance and Reporting Unit, Department of Justice	Government departments and agencies	Online
Child Protection Practitioners Association of Queensland	Legal practitioners and judicial officers	Brisbane
Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts	Government departments and agencies	Rockhampton

Stakeholder	Stakeholder type	Consultation location
Darumbal people	Aboriginal peoples and Torres Strait Islander peoples and organisations	Rockhampton
Fitzroy Basin Association	Community support and advocacy organisations	Rockhampton
Queensland College of Teachers	Independent statutory bodies	Online
Queensland Domestic Violence Services Network	Community support and advocacy organisations	Online
Townsville Community Justice Group	Aboriginal peoples and Torres Strait Islander peoples and organisations	Townsville
Legal Aid Queensland	Legal practitioners and judicial officers	Townsville
Office of the Director of Public Prosecutions	Legal practitioners and judicial officers	Townsville
Legal Aid Queensland and Aboriginal and Torres Strait Islander Legal Service	Legal practitioners and judicial officers	Mount Isa
North West Queensland Indigenous Community Social Services and Elders	Aboriginal peoples and Torres Strait Islander peoples and organisations	Mount Isa
54 Reasons	Community support and advocacy organisations	Mount Isa
Aboriginal and Torres Strait Islanders Development Recreational Women's Association	Aboriginal peoples and Torres Strait Islander peoples and organisations	Mount Isa
Magistrate 1 and Magistrate 2	Legal practitioners and judicial officers	Remote
Academic 5 and Academic 6	Academics	Brisbane and online
Women’s Legal Service Queensland	Legal practitioners and judicial officers	Brisbane
Academic 3, Individual 1 and Individual 2	Academics and Community support and advocacy organisations	Brisbane and online
Domestic Violence Action Centre	Community support and advocacy organisations	Ipswich
Legal Aid Queensland and Defence Counsel 1	Legal practitioners and judicial officers	Ipswich
Office of the Director of Public Prosecutions	Legal practitioners and judicial officers	Ipswich
Office of the Child and Family Official Solicitor	Government departments and agencies	Brisbane
Office of the Director of Public Prosecutions	Legal practitioners and judicial officers	Gold Coast

Stakeholder	Stakeholder type	Consultation location
Domestic Violence Prevention Centre	Community support and advocacy organisations	Gold Coast
Aboriginal and Torres Strait Islander Legal Service	Legal practitioners and judicial officers	Gold Coast
Legal Aid Queensland	Legal practitioners and judicial officers	Gold Coast
Support Assessment Referral Advocacy Program, Multicultural Families Organisation	Community support and advocacy organisations	Gold Coast
Immigrant Women's Support Service	Community support and advocacy organisations	Brisbane
Queensland Family and Child Commission	Independent statutory bodies	Brisbane
Lifeline Darling Downs and South West Queensland	Community support and advocacy organisations	Toowoomba
TASC Legal and Social Justice Services	Legal practitioners and judicial officers	Toowoomba and online
Yumbin Community Justice Aboriginal Corporation	Aboriginal peoples and Torres Strait Islander peoples and organisations	Toowoomba
Office of the Director of Public Prosecutions	Legal practitioners and judicial officers	Toowoomba
Academic 7	Academics	Toowoomba
Office of the Victims' Commissioner	Independent statutory bodies	Brisbane and online
Queensland Family and Child Commission	Independent statutory bodies	Brisbane
Queensland Council of Social Service	Community support and advocacy organisations	Brisbane
Department of Children, Youth Justice and Multicultural Affairs, Service Delivery (Child and Family) and Office of the Chief Practitioner	Government departments and agencies	Brisbane
North West Queensland Indigenous Community Social Services	Aboriginal peoples and Torres Strait Islander peoples and organisations	Mount Isa and online
Magistrate 1	Legal practitioners and judicial officers	Remote
New Zealand Ministry of Justice	Government departments and agencies	Online
Queensland Family and Child Commission	Independent statutory bodies	Brisbane
Queensland Police Service	Government departments and agencies	Brisbane

Stakeholder	Stakeholder type	Consultation location
Legal practitioners	Legal practitioners and judicial officers	Rockhampton
Aboriginal and Torres Strait Islander Legal Service	Legal practitioners and judicial officers	Rockhampton
CatholicCare Central Queensland	Community support and advocacy organisations	Rockhampton
Helem Yumba Central Queensland Healing Centre	Aboriginal peoples and Torres Strait Islander peoples and organisations	Rockhampton
Defence Counsel 2, Defence Counsel 3 and Defence Counsel 4	Legal practitioners and judicial officers	Rockhampton
Office of the Director of Public Prosecutions	Legal practitioners and judicial officers	Rockhampton
Focus group with nine youth advocates and young people aged 14 to 18 years about the domestic discipline defence	Individuals	Brisbane and online
Academic 8, Academic 9 and Academic 10	Academics	Online
Sisters Inside	Community support and advocacy organisations	Online
Red Rose Foundation	Community support and advocacy organisations	Brisbane and online
Academic 11 and Academic 12	Academics	Online
Office of the Director of Public Prosecutions	Legal practitioners and judicial officers	Brisbane
Aboriginal and Torres Strait Islander Legal Service and Legal Aid Queensland	Legal practitioners and judicial officers	Brisbane
The Bar Association of Queensland and Queensland Law Society	Legal practitioners and judicial officers	Brisbane
Academic 1 and Individual 2	Academics and individuals	Brisbane and online
Aboriginal and Torres Strait Islander Legal Service South West Queensland	Legal practitioners and judicial officers	Toowoomba, Charleville and online
First Nations Justice Office	Government departments and agencies	Brisbane
Individual 3	Individual	Brisbane

Stakeholder	Stakeholder type	Consultation location
Coroner 1 and Domestic and Family Violence Death Review Unit within the Coroners Court of Queensland	Legal practitioners and judicial officers and government departments and agencies	Brisbane
Positive Relationships Cultural Connectors, Department of Women, Aboriginal and Torres Strait Islander Partnerships and Multiculturalism	Government departments and agencies	Online
Amaroo, Cairns Community Justice Group	Aboriginal peoples and Torres Strait Islander peoples and organisations and Community support and advocacy organisations	Cairns
Police Prosecutions Services	Legal practitioners and judicial officers	Cairns
Gindaja Treatment and Health Centre Aboriginal Corporation and Yarrabah Community Justice Group	Aboriginal peoples and Torres Strait Islander peoples and organisations	Yarrabah and Cairns
North Queensland Women's Legal Service	Legal practitioners and judicial officers	Cairns
Youth Empowered Towards Independence	Community support and advocacy organisations	Cairns
The Aboriginal and Torres Strait Islander Domestic and Family Violence Prevention Group	Aboriginal peoples and Torres Strait Islander peoples and organisations	Brisbane
Magistrate 4 and Magistrate 5	Legal practitioners and judicial officers	Regional
Aboriginal and Torres Strait Islander Legal Service	Legal practitioners and judicial officers	Townsville
Townsville Community Justice Group	Aboriginal peoples and Torres Strait Islander peoples and organisations	Townsville
Police Prosecutions Services	Legal practitioners and judicial officers	Townsville
Academic 14	Academics	Toowoomba
Queensland Police Service	Government departments and agencies	Toowoomba
Yumbin Community Justice Aboriginal Corporation	Aboriginal peoples and Torres Strait Islander peoples and organisations	Toowoomba
Office of the Victims' Commissioner	Independent statutory bodies	Brisbane and online
Domestic Violence Action Centre	Community support and advocacy organisations, government departments and agencies	Ipswich
Magistrate 7	Legal practitioners and judicial officers	Online

Stakeholder	Stakeholder type	Consultation location
Individual 4	Aboriginal peoples and Torres Strait Islander peoples and organisations	Ipswich
Sero4, the MARA Project	Community support and advocacy organisations	Beenleigh
Queensland Police Service	Government departments and agencies	Logan
First Nations Justice Office	Government departments and agencies	Brisbane
Local law firms	Legal practitioners and judicial officers	Gold Coast
Gold Coast Centre Against Sexual Violence and Red Rose Foundation	Community support and advocacy organisations	Gold Coast
Queensland Police Service	Government departments and agencies	Gold Coast
Office of the Director of Public Prosecutions and Legal Aid Queensland	Legal practitioners and judicial officers	Sunshine Coast
Academic 13, Individual 5 and Individual 6	Individuals	Cleveland
Academic 2	Academics	Brisbane
Department of Education	Government departments and agencies	Brisbane and online
Queensland Police Service and Police Prosecutions Services	Government departments and agencies and legal practitioners and judicial officers	Charleville
Cunnamulla Community Justice Group	Aboriginal peoples and Torres Strait Islander peoples and organisations	Cunnamulla
Mitakoodi Elders Council	Aboriginal peoples and Torres Strait Islander peoples and organisations	Cloncurry and online
Magistrate 1	Legal practitioners and judicial officers	Remote
Magistrates Court Services, Department of Justice	Government departments and agencies	Mount Isa
Nawamba House	Community support and advocacy organisations	Mount Isa
Queensland Police Service	Government departments and agencies	Mount Isa
North West Queensland Indigenous Community Social Services and Elders	Aboriginal peoples and Torres Strait Islander peoples and organisations	Mount Isa
Individual 7	Individuals	Cloncurry
Queensland Police Service	Government departments and agencies	Cloncurry
Queensland Catholic Education Commission	Community support and advocacy organisations	Brisbane

Stakeholder	Stakeholder type	Consultation location
Academic 4	Academic	Online
Individual 8	Individuals	Online
Individual 9	Individuals	Mackay
Mackay Hospital and Health Service and Mackay Sexual Health Clinic	Government departments and agencies and community support and advocacy organisations	Mackay
Queensland Police Service	Government departments and agencies	Mackay
Department of Women, Aboriginal and Torres Strait Islander Partnerships and Multiculturalism, and Torres Strait Islander community elder	Government departments and agencies, Aboriginal peoples and Torres Strait Islander peoples and organisations	Rockhampton
Yoombooda Nujeena Community Justice Group and Murri Court elders	Aboriginal peoples and Torres Strait Islander peoples and organisations	Rockhampton
Queensland Police Service	Government departments and agencies	Rockhampton
Woorabinda Community Health	Community support and advocacy organisations	Woorabinda
Woorabinda Community Justice Group	Aboriginal peoples and Torres Strait Islander peoples and organisations	Woorabinda
Queensland Police Service	Government departments and agencies	Woorabinda
Queensland Human Rights Commission	Independent statutory bodies	Brisbane
Legal Aid Queensland	Legal practitioners and judicial officers	Rockhampton
Queensland Homicide Victims' Support Group	Community support and advocacy organisations	Online
Lena Passi Women's Shelter and First Nations Justice Office	Community support and advocacy organisations	Thursday Island
Tagai State College	Community support and advocacy organisations	Thursday Island
Thursday Island Community Justice Group	Aboriginal peoples and Torres Strait Islander peoples and organisations	Thursday Island
Torres Strait Regional Authority	Independent statutory bodies	Thursday Island
Northern Peninsula Area Community Justice Group	Aboriginal peoples and Torres Strait Islander peoples and organisations	Bamaga
NPA Family and Community Services Aboriginal and Torres Strait Islander Corporation	Aboriginal peoples and Torres Strait Islander peoples and organisations	Bamaga
Queensland Indigenous Family Violence Legal Service	Legal practitioners and judicial officers	Bamaga

Stakeholder	Stakeholder type	Consultation location
Queensland Police Service	Government departments and agencies	Bamaga
Community session with nine individuals	Individuals	Badu Island
Magistrate 7	Legal practitioners and judicial officers	Very remote
Mura Kosker Sorority	Aboriginal peoples and Torres Strait Islander peoples and organisations	Thursday Island
Barambah Justice Group	Aboriginal peoples and Torres Strait Islander peoples and organisations	Cherbourg
Cherbourg Aboriginal Shire Council and Cherbourg Elders Advisory Group	Aboriginal peoples and Torres Strait Islander peoples and organisations	Cherbourg
Queensland Police Service	Government departments and agencies	Murgon
Defence solicitor	Legal practitioners and judicial officers	Murgon
Central Queensland Indigenous Development	Aboriginal peoples and Torres Strait Islander peoples and organisations	Hervey Bay
Wide Bay Burnett Community Legal Service	Legal practitioners and judicial officers	Hervey Bay
Darling Downs Hospital and Health Service	Government departments and agencies	Murgon
Queensland Police Service	Government departments and agencies	Hervey Bay
Queensland Police Service	Government departments and agencies	Kingaroy
Local law firms	Legal practitioners and judicial officers	Gympie
Queensland Police Service	Government departments and agencies	Toowoomba and online
Zig Zag Young Women's Resource Centre	Community support and advocacy organisations	Brisbane
Community Leaders' Gathering	Individuals from culturally and linguistically diverse communities	Brisbane
Refugee and Immigration Legal Service	Legal practitioners	Brisbane
Family and Child Connect, Aboriginal and Torres Strait Islander Family Wellbeing Services, Kurbingui Youth Development	Aboriginal peoples and Torres Strait Islander peoples and organisations	Online
LGBTI Legal Service	Legal practitioners	Online

Stakeholder	Stakeholder type	Consultation location
Office of the Director of Public Prosecutions	Legal practitioners and judicial officers	Brisbane
Magistrates Court Services, Department of Justice	Government departments and agencies	Online
District Court Judge 7	Legal practitioners and judicial officers	Online
Sexual Offence Expert Evidence Panel and Queensland Intermediary Service, Department of Justice	Government departments and agencies	Online
Indigenous Justice Programs, Department of Justice	Government departments and agencies	Online
District Court Judge 7	Legal practitioners and judicial officers	Online
Office of the Director of Public Prosecutions,	Legal practitioners and judicial officers	Brisbane
Queensland Police Service	Government departments and agencies	Online
Office of the Director of Public Prosecutions and Police Prosecutions Services	Legal practitioners and judicial officers	Online
Chief Magistrate Brassington	Legal practitioners and judicial officers	Brisbane
His Honour Chief Judge Devereaux SC	Legal practitioners and judicial officers	Brisbane
The Honourable Chief Justice Bowskill	Legal practitioners and judicial officers	Brisbane

Events, forums, roundtables and group consultations

Event	Attendees	Location
Launch event	Launch event panellists: • Saul Holt KC • Todd Fuller KC • Melia Benn • Professor Kate Fitz-Gibbon and • the Hon Margaret McMurdo AC	Brisbane
Legal practitioners forum	• Legal Aid Queensland • Aboriginal and Torres Strait Islander Legal Service • Defence Counsel • Defence Counsel	Cairns
Aboriginal peoples and Torres Strait Islander peoples and organisations forum	Murri Binda Consortium comprising: • Darumbal Community Youth Service • Helem Yumba CQ Healing Centre • Wardingarri Aboriginal Corporation	Rockhampton
Community support and advocacy stakeholders forum	• North Queensland Domestic Violence Resource Service • Sera's Women's Shelter • Yumba-Meta	Townsville
Legal practitioners forum	• Legal Aid Queensland • Local defence firm	Rockhampton
Aboriginal peoples and Torres Strait Islander peoples and organisations forum	• HopeVale Congress	HopeVale
Aboriginal peoples and Torres Strait Islander peoples and organisations forum	• Carpentaria Land Council Aboriginal Forum	Burketown
Legal practitioners forum	• Office of the Director of Public Prosecutions • Aboriginal and Torres Strait Islander Legal Service	Cairns

Event	Attendees	Location
	• Local defence firm	
Community support and advocacy stakeholders forum	• North Queensland Domestic Violence Resource Service • Sera's Women's Shelter • Yumba-Meta	Townsville and online
Legal practitioners forum	• Office of the Director of Public Prosecutions • TASC Community Legal Centre • Local defence firms • Defence Counsel	Toowoomba
Community support and advocacy stakeholders forum	• Darling Downs Hospital and Health Service • Carbal Medical Services • Academic 7 • Domestic Violence Action Centre • Toowoomba Together	Toowoomba
Legal practitioners forum	• Office of the Director of Public Prosecutions • Police Prosecutions Services • Defence Counsel	Ipswich
Legal practitioners forum	• Office of the Director of Public Prosecutions • Legal Aid Queensland • YFS Legal	Beenleigh
Aboriginal peoples and Torres Strait Islander peoples and organisations and Community support and advocacy stakeholders forum	• Maroochydore Community Justice Group • Laurel Place • IFYS	Sunshine Coast
Community support and advocacy stakeholders forum	• Lifeline Darling Downs and South West Queensland • Far West Indigenous Family Health Service • The Queensland Aboriginal and Torres Strait Islander Coalition	Charleville
Community support and advocacy stakeholders forum	• Strong Families, Strong Communities • Lifeline Darling Downs and South West Queensland • Far West Indigenous Family Violence Service	Cunnamulla

Event	Attendees	Location
	• Cunnamulla Aboriginal Corporation for Health	
Aboriginal peoples and Torres Strait Islander peoples and organisations and legal practitioners forum	• South West Indigenous Corporation • Big Buddy Program, Goondir Health Services • Aboriginal and Torres Strait Islander Legal Service	St George
Aboriginal peoples and Torres Strait Islander peoples and organisations forum	• Goolburri Family Wellbeing Service • Charleville and Western Areas Aboriginal and Torres Strait Islanders Community Health Limited	Roma
Community support and advocacy stakeholders forum	• Act for Kids • Drug ARM • Lifeline Darling Downs and South West • Queensland Maranoa Regional Council	Roma
Legal practitioners and government departments forum	• Queensland Corrective Services • TASC Legal and Social Justice Services • Local law firm	Roma
Academics roundtable	• Academic 1 • Academic 2 • Academic 3 • Academic 5 • Academic 6 • Academic 8 • Academic 10 • Academic 15 • Academic 16 • Academic 17 • Academic 18 • Academic 19 • Academic 20 • Academic 21	Brisbane and online
Community support and advocacy stakeholders, academics, government	• 54 Reasons • Act for Kids • Brisbane Domestic Violence Service	Brisbane and online

Event	Attendees	Location
departments and legal practitioners roundtable	• Brisbane Rape and Incest Survivors Support Centre • Brisbane Youth Service • Cairns Regional Domestic Violence Service • Department of Women, Aboriginal and Torres Strait Islander Partnerships and Multiculturalism • Domestic Violence Action Centre Gold Coast • Domestic Violence Action Centre Ipswich • Domestic Violence Connect • Immigrant Women's Support Services • Brisbane law firm • Marabisda Inc • Office of the Victims' Commissioner Respect Qld • Queensland Centre for Domestic and Family Violence Research • Queensland Council of Social Service • Queensland Health • Queensland Sexual Assault Network • Red Rose Foundation • Small Steps 4 Hannah • Synapse • The Centre for Women • The Salvation Army of Australia • Toowoomba Together • Uniting Church Australia • Women’s Safety and Victims and Community Support within the Department of Justice • Women’s Safety and Violence Prevention portfolio within the Department of Families, Seniors, Disability Services and Child Safety • Women's Legal Service Queensland • Yumba Meta Housing • Zig Zag Young Women’s Resource Centre	
Legal practitioners, government departments and academics roundtable	• Aboriginal and Torres Strait Islander Legal Service • Legal Aid Queensland • LGBTI Legal Service • Office for Women and Violence Prevention, Department of Justice	Brisbane and online

Event	Attendees	Location
	• Defence law firms • Defence Counsel 10 • Defence Counsel 12 • Defence Counsel 13 • Defence Counsel 14 • Defence Counsel 15 • Defence Counsel 16 • Defence Counsel 17 • Defence Counsel 18 • Defence Counsel 19 • Academic 21	
Community support and advocacy stakeholders forum	• 54 Reasons • Gidgee Healing • Injilinji Aboriginal and Torres Strait Islander Corporation for Children and Youth Services • Queensland Corrective Services • Court Link, Department of Justice	Mount Isa
Legal practitioners forum	• Aboriginal and Torres Strait Islander Legal Service • Legal Aid Queensland • Local law firm	Mount Isa
Aboriginal peoples and Torres Strait Islander peoples and organisations forum	• Aboriginal peoples and Torres Strait Islander peoples	Mackay
Community support and advocacy stakeholders forum	• Mackay Women's Services • The Neighbourhood Hub • The Salvation Army Australia	Mackay
Legal practitioners forum	• Aboriginal and Torres Strait Islander Legal Service • Family Relationship Centre • Legal Aid Queensland • Mackay Regional Community Legal Centre • Office of the Director of Public Prosecutions	Mackay
Aboriginal peoples and Torres Strait Islander	Murri Binda Consortium comprising:	Rockhampton

Event	Attendees	Location
peoples and organisations forum	• Central Queensland Indigenous Development • Darumbal Youth Centre, Central Queensland Indigenous Development • Helem Yumba	
Aboriginal peoples and Torres Strait Islander peoples and organisations forum	• Wakai Waian Healing • Yoonthalla Services Woorabinda • Central Queensland Indigenous Development • Bidgerdii Community Health Service	Woorabinda
Community support, advocacy stakeholders and government departments forum	• Act for Kids • CatholicCare Central Queensland • CQ Healthy Families • Counsellor • Department of Families, Seniors, Disability Services and Child Safety • Rockhampton Women's Shelter • Strong Communities	Rockhampton
Community support, advocacy stakeholders and government departments forum	• Cherbourg Regional Aboriginal and Islander Community Controlled Health Service • Darling Downs Hospital and Health Service, Sit, Talk and Yarn Suicide Prevention	Cherbourg
Community support, advocacy stakeholders and Aboriginal peoples and Torres Strait Islander peoples forum	• Aboriginal Elder • South Burnett CTC • Uniting Care Community	Cherbourg
Community support and advocacy stakeholders	• Edon Place Women's Domestic Violence Service • Community support and advocacy stakeholders	Bundaberg
Legal practitioners forum	• Aboriginal and Torres Strait Islander Legal Service • Legal practitioners	Bundaberg
Community support and advocacy stakeholders forum	• Graham House Community Centre • Department of Families, Seniors, Disability Services and Child Safety • South Burnett CTC	Murgon

Event	Attendees	Location
	• Centacare Family and Relationship Services Kingaroy • Laurel Place	
Community support stakeholders, advocacy stakeholders and government departments forum	• REFOCUS Aboriginal & Torres Strait Islander Service • Sunshine Coast Hospital and Health Service • Gympie & District Women's Health Centre	Gympie
Legal Practitioners Roundtable	• Brisbane law firms • Defence Counsel 9 • Defence Counsel 10 • Defence Counsel 11 • Legal Aid Queensland • LGBTI Legal Service • Office of the Director of Public Prosecutions	Brisbane

Queensland Police Service Officer Interviews

Date	Unit	Location
14 October 2024	Child Protection and Investigation Unit	City
14 October 2024	Suspected Child Abuse and Neglect Team	Regional
15 October 2024	Child Protection and Investigation Unit	Regional
15 October 2024	Child Protection and Investigation Unit	City
17 October 2024	Child Protection and Investigation Unit	Regional
21 October 2024	Child Protection and Investigation Unit	City
23 October 2024	Child Protection and Investigation Unit	Regional
24 October 2024	Suspected Child Abuse and Neglect Team	Regional
29 October 2024	Child Protection and Investigation Unit	Remote

Structured interviews with legal professionals

No	Date	Interviewee
1	19 February 2025	Defence Counsel 5
2	20 February 2025	Defence Counsel 6
3	20 February 2025	District Court Judge 1
4	21 February 2025	Crown Prosecutor 1
5	21 February 2025	Crown Prosecutor 2
6	21 February 2025	Supreme Court Judge 1
7	25 February 2025	Crown Prosecutor 3
8	27 February 2025	District Court Judge 2
9	27 February 2025	Supreme Court Judge 2
10	28 February 2025	Crown Prosecutor 4
11	28 February 2025	Supreme Court Judge 2
12	3 March 2025	Defence Counsel 7
13	4 March 2025	District Court Judge 3
14	4 March 2025	District Court Judge 4
15	4 March 2025	Crown Prosecutor 5
16	5 March 2025	Defence Counsel 8
17	6 March 2025	Crown Prosecutor 6
18	7 March 2025	Supreme Court Judge 3
19	11 March 2025	Supreme Court Judge 4
20	12 March 2025	District Court Judge 5
21	18 March 2025	Supreme Court Judge 5
22	18 March 2025	District Court Judge 6
23	18 March 2025	District Court Judge 7
24	18 March 2025	Magistrate 3
25	20 March 2025	Crown Prosecutor 7
26	20 March 2025	Defence Counsel 9

No	Date	Interviewee
27	21 March 2025	Coroner 2
28	25 March 2025	Magistrate 6
29	27 March 2025	Supreme Court Judge 6
30	28 March 2025	Defence Counsel 10
31	3 April 2025	Defence Counsel 11
32	7 April 2025	Magistrate 8

Appendix E: List of Submissions

1. Andrew Hemming
2. PeakCare
3. Jillian van Turnhout
4. The Public Advocate
5. Scott Sier
6. Sally Holland
7. Anne Hollonds, National Children's Commissioner
8. Parenting and Family Support Centre, The University of Queensland
9. CONFIDENTIAL
10. Queensland Corrective Services
11. Queensland Network of Alcohol and other Drug Agencies
12. Kelley Burton
13. Queensland Catholic Education Commission
14. Respect Inc
15. LGBTI Legal Service
16. Australian National University Law Reform and Social Justice Research Hub
17. End Physical Punishment of Australian Children, The University of Melbourne
18. Department of Families, Seniors and Disability Services
19. Divna Haslam and the Consortium
20. Veronika Drago
21. Queensland College of Teachers
22. Joseph Lelliott and Rebecca Wallis
23. CONFIDENTIAL
24. Queensland Teachers' Union
25. Aboriginal and Torres Strait Islander Legal Service
26. Queensland Sexual Assault Network
27. Queensland Aboriginal and Torres Strait Islander Child Protection Peak
28. Queensland Council of Social Service
29. Zoe Rathus
30. Queensland Law Society
31. Legal Aid Queensland
32. Victims' Commissioner

33. Red Rose Foundation
34. Queensland Homicide Victims' Support Group
35. Queensland Council for Civil Liberties
36. Eliana (child)
37. Women's Legal Service Queensland
38. Rachel Dioso-Villa and Caitlin Nash
39. Department of Education
40. Michael Hurtado
41. Queensland Human Rights Commission
42. Bar Association of Queensland
43. Ben Mathews
44. James Duffy
45. Sisters Inside

APPENDIX F

Research methodology

Our research

F.1. We identified six key areas where there were gaps in the research and so conducted six original research projects.

F.2. The findings from all six research projects have informed our recommendations.

F.3. **Table F.1** provides a brief description of each of our six research projects. Below the table we provide a short summary of each research project, including in relation to methodology, data analysis, limitations and key findings.

Table F.1: Our research projects

Research project	Overview
Community attitudes research	We used an online survey and a series of focus groups to understand community attitudes towards defences to homicide and assault, the mandatory life sentence for murder and DFV. Research Report 1, published on our website, outlines full details of this research project.[1]
Sentencing for murder	We analysed various data sets, including sentencing remarks and Queensland Corrective Services data, to understand how Queensland's mandatory life sentence for murder and associated minimum non-parole periods are applied in practice. Research Report 2, published on our website, outlines full details of this research project.[2]
Domestic discipline	We conducted a focus group with youth advocates and young people, held structured interviews with police and analysed QPS data to understand how the defence of domestic discipline is applied in practice. Research Report 3, published on our website, outlines full details of this research project.[3]
Women who kill	We analysed various data sets, including sentencing remarks, trial transcripts, Court of Appeal judgments and media reports, to better understand the circumstances in which females commit homicide offences in Queensland. Key findings from this research project are published in a fact sheet on our website and discussed in our Final Report.
Legal profession insights	We interviewed a range of legal professionals, including Judges, Magistrates, Crown Prosecutors and Defence Counsel, to understand their experiences with the defences and the mandatory sentencing regime. Background Paper 4, published on our website, outlines key findings from this research project.[4]
Homicide cases	We analysed various data sets, including sentencing remarks, trial transcripts, Court of Appeal judgments and media reports, to better understand how the defences relevant to our review are used in Queensland. There is no discrete publication for this research project. Key findings are discussed in our final report.

Community attitudes research

F.4. The aim of the survey was to understand contemporary community attitudes towards defences to homicide and assault, the mandatory life sentence for murder and DFV.

F.5. We commissioned an expert research team, led by Dr Hayley Boxall from the Australian National University's Centre for Social Policy Research, supported by the Social Research Centre, to conduct independent research.

Methods and sampling

F.6. We used a mixed methods approach, using an online survey and a series of community focus groups.

F.7. The survey contained 31 questions, including 6 questions related to scenario-based situations, and 10 sociodemographic questions.

F.8. The scenarios described situations where one person seriously harmed or killed another person. Participants were asked what they thought would be an appropriate outcome in each scenario. We tracked whether their answers changed based on variations, including the level of force used or the nature of the provoking conduct or abuse within the intimate partner relationship. In homicide scenarios, participants were also asked whether there were factors they believed should increase or reduce the defendant's sentence, if they were found guilty of murder.[5]

F.9. The Social Research Centre administered the survey to a representative sample of approximately 2,500 people living in Queensland, aged 18 years and over. Participants included people from online research panels who had consented to participate in research of this nature.

F.10. The research team held 12 community focus groups online via Zoom, which lasted for approximately 90 minutes. They involved a total of 58 people in Queensland who were recruited through community-based organisations who shared information about the study in their newsletters and social media channels. The focus groups used a subset of the survey scenarios to generate discussion.

F.11. Focus group participants included people who identified as:

- victim-survivors of DFV
- Aboriginal peoples and Torres Strait Islander peoples
- people from culturally and linguistically diverse communities
- people from the LGBTQIA+ community
- people living in rural and remote areas of Queensland.

Data analysis

F.12. The research team analysed participant's attitudes to the culpability of the defendants in the scenarios and whether their attitudes changed based on variations, such as whether the defendant used a weapon or not.

F.13. Data was thematically coded and analysed using NVivo14 software.

Findings

F.14. We discuss relevant findings in Research Report 1 and throughout this report. Key findings include:

- individual attitudes and knowledge about DFV influenced whether people thought DFV defendants should have a defence
- Aboriginal and Torres Strait Islander participants had different views about defendant culpability than participants who did not identify as an Aboriginal person or Torres Strait Islander person, in a small number of scenarios
- the community supports alternatives to criminal prosecution where parents use minimal force to discipline children and supports teachers' ability to use force for the purpose of management or control but not for discipline or correction
- the community does not support provocation defences where the defendant's conduct is motivated by anger, jealousy, or a desire for control, particularly in cases involving DFV
- the community expects individualised criminal justice responses to the use of lethal violence
- there was strong community support for partial and complete defences for victim-survivors of DFV who kill an abusive partner
- the community does not support the mandatory penalty of life imprisonment for murder and expects sentencing to reflect the culpability of murder defendants.

Limitations

F.15. While the survey achieved a large sample size that broadly reflected Queensland's population, it was conducted exclusively in English and administered online. This meant that some community groups were likely under-represented, including those who speak English as a second language, live in very remote areas or face challenges accessing digital technology.

Sentencing for murder research

F.16. The aim of this project was to understand how Queensland's mandatory life sentence for murder and associated minimum non-parole periods are applied in practice. This included understanding how the mandatory sentence for murder and the minimum non-parole periods affect the sentencing process and analysing data on time served in custody, eligibility for parole and post-release offending.

Methods and sampling

F.17. We used a mixed methods approach, analysing quantitative and qualitative data from four datasets:

- administrative data on murder convictions and sentencing outcomes in Queensland[6]
- sentencing remarks for murder convictions in Queensland[7]
- administrative data on individuals convicted for murder between 1980 and 2010, including follow-up data extending to 2024[8]
- supplementary data on parole release decisions of the Parole Board Queensland.

F.18. From the administrative data on murder convictions, we identified 147 murder convictions (involving 146 offenders) that were finalised in Queensland between 1 July 2013 and 30 June 2023.

F.19. We obtained sentencing remarks for each of the 147 murder convictions, except for offenders sentenced under the Youth Justice Act which applies a different sentencing framework.

F.20. Queensland Corrective Services provided additional administrative data for the 146 offenders identified during the sentencing remark analysis.

F.21. The Parole Board of Queensland provided supplementary data on parole decisions of 164 offenders who were sentenced for murder between 1980 and 2010.

F.22. We also reviewed legislation, case law and sentencing statistics from NSW, Victoria and New Zealand to compare against other jurisdictions and consider whether discretionary sentencing impacts the length of time sentenced or served.

Data analysis

F.23. We analysed quantitative data in Microsoft Excel and we coded and thematically analysed qualitative data using NVivo14 software.

Findings

F.24. We discuss relevant findings in Research Report 2 and throughout this report. Key findings include:

- sentences for murder do not reflect the offending context, including the degree of culpability or surrounding circumstances
- the judicial discretion to extend the minimum non-parole period is rarely exercised
- as the minimum non-parole period increases, the gap between the non-parole period and the release date reduces
- people found guilty of murder and sentenced to life imprisonment rarely reoffend following release on parole and almost never reoffend by committing another murder.

Limitations

F.25. The current 20-year minimum non-parole period was introduced in 2012, less than 20 years ago. This limited our ability to understand longitudinal trends.

F.26. Data collected by Queensland Corrective Services does not identify the nature of breaches of parole by convicted murderers. This restricted our ability to understand the impact of mandatory sentencing and minimum non-parole periods on recidivism patterns. We explored parole movements for a subset of offenders, however this topic warrants further research.

F.27. The existence of the mandatory penalty for murder has resulted in more limited consideration of sentencing factors in cases of murder as compared with other offences. While this is partly addressed by the requirement to give reasons in the Penalties and Sentences Act and the fact that sentencing remarks form part of the evidence subsequently considered by the Queensland Parole Board, this still limits the judicial consideration available for analysis.

Domestic discipline research

F.28. The aim of this project was to understand how the domestic discipline defence is used in practice, including how it affects police decision-making about whether to charge a parent or person in place of a parent in matters that involve the use of force against a child.

Methods and sampling

F.29. We used a mixed method approach, comprising:

- a focus group with youth advocates and young people
- structured interviews with Queensland Police Service Child Protection and Investigation Unit ('CPIU') officers
- an analysis of QPS administrative data.

F.30. The focus group was a hybrid event, held online via Microsoft Teams and in-person. It was moderated by a staff member from the Queensland Family and Child Commission ('QFCC') and QLRC secretariat staff. We worked with the QFCC to recruit suitable participants. Nine youth advocates and young people took part in the focus group.

F.31. The structured interviews comprised of 24 questions and used two of the scenarios from Research Report 1. We worked with QPS to identify relevant police for the interviews. Of the 14 police QPS identified as having relevant experience, nine agreed to be interviewed.

F.32. The QPS administrative data comprised of:

- Queensland Police Records and Information Management Exchange ('QPRIME') data on 571 recorded incidents that occurred between January 2021 and December 2024 where force had been used against a child by a parent or person in place of a parent and the decision not to charge was based on the domestic discipline defence. Relevant information was missing for 128 of the incidents, so our final sample consisted of 443 incidents.
- QPRIME full case reports of 69 cases from the sample of 571 incidents.

Data analysis

F.33. We coded and thematically analysed focus group transcripts using Microsoft Excel.

F.34. We coded and thematically analysed interview transcripts using NVivo14 software.

F.35. We coded and analysed QPRIME data sets using NVivo14 software and Microsoft Excel.

Findings

F.36. We discuss relevant findings in Research Report 3 and throughout this report. Key findings include:

- the defence of domestic discipline is relied on by police when deciding not to charge a parent for the use of force against a child
- when deciding not to charge a person based on the defence, police seek to justify their decision and senior officers provide oversight
- police apply the defence in a range of circumstances and do so inconsistently
- the availability of the defence enables CPIU officers to not charge a parent and to consider diversionary options as an alternative.

Limitations

F.37. The police interviewed have specialist training and experience in investigating matters that are specific to youth victimisation and youth offending. Accordingly, findings cannot be generalised to the knowledge or use of the domestic discipline defence by general duty officers.

F.38. While the CPIU officers discussed the defence of domestic discipline and how it impacted their decision-making on whether to charge someone, other factors are also likely to contribute. Caution should be taken when drawing conclusions about domestic discipline being a primary consideration in decision-making. Our sample did not capture all QPS regions of operation. This means certain regional practices may be missing from our data.

F.39. Of the 571 incidents we explored, only a small number of incidents explicitly recorded that the domestic discipline defence provided a bar to prosecution. We relied on the Section 10.2 Authority, issued by the Assistant Commissioner, Crime and Intelligence Command, to confirm that all 571 incidents in the QPRIME data set related to police consideration of the operation of domestic discipline.

Women who kill research

F.40. The aim of this research project was to understand the circumstances in which women commit homicide, the role of DFV victimisation in female homicide offending and whether existing complete defences (self-defence) and partial defences (killing on provocation and killing for preservation) operate effectively for DFV victim-survivors.

Methods and sampling

F.41. We used a mixed methods approach, analysing quantitative and qualitative data from five datasets:

- administrative data on all females charged with homicide related offences (murder and manslaughter) and lodged in the Queensland Supreme Court between July 2010 and April 2024[9]
- trial transcripts for a sample of cases where specific defences relevant to our review were raised
- sentencing remark transcripts for trials where a female defendant was convicted of murder or manslaughter
- Queensland Court of Appeal judgments
- media reports.

F.42. We identified 115 females that had been charged with murder or manslaughter which proceeded to the Queensland Supreme Court between July 2010 and April 2024 from the administrative data.

F.43. We obtained trial transcripts for 78 cases (17 female, 61 male) where defences relevant to our review were raised and contextual factors, such as DFV victimisation, were present. The sample included both male and female defendants to allow for a comparative analysis. We focussed on the female trial transcripts, using a selection of the male transcripts for comparison.

F.44. We obtained sentencing remark transcripts for 93 cases. In some cases, transcripts were unavailable due to non-publication restrictions or suppression orders.

F.45. We analysed 17 Court of Appeal judgments.

F.46. We accessed media reports where required to fill gaps in our datasets.

Data analysis

F.47. We analysed quantitative data in Microsoft Excel. We coded and thematically analysed qualitative data using NVivo14 software.

Findings

F.48. We discuss relevant findings throughout our report. Key findings include:

- Females are charged with and convicted of homicide offences much less than males. We identified 883 males compared to 170 females who were charged and indicted with a homicide related offence between July 2010 and April 2024.
- Of the 13 women convicted of murder, three killed their current or former intimate partner and nine were co-accused with men, seven with a current or former intimate partner.
- Of the 26 females sentenced for the manslaughter of a current or former intimate partner:
  - the most common sentencing basis appears to be lack of intent (11 of 26) followed by the partial defence of diminished responsibility (five of 26)
  - most appear to kill during or immediately after a physical or verbal confrontation with their partner (19 of 26)
  - 10 were identified as intoxicated at the time of death (it is possible the actual incidence of intoxication was higher).
- Many women who plead guilty to manslaughter may have an arguable case of self-defence:
  - 14 of the 26 women who were convicted of manslaughter for killing their current or former intimate partner did so in circumstances that were potentially defensive
  - A further three women killed in circumstances with weakly arguably defensive cases.

Limitations

F.49. There were gaps in the datasets. For example, information on whether cases involved DFV was not always available. We sought to overcome this by using other sources to fill gaps in information and to build a better understanding of the case.

F.50. Our sentencing remark analysis did not include cases where a conviction of murder or manslaughter was not recorded. For example, cases where the defendant was acquitted or cases where the defendant was convicted of a lesser offence.

F.51. Sentencing remarks for defendants convicted of murder often lack contextual information due to the mandatory sentencing regime and the lack of judicial discretion during sentencing.

F.52. Similarly, we observed that in many manslaughter sentencing remarks, there can be limited consideration of:

- whether the defendant's use of violence was defensive[10]
- the relationship context in which the offending occurred, including the defendant's history of DFV victimisation
- the broader context in which the offending occurred, including the systemic, community and family responses to the defendant's DFV victimisation and help-seeking behaviour.

Legal profession insights research

F.53. The aim of this research project was to understand legal professionals' experiences with the defences and how the mandatory sentence for murder impacts decision-making by lawyers and their clients. We also wanted to understand any practical challenges lawyers and clients faced when seeking to use these defences and understand what changes to practice and procedure would support just outcomes.

Methods and sampling

F.54. We conducted one-on-one, semi-structured interviews with Judges, Magistrates, prosecutors and defence counsel.

F.55. Interviews were held via Microsoft Teams.

F.56. We identified 32 legal professionals with relevant experience, including in the use of defences relevant to our review.[11] We interviewed:

- seven Supreme Court Judges
- seven District Court Judges
- four Magistrates, including 1 Coroner
- seven Crown Prosecutors
- seven Defence Counsel.

Data analysis

F.57. We coded and thematically analysed interview transcripts using NVivo14 software.

Findings

F.58. We discuss relevant findings in Background Paper 1 and throughout this report. Key findings include:

- judges should have discretion in sentencing
- partial defences can be a 'backwards way' of obtaining a tailored sentencing outcome and increase the complexity and length of homicide trials
- the partial defence of killing for preservation fails to reflect the reduced moral culpability of an unlawful killing in the context of DFV
- legal professionals had mixed views about whether juries were able to adequately understand evidence of DFV and associated jury directions to assist them
- the prospect or experience of lengthy delays awaiting trial can increase the likelihood of pragmatic pleas of guilty, particularly where significant time in custody has already been served.

Limitations

F.59. While the interview sample was a good size with even representation across prosecution and defence lawyers, Magistrates were under-represented in our sample.

F.60. Judicial and legal professionals from regional parts of Queensland were also under-represented. Insights from regional areas may have highlighted issues related to practice and

procedure and barriers to justice for Aboriginal peoples and Torres Strait Islander peoples and their communities.

Homicide cases research

F.61. The aim of this research project was to understand how the defences and excuses are used by analysing data relating to homicide charges and outcomes for homicide cases in Queensland.

Methods and sampling

F.62. We used a mixed methods approach, analysing quantitative and qualitative data from five datasets:

- administrative data on all people charged with homicide related offences (murder and manslaughter) and lodged in the Queensland Supreme Court between July 2010 and April 2024[12]
- trial transcripts for a sample of cases where specific defences relevant to our review were raised (this is the same dataset as used in the Women Who Kill research project)
- sentencing remark transcripts for women and men convicted of murder and manslaughter
- Queensland Court of Appeal judgments
- media reports.

F.63. We identified 883 males and 170 females who were charged and indicted with a homicide related offence between July 2010 and April 2024 from the administrative data. We identified sub-samples of data for various categories of cases, including cases where females sentenced for manslaughter were DFV victim-survivors and cases where the partial defences of killing on provocation or killing for preservation were relevant for male offenders.

F.64. We obtained 553 sentencing remark transcripts, including transcripts for 496 male defendants and 97 female defendants. In some cases, multiple transcripts were available due to resentencing following re-trials or appeal decisions.

F.65. We analysed 177 Court of Appeal judgments.

F.66. We accessed media reports where required to fill gaps in our datasets.

Data analysis

F.67. We analysed quantitative data in Microsoft Excel. We coded and thematically analysed qualitative data using NVivo14 software.

Findings

F.68. We discuss relevant findings throughout our report. Key findings include:

- Women charged with murder proceed to trial less often than men. 43.8 % of men (n=198) originally charged with murder were convicted of murder while 18.6 % of women (n=13) originally charged with murder were convicted of murder.
- Men continue to rely on provocation as a defence in circumstances where they have killed their intimate partner or in the broader context of DFV, arguing victims contribute to their own victimisation. Roughly equal numbers of men were sentenced for manslaughter on the basis of provocation in DFV and non-DFV-related matters between 2010 and 2024.

- Of the females sentenced for intimate partner or non-DFV abuse manslaughter and males sentenced for manslaughter where the killing for preservation and provocation partial defences were relevant, we found that:
    - two females and nine males were sentenced on the basis of provocation
    - provocation was the possible sentencing basis in a further five matters, four of which were males
    - four females and no males were sentenced on the basis of killing for preservation
    - we identified two males who unsuccessfully attempted to rely on killing for preservation.

Limitations

F.69. There were gaps in the datasets. We sought to overcome this by using other sources to fill gaps in information and to build a better understanding of the case.

F.70. The scope of our research was impacted by practical constraints including time, cost and availability of data. We selected data sources based on their relevance, accessibility, and potential to yield meaningful insights within the constraints of the area of study. We note throughout the report and associated publications where these constraints may have affected the research findings.

References

1 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024).

2 QLRC, Review of Particular Criminal Defences: Mandatory Penalty for Murder — Key Research Insights (Research Report No 2, June 2025).

3 QLRC, Review of Particular Criminal Defences: Domestic Discipline Defence — Key Insights into Police Practices (Research Report No 3, June 2025).

4 QLRC, Review of Particular Criminal Defences: What We Heard (Background Paper No 4, July 2025).

5 QLRC, Review of Particular Criminal Defences: Community Attitudes to Defences and Sentences in Cases of Homicide and Assault in Queensland (Research Report No 1, November 2024) xi. Appendix B: Scenarios of Research Report No 1 provides the scenarios and the variations.

6 Queensland Courts Performance and Reporting Unit (CPRU) administrative data on all homicide offences lodged in the Queensland Supreme Court between July 2010 and April 2024. Data provided to us included 3,373 lines of data for 1,053 individuals charged with homicide related offences.

7 Official transcripts of sentencing remarks from the Supreme Court, obtained through Queensland Sentencing Information Service (QSIS). In some instances, sentencing remark transcripts were unavailable to us due to being subject to non-publication or suppression orders and one transcript was also unavailable due to a retrial of that case.

8 Queensland Corrective Services data including offender profiles, sentencing details, and custodial history obtained through the Integrated Offender Management System (IOMS), a centralised shared database used by Queensland Corrective Services (QCS) to manage offenders.

9 The Queensland Courts database uses the Queensland Wide Interlinked Courts (QWIC) case management system to record and manage information about all criminal cases heard in Queensland courts. Data provided to us included 3,373 lines of data for 1,053 individuals charged with homicide related offences.

10 Where we identify a defendant's use of violence as defensive we did so in the broadest sense of the word, where we identified any evidence that the defendant 1) was responding to DFV or other abuse including coercive control, including subtle indications of actual or risk of escalation of abuse; 2) was acting to protect themselves or another in any way, including in response to actual or threatened violence by the deceased, 3) had given a version of events suggesting they were motivated by a perceived need to defend themselves or another. Identifying a defendant's behaviour as defensive does not indicate a formed view that self-defence or excessive self-defence would or could successfully be raised in any matter.

11 Using trial transcripts, including of high-profile cases like R v Falls and R v Peniamina, we identified judges, prosecutors and defence counsel who had experience with homicide trials which used the particular defences under review (self-defence, provocation, killing for preservation). Individuals were approached on that basis and asked to participate. The Chief Magistrate was contacted with a request for 8–10 Magistrates to be nominated for participation in the legal profession interviews. Her Honour was advised we were particularly interested in hearing from Magistrates who have experience in regional and remote areas. Three Magistrates and one coroner were nominated and agreed to participate.

12 The Queensland Courts database uses the Queensland Wide Interlinked Courts (QWIC) case management system to record and manage information about all criminal cases heard in Queensland courts. Data provided to us included 3,373 lines of data for 1,053 individuals charged with homicide related offences.

APPENDIX G

Human rights

Introduction

G.1. As a public entity under the Human Rights Act, we must consider human rights when making decisions and act and make decisions compatible with human rights.[1] Our terms of reference require us to have regard to 'the compatibility of' recommended reforms 'with the Human Rights Act (including balancing the rights of victims and accused persons)'.[2] Our first guiding principle, justice, states that the defences and penalty for murder should promote just outcomes and protect human rights, including rights in criminal proceedings.[3]

G.2. The Human Rights Act consolidates and establishes statutory protections for certain human rights recognised under international law.[4] Most are civil and political rights based on rights recognised in the International Covenant on Civil and Political Rights.[5]

G.3. Human rights are also reflected in other legislation (for example, the Anti-Discrimination Act protects against discrimination on grounds including race, sex, age and impairment) and at common law (for example, the courts have recognised the right to liberty and security of the person, the right to a fair trial, freedom of association and freedom of expression).[6]

G.4. **Table G.1** lists each of the human rights recognised in the Human Rights Act that may be engaged by our recommendations.

G.5. Following the table, we explain these rights and provide examples of how our recommendations engage them.[7] In explaining the rights and considering their relevance for our recommended reforms, our approach is to:

- Identify the right, and the scope of the right, protected in the Human Rights Act.
  - The Human Rights Act does not include all human rights and many of the rights it includes are protected in a partial or limited way.
  - Where the Human Rights Act does not recognise, or only partly recognises, a human right, this does not limit the substantive right at international law.[8] However, the right is only binding in Queensland to the extent that it is protected in the Human Rights Act (or by another Queensland law or at common law).
- Identify the meaning of the right by reference to international law and the common law.
  - The Human Rights Act requires that all statutory provisions are interpreted in a way that is compatible with human rights.[9]
  - International law and precedent can be relevant to interpreting a provision of the Human Rights Act.[10]
- Consider how our recommendations engage rights in the Human Rights Act, recognising that not all international law and jurisprudence will be relevant to human rights as recognised and protected in Queensland.[11]

G.6. Human rights can be subject to limitations that are reasonable and demonstrably justifiable.[12] In conducting our analysis, we considered:

- the purpose of the limitation and whether it is consistent with a free and democratic society based on dignity, equality and freedom
- the relationship between the limitation and its purpose and whether the limitation achieves the purpose

- whether there are any less restrictive and reasonably available ways to achieve the purpose.

G.7. If a recommended reform potentially limits a right, we only recommend it if the limit is reasonable and demonstrably justifiable in the circumstances.

G.8. In developing our recommendations, we considered the rights of defendants, victims and victim-survivors and their families, and the broader community.

Table G.1: Rights engaged by our recommendations

Recommendation	Rights engaged under the Human Rights Act
Recommendations 1–6: Reforms to simplify and clarify self-defence, and lethal defensive force	Right to recognition and equality before the law Right to life Right to protection from torture and cruel, inhuman or degrading treatment Right to liberty and security of person Rights in criminal proceedings
Recommendations 7–11: A new defence of duress and consequential changes (including to compulsion)	Right to recognition and equality before the law Right to life Right to protection from torture and cruel, inhuman or degrading treatment Right to freedom of association Right to protection of families and children Right to liberty and security of person Rights in criminal proceedings
Recommendations 12–14: Reframing provocation	Right to recognition and equality before the law Right to life Right to protection from torture and cruel, inhuman or degrading treatment Right to freedom of expression Right to privacy and reputation Right to liberty and security of person
Recommendation 15: Sentencing for murder	Right to recognition and equality before the law Right to life Right to liberty and security of person Right to a fair hearing Rights in criminal proceedings
Recommendations 16–20: Protection and management of children	Right to recognition and equality before the law Right to protection from torture and cruel, inhuman or degrading treatment Right to freedom of thought, conscience, religion and belief Right to protection of families and children Cultural rights Cultural rights of Aboriginal peoples and Torres Strait Islander peoples Right to liberty and security of person Right to education
Recommendations 21–24:	Right to recognition and equality before the law

Investigating and charging reforms	Cultural rights Cultural rights of Aboriginal peoples and Torres Strait Islander peoples Right to humane treatment when deprived of liberty Rights in criminal proceedings
Recommendations 25–26: Pre-trial reforms	Right to recognition and equality before the law Right to privacy and reputation Right to a fair hearing Rights in criminal proceedings
Recommendations 27–32: Trial reforms	Right to recognition and equality before the law Cultural rights Cultural rights of Aboriginal peoples and Torres Strait Islander peoples Right to a fair hearing Rights in criminal proceedings
Recommendations 33–35: Training and resourcing reforms	Right to recognition and equality before the law Right to protection from torture and cruel, inhuman or degrading treatment Cultural rights Cultural rights of Aboriginal peoples and Torres Strait Islander peoples Right to humane treatment when deprived of liberty Right to a fair hearing
Recommendation 36: Future reviews	Right to recognition and equality before the law

Right to recognition and equality before the law

G.9. Section 15 of the Human Rights Act provides that every person is equal before the law and is entitled to equal and effective protection of the law without discrimination.

G.10. Equality before the law is a procedural right that relates to 'the general application, administration and enforcement of the law and the equal treatment of all persons who come before the law, not its content'.[13] Every person has equal dignity and rights by virtue of being human and should be treated equally regardless of their personal characteristics.[14]

G.11. The right to equality includes both formal equality (equality of treatment) and substantive equality (equality of outcomes). It generally prohibits governments from making discriminatory laws and may require procedural adjustments to achieve equality.[15] This includes measures taken to establish genuine equality for people whose situations are different and who may be disproportionately impacted.[16]

G.12. Our recommendations promote the right to recognition and equality before the law. The defences in their current form can create barriers to justice for certain groups of people, including DFV victim-survivors and Aboriginal peoples and Torres Strait Islander peoples. Our proposed reforms to defences and sentencing (**Recommendations 1–20**) and to practice and procedure (**Recommendations 21–35**) would support equality for people disproportionately impacted by the defences and broader criminal justice system.

G.13. **Recommendations 12–14** and **16–18** would potentially limit this right. Chapters 7 and 9 respectively discuss how these limitations are reasonable and demonstrably justifiable in the circumstances.

Right to life

G.14. Section 16 of the Human Rights Act provides that every person has the right to life and the right not to be arbitrarily deprived of life. An 'arbitrary' deprivation of life is one that is unreasonable or disproportionate.[17] Not every act that results in a death will be arbitrary.[18]

G.15. Section 16 imposes:

- positive obligations to implement 'laws that prohibit arbitrary killings, and other forms of preventable death such as malnutrition and infant mortality'
- negative obligations to 'refrain from conduct that causes an arbitrary deprivation of life'.[19]

G.16. Part of the positive obligation on governments is to 'take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity'.[20] This can include high levels of criminal violence.[21] Governments should work to uphold the right to life by implementing campaigns that raise awareness of gender-based violence and harmful practices.[22]

G.17. The right to life grounds our recommendations to reform specific defences and the non-parole period for murder. We recognise that the law must be clear about what can and cannot excuse homicide. The existence of a defence to murder based on necessity and proportionality is not an arbitrary limitation on the right to life. This is discussed in Chapters 5 and 6. In Chapter 8, we discuss how our reforms to sentencing for murder promote the right to life by maintaining the mandatory head sentence of life imprisonment for murder.

Right to protection from torture and cruel, inhuman or degrading treatment

G.18. Section 17 of the Human Rights Act protects people from torture and cruel, inhuman or degrading treatment or punishment.

G.19. This right seeks to protect people from acts that may cause physical or mental harm.[23] The Government should prevent and minimise the risk of deliberate acts that may cause such harm, even when the acts are committed in a private setting.[24]

G.20. Torture is any act which 'intentionally inflicts severe physical or mental pain or suffering on a person for a prohibited purpose', such as coercion.[25] Treatment less severe than torture but which seriously denies a person's most basic needs is generally regarded as cruel, inhuman or degrading treatment or punishment.[26]

G.21. Whether conduct amounts to torture or other prohibited treatment is a question of degree and will depend on the particular circumstances, including the victim-survivor's characteristics.[27] It will also depend on the nature, purpose and severity of the treatment.[28] For example, the 'use of force in law enforcement may constitute cruel or inhuman treatment if it is grossly disproportionate to the purpose to be achieved and results in pain or suffering meeting a certain threshold'.[29]

G.22. When protecting this right, governments should prioritise protecting groups who are more vulnerable to experiencing torture.[30] This includes taking a gendered approach and protecting

women from all kinds of violence, including violence that occurs within a domestic setting.[31] International experts have gone as far as to suggest that governments who fail to punish private actors who commit acts of torture 'bear responsibility and … should be considered as … complicit or otherwise responsible'.[32]

G.23. Our reforms to self-defence (**Recommendations 1–6**) would recognise and protect DFV victim-survivors who use resistive violence against their abusers who, in many cases, have employed coercive and controlling behaviours that can constitute ill treatment.

G.24. Our reforms to duress (**Recommendations 7–11**) would balance the right to protection from torture and cruel, inhuman or degrading treatment held by victims and defendants. While people should be able to take necessary and proportionate steps to free or preserve themselves from threats of harm, the defence does not permit the uninhibited use of force against an innocent third party in doing so. This is discussed further in Chapter 6.

G.25. **Recommendations 16–20** would promote the protection of children from degrading treatment, since various United Nations Committees have recognised that physical punishment is inherently degrading treatment. This is discussed further in Chapter 9.

G.26. **Recommendation 33** would also promote this right by ensuring criminal justice personnel are adequately trained and resourced to avoid or minimise harm and bias.

Right to freedom of thought, conscience, religion and belief

G.27. Section 20 of the Human Rights Act protects the right to freedom of thought, conscience, religion or belief. This includes the right to hold a particular belief and to demonstrate it in particular ways, such as through worship, observance, practice or teaching.

G.28. A person's right to demonstrate their religion or belief can be limited. Such limitations can include where the belief is outwardly practiced or observed in a way that negatively impacts others and is unreasonable and not demonstrably justifiable.[33] 'Manifestation of a religious belief, for instance, which involved subjecting others to torture, or inhuman punishment would not qualify for protection.'[34]

G.29. **Recommendations 16–18** may limit a person's right to freedom of thought, conscience, religion and belief by prohibiting the use of physical punishment of a child, including when it is related to a person's cultural practices or traditions. However, Committees in the United Nations have emphasised that religious grounds cannot justify harmful practices like corporal punishment.[35] Any limitations on this right would be reasonable and demonstrably justifiable. This is discussed further in Chapter 9.

Right to freedom of expression

G.30. Section 21 of the Human Rights Act protects a person's right to freely hold and express their opinion. It is concerned with a person's autonomy to hold (or not hold[36]) any opinion, including unpopular or controversial ones. It is considered to be of 'fundamental importance' for democratic society and rule of law, as well as for 'individual self-fulfilment'.[37] The implied freedom of political communication also limits laws and government decisions that disproportionately or unreasonably restrict a person's political expression, including criticising public institutions.[38]

G.31. An 'expression' can be in any form (verbal, writing, art, or other medium)[39] as long as it conveys or tries to convey a meaning.[40] The right protects not only providing information and ideas,

but also seeking and receiving them.[41] However, the mode and content of expression may be justifiably limited to protect freedom, democracy and rule of law. For example, violence or damage to property is not a protected mode of expression.[42] Similarly, offensive expression such as hate speech towards ethnic or religious minorities may be justifiably restricted.[43]

G.32. **Recommendation 12** would promote the right to free expression because it removes a person's ability to use violence in response to another person's provocative words or conduct. The latter person's freedom to express themselves without fear of physical retaliation is protected. We discuss how this right is promoted and balanced against a person's right to be free from discrimination and harassment in Chapter 7.

Right to freedom of association

G.33. Section 22(2) of the Human Rights Act protects a person's right to freedom of association. It is contained in the same section as the right to peaceful assembly, and together, they are considered cornerstones of a genuinely free and democratic society.[44]

G.34. The right to freedom of association protects people's ability to pursue common interests in formal civil society groups.[45] It can be subject to limitations that are necessary for national security, public safety and health, public order and protecting other citizens' rights.[46] Common examples where this right is engaged include trade union activities, collective bargaining and peaceful protest.

G.35. In R (Countryside Alliance) v Attorney-General, it was said that the purpose of the activity for which an assembly or association occurs 'provides the key to its application'.[47] The implied freedom of political communication also limits laws and government decisions that disproportionately or unreasonably restrict political communication, including peaceful protest.[48]

G.36. **Recommendation 10** would limit this right by precluding access to the duress defence for defendants engaged in unlawful joint criminal activity. We discuss how this limitation is reasonable and demonstrably justifiable in Chapter 6.

Right to privacy and reputation

G.37. Section 25 of the Human Rights Act protects a person's right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. This right is broad in scope, covering a person's general private life, including their physical and mental integrity, thought and conscience, personal information, identity (including appearance) and home life.[49]

G.38. The right to privacy is primarily about personal autonomy and human dignity.[50] Privacy means that people should have 'an area of autonomous development' and a 'private sphere' that is free from unwanted intervention from government or others.[51] The scope of the right is relative and depends on the context of the society in which it operates.[52] It may also depend on whether there is a 'reasonable expectation of privacy'.[53]

G.39. **Recommendations 12–14** would promote the right to privacy by reforming the defence of provocation and limiting its ability to justify conduct that interferes with a person's 'private sphere'. Human rights considerations regarding these recommendations are discussed in Chapter 7.

G.40. **Recommendation 26** could limit a complainant's right to privacy and reputation by permitting their domestic violence history and relevant domestic violence evidence to be provided to a defendant. In Chapter 12, we discuss how any limitation would be reasonable and demonstrably justifiable.

Right to protection of families and children

G.41. Section 26 of the Human Rights Act provides protection to families as the fundamental group unit of society. The term 'family' is defined broadly to encompass different cultural traditions and understandings of family, including those with or without children.[54]

G.42. The right also recognises the particular vulnerability of children and affords them special protections.[55] Where the right to the protection of families conflicts with the right to the protection of children, the child's rights are paramount and will prevail.[56]

G.43. It has been recognised that the responsibility for guaranteeing children the necessary protection and enjoyment of their rights is primarily incumbent on the family, including parents.[57]

G.44. This right is relevant to laws, policies, acts or decisions that relate to DFV.[58] For example, the right has been raised in cases where children have been removed from their families in circumstances of abuse and neglect, and where children have been called as witnesses in cases of alleged DFV.[59] It is understood to impose 'a comprehensive duty on governments to adopt special measures to protect families and children'.[60] This may include funding community organisations to provide support to DFV victim-survivors.[61]

G.45. The reformed test for duress (**Recommendations 7–9)** would promote this right by recognising threats to harm families and children are especially dire and lawfully excusing acts to protect one's family and children in certain circumstances. This is discussed further in Chapter 6.

G.46. In Chapter 9, we discuss how our proposed reforms to domestic discipline (**Recommendations 16–18)** would both promote the obligation to treat a child's best interests as a primary consideration and potentially limit the rights of the family and child in a reasonable and demonstrably justifiable manner.

Cultural rights

G.47. Section 27 of the Human Rights Act states that all people have a right to enjoy their culture, declare and practice their religion and use their language with other people of that background.[62] The right includes all people with 'a particular cultural, religious, racial or linguistic background' and is not limited to minority groups.[63]

G.48. It protects individual rights as well as rights exercised in community with others to protect the 'survival and continued development of cultural heritage.'[64] The concept of 'culture' has been interpreted broadly and is said to encompass aspects such as traditional dress, language, relationship with land and a right to participate in decision-making that affects a group of people.[65]

G.49. Cultural rights are engaged by several recommendations. **Recommendations 16–18** may limit a person's cultural rights by prohibiting the use of physical punishment of a child when it is related to a person's cultural practices or traditions. Chapter 9 discusses how this limitation is reasonable and demonstrably justifiable.

G.50. Several of our practice and procedure reforms would promote cultural rights. For example, extending safeguards during questioning for indictable offences (**Recommendation 22**) and special witness protections to people from culturally and linguistically diverse backgrounds (**Recommendation 27**) and improving training for criminal justice personnel on the experiences of people from culturally and linguistically diverse communities (**Recommendation 33**).

Cultural rights of Aboriginal peoples and Torres Strait Islander peoples

G.51. Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights. This includes rights to enjoy, maintain, control, protect and develop their identity, cultural heritage, language and kinship ties. It also includes the right not to be subjected to forced assimilation or destruction of their culture. Section 28 of the Human Rights Act protects these rights.

G.52. Generally, this right seeks to ensure the continued survival and development of culture and may extend to engaging with the justice system, such as the court in which a person may have their matter heard.[66] For example, options like the Murri Court may assist Aboriginal peoples and Torres Strait Islander peoples in the criminal justice system by having their identity and culture considered after being charged with criminal offences.[67]

G.53. **Recommendations 16–18** would engage the cultural rights of Aboriginal peoples and Torres Strait Islander peoples. Physically punishing a child could be considered necessary to promote safety in an Aboriginal or Torres Strait Islander community and criminalisation would limit a person's right to enjoy and practice their culture. In Chapter 9, we discuss how these limitations are reasonable and demonstrably justifiable in a free and democratic society.

G.54. **Recommendations 22–23** would promote cultural rights by expanding safeguards during questioning for indictable offences to Aboriginal peoples and Torres Strait Islander peoples and updating the Director's Guidelines on prosecuting and obtaining evidence from Aboriginal peoples and Torres Strait Islander peoples. A person's ability to practice their cultural rights in the criminal justice system would be further promoted by **Recommendation 27**, which extends special witness protections to Aboriginal peoples and Torres Strait Islander peoples, and **Recommendation 30**, which allows courts to receive evidence of traditional laws and customs of Aboriginal peoples and Torres Straits Islander peoples.

G.55. Our training and resourcing reforms would also promote the cultural rights of Aboriginal peoples and Torres Strait Islander peoples by improving cultural capability training of key criminal justice stakeholders (**Recommendation 33**) and expanding the role of Community Justice Groups (**Recommendation 35**).

Right to liberty and security of person

G.56. Section 29 of the Human Rights Act protects a person's right to liberty and security of person. This right has been described as a fundamental value of freedom. The right to liberty aims to 'protect people from unlawful and arbitrary interference with their physical liberty'.[68] The United Nations Human Rights Committee has explained that the right to security:

> protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained. … [It] also obliges States parties to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors.[69]

G.57. This right protects people from arbitrary arrest or detention or any other unlawful deprivation of liberty. Certain other rights are provided to a person who is arrested or detained, including the right to be brought before a court without unreasonable delay.

G.58. **Recommendations 1–18** would engage the right to liberty and security. These recommendations would affect substantive changes to legal defences in the Criminal Code and sentencing in Queensland that:

- promote the right by ensuring people can use proportionate force to protect themselves from arbitrary interferences with their physical liberty (discussed in Chapter 5)
- balance the right, held by both victims and defendants who suffer because of someone else's threat, by permitting otherwise unlawful actions carried out in self-preservation, as long as the actions are proportionate and objectively assessed (discussed in Chapter 6)
- promote the right by permitting sentencing discretion in murder cases, allowing for more proportionate and just outcomes (discussed in Chapter 8)
- promote the right by ensuring children's bodily integrity is protected under the law (discussed in Chapter 9).

Right to humane treatment when deprived of liberty

G.59. Section 30 of the Human Rights Act protects a person's right to be treated with humanity, dignity and respect when deprived of their liberty. The provision makes specific reference to people who are detained without being criminally charged yet, such as in the process of police investigation and questioning, however it can also apply to all forms of compulsory detention.

G.60. The right can encompass the general conditions of detention rather than specific incidents of ill-treatment.[70] It requires 'some level of benevolence or compassion and the infliction of the minimum of pain'.[71] The right imposes a positive obligation on States to ensure detained persons are treated with dignity and humanity.[72] Although the right must be applied impartially,[73] the individual needs and vulnerabilities of people in detention must be taken into account.[74]

G.61. **Recommendations 21, 23,** and **33** would promote this right by recommending that criminal justice personnel, particularly police and corrections staff, have the necessary training and resources to consider the specific vulnerabilities of people in detention, under arrest or in questioning, and treat them with humanity, dignity and respect. Further, **Recommendation 22** would enshrine safeguards for people who may experience additional barriers to justice in legislation, recognising their individual needs and vulnerabilities. We discuss how this right would be promoted in Chapters 11, 12 and 14.

Right to a fair hearing

G.62. Section 31 of the Human Rights Act provides that a person charged with a criminal offence or who is a party to a civil proceeding has the right to have their matter decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This right reflects a fundamental principle of common law and is considered to be 'deeply rooted in our system of law'.[75] It also has a constitutional dimension because judicial independence and impartiality are a defining feature of a court.[76]

G.63. This right relates to procedural fairness and not the perceived substantive fairness of a decision or judgment.[77]

G.64. What is considered 'fair' will depend on the circumstances of a particular case, including consideration of what is in the public interest. Factors that are relevant to determining fairness include the nature and complexity of the issues involved, the competing demands on time and

resources of the court or tribunal, and the potential consequences of an adverse decision.[78] While limitations on certain aspects of a fair hearing may be considered reasonable, the hearing as a whole must remain fair.[79]

G.65. **Recommendation 15** would promote the right to a fair hearing by increasing judges' ability to consider all relevant circumstances in imposing an appropriate non-parole period for murder.

G.66. In Chapters 12-14, we discuss how our pre-trial, trial and training and resourcing reforms (**Recommendations 26, 29–32** and **33–34**) would promote the right to a fair hearing.

Rights in criminal proceedings

G.67. Section 32 of the Human Rights Act is complementary to section 31 and protects several rights and minimum guarantees in criminal proceedings. This includes the fundamental right to be presumed innocent until proven guilty according to law.[80]

G.68. A person charged with a criminal offence is also entitled to be promptly informed of the nature and reasons for the charge, as well as to have access to a lawyer and have adequate time and facilities to prepare their defence. What would be considered 'adequate time' will depend on the circumstances of the case and their legal representation.[81] Further, the person charged is also entitled to examine witnesses against them and to have witnesses give evidence on their behalf.[82]

G.69. **Recommendations 1–11** maintain the presumption of innocence. The prosecution is still required to prove the defendant's guilt, and thus disprove any defences, beyond reasonable doubt. We discuss this further in Chapters 4, 5 and 6.

G.70. **Recommendation 15** would promote the right of defendants to appeal sentences by introducing greater sentencing discretion for courts.[83] We discuss how this right is balanced with the right to life in Chapter 8.

G.71. In Chapters 11-14, we discuss how our practice and procedure reforms (**Recommendations 21–35**) would promote various rights in criminal proceedings.

Right to education

G.72. Section 36 of the Human Rights Act protects every child's right to access primary and secondary education that is appropriate to the child's needs. It also states that every person has the right to access, based on their abilities, further vocational education and training that is equally accessible to all.

G.73. This right relates to the 'aspects of education service delivery for which the State is responsible'.[84] The right is limited to 'access' to education and requires the Government to ensure it is available to all students and is of a minimum standard that is appropriate to their needs.[85]

G.74. International law has interpreted economic, social and cultural rights, such as the right to education, as rights that are not immediately realised but progressively realised, subject to resource availability.[86] This may be relevant when considering whether limits to this right are reasonable and demonstrably justifiable.

G.75. The United Nations Committee on the Rights of the Child has recognised that other rights held by children should not be undermined through the educational process, meaning that the teaching methods and environments must respect the inherent dignity of children and be provided in a manner with strict limits on discipline. 'Children do not lose their human rights by virtue of passing through the school gates'.[87]

G.76. **Recommendations 16–18** would promote a child's right to access education by modernising the strict limits on discipline in schools. This is discussed in Chapter 9.

References

1 Human Rights Act 2019 (Qld) ss 9, 58(1).

2 Terms of reference, para 7(i).

3 QLRC, Review of Particular Criminal Defences: Our Guiding Principles for Reform (Background Paper No 2, July 2024) 7–9.

4 Explanatory Notes, Human Rights Bill 2018 (Qld) 1–2.

5 Explanatory Notes, Human Rights Bill 2018 (Qld) 3–5. The rights to health services and education are drawn from the International Covenant on Economic, Social and Cultural Rights and property rights are drawn from the Universal Declaration of Human Rights: Explanatory Notes, Human Rights Bill 2018 (Qld) 4–5.

6 Explanatory Notes, Human Rights Bill 2018 (Qld) 1–2.

7 All cross-references to chapters in the report are to the 'Human rights considerations' section.

8 Human Rights Act 2019 (Qld) s 12.

9 Human Rights Act 2019 (Qld) s 48(1).

10 Human Rights Act 2019 (Qld) s 48(3).

11 Explanatory Notes, Human Rights Bill 2018 (Qld) 31.

12 Human Rights Act 2019 (Qld) ss 8, 13.

13 Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 113–14.

14 Explanatory Notes, Human Rights Bill 2018 (Qld) 18–19; Re Lifestyle Communities Ltd (No 3) (2009) 31 VAR 286, 342.

15 Matsoukatidou v Yarra Ranges Council (2017) 51 VR 624, 641 [53] citing Re Lifestyle Communities (No 3) (2009) 31 VAR 286, 344 [287]–[290]; Victorian Police Toll Enforcement v Taha; State of Victoria v Brookes (2013) 49 VR 1.

16 Human Rights Act 2019 (Qld) s 15(5); Attorney-General for the State of Queensland v Grant (No 2) [2022] QSC 252 [148]; Matsoukatidou v Yarra Ranges Council (2017) 51 VR 624, 643–4 [61], 659 [108].

17 Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 124.

18 Explanatory Notes, Human Rights Bill 2018 (Qld) 19.

19 Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 123–4.

20 Human Rights Committee, General Comment No. 36: Article 6: Right to Life, UN Doc CCPR/C/GC/36 (3 September 2019) 6.

21 Human Rights Committee, General Comment No. 36: Article 6: Right to Life, UN Doc CCPR/C/GC/36 (3 September 2019) 6.

22 Human Rights Committee, General Comment No. 36: Article 6: Right to Life, UN Doc CCPR/C/GC/36 (3 September 2019) 6.

23 Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc CCPR/C/GC/20 (10 March 1992) [5].

24 Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 131–2.

25 Nicky Jones and Peter Billings, An Annotated Guide to the Human Rights Act 2019 (Qld) (LexisNexis, 2023) 161.

26 R (Limbuela) v Secretary of State for the Home Department [2006] 1 AC 396, 402 [7].

27 Explanatory Notes, Human Rights Bill 2018 (Qld) 19.

28 Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc CCPR/C/GC/20 (10 March 1992) [4].

29 Certain Children v Minister for Families and Children (No 2) (2017) 52 VR 441, 526 [275].

30 Committee Against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, CAT/C/GC/2 (24 January 2008) 6.

31 Economic and Social Council, Report of the Special Rapporteur on the Question of Torture Submitted in Accordance with Commission Resolution 2002/38, UN Doc E/CN.4/2003/68 (17 December 2002) 9–10; Human Rights Council, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: The

Roles and Responsibilities of Police and Other Law Enforcement Officials, UN Doc A/HRC/46/L.27 (15 March 2021) 3.

32 Committee Against Torture, General Comment No 2: Implementation of Article 2 by States Parties, UN Doc CAT/C/GC/2 (24 January 2008) 5.

33 Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 158.

34 R (Williamson & Ors) v Secretary of State for Education and Employment [2005] 2 AC 246, 259.

35 Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child, Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination Against Women/General Comment No. 18 of the Committee on the Rights of the Child, UN Doc CEDAW/C/GC/31/REV.1 - CRC/C/GC/18/Rev.1 (2014) (8 May 2019) [31], [55]. As to the categorisation of corporal punishment as a 'harmful practice', see [9].

36 RT (Zimbabwe) and others v Secretary of State for the Home Department; KM (Zimbabwe) v Secretary of State for the Home Department [2012] 4 ER 843, 859–60 [43].

37 Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 168. See also: Eatock v Bolt (2011) 197 FCR 261, [228].

38 See for example: Nationwide News Pty Ltd v Wills (1992) 177 CLR 1. The freedom is implied from ss 7 and 24 of the Australian Constitution.

39 Human Rights Act 2019 (Qld) s 21(2).

40 Magee v Delaney (2012) 39 VR 50, [61]–[62].

41 Human Rights Act 2019 (Qld) s 21(2).

42 Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 172–3. See McDonald v Legal Services Commissioner (No 2) [2017] VSC 89, [27]–[28]; Magee v Delaney (2012) 39 VR 50, [89]–[98].

43 Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 175.

44 Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 189.

45 Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 195.

46 International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 22(2).

47 R (Countryside Alliance) v Attorney General [2008] 1 AC 719, [58].

48 See for example: Brown v Tasmania [2017] HCA 43. The freedom is implied from ss 7 and 24 of the Australian Constitution.

49 Explanatory Notes, Human Rights Bill 2018 (Qld) 22.

50 Nicky Jones and Peter Billings, An Annotated Guide to the Human Rights Act 2019 (Qld) (LexisNexis, 2023) 251 referring to the Parliamentary Joint Committee on Human Rights, Guide to Human Rights (Guide, June 2015) 29.

51 Parliamentary Joint Committee on Human Rights, Guide to Human Rights (Guide, June 2015) 29.

52 Human Rights Committee, CCPR General Comment No. 16: Article 17 (Right to Privacy), UN Doc HR1/Gen/1/Rev.9 (8 April 1988) [7].

53 Parliamentary Joint Committee on Human Rights, Guide to Human Rights (Guide, June 2015) 29.

54 Explanatory Notes, Human Rights Bill 2018 (Qld) 22; Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 220.

55 Explanatory Notes, Human Rights Bill 2018 (Qld) 22.

56 Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 234–5.

57 Human Rights Committee, General Comment No. 17: Article 24 (Rights of the Child), UN Doc CCPR/C/GC/17 (7 April 1989) [6].

58 'Right to Protection of Families and Children', Queensland Human Rights Commission (Web Page, 28 June 2019) <https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-protection-of-families-and-children>.

59 Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 236–7, 239–40.

60 Nicky Jones and Peter Billings, An Annotated Guide to the Human Rights Act 2019 (Qld) (LexisNexis, 2023) 266.

61 Nicky Jones and Peter Billings, An Annotated Guide to the Human Rights Act 2019 (Qld) (LexisNexis, 2023) 266.

62 'Cultural Rights', Queensland Human Rights Commission (Web Page, 28 June 2019) <https://www.qhrc.qld.gov.au/your-rights/human-rights-law/cultural-rights>.

63 Human Rights Act 2019 (Qld) s 27; Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 242.

64 Explanatory Notes, Human Rights Bill 2018 (Qld) 23.

65 Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 245.

66 This right as it applies to court jurisdiction is enlivened where the court has a discretion to exercise a possible transfer to a Koori Court (or Murri Court in Queensland). See Cemino v Cannan (2018) 56 VR 480, 524.

67 See Cemino v Cannan (2018) 56 VR 480, 523.

68 Nicky Jones and Peter Billings, An Annotated Guide to the Human Rights Act 2019 (Qld) (LexisNexis, 2023) 299.

69 Human Rights Committee, General Comment No. 35: Article 9 (Liberty and Security of Person), UN Doc CCPR/C/GC/35 (16 December 2014) [9].

70 Application for Bail by HL (No 2) [2017] VSC 1, [117], [124]–[130]; Certain Children v Minister for Families and Children (2016) 51 VR 473, [171]–[178]; Certain Children v Minister for Families and Children (No 2) (2017) 52 VR 441, [251]; DPP v Tiba [2013] VCC 1075, [31]; Dale v DPP [2009] VSCA 212, [35]–[39]; R v Kent [2009] VSC 375, [32]; Attorney-General v Taunoa [2006] 2 NZLR 457. As cited in Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 268.

71 Owen-D'Arcy v Chief Executive, Queensland Corrective Services (2021) 9 QR 250, 324 [245].

72 Human Rights Committee, General Comment No. 21 (1992): Article 10 (Humane Treatment of Persons Deprived of Their Liberty), UN Doc CCPR/C/GC/21 (10 April 1992) [3].

73 'This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status': Human Rights Committee, General Comment No. 21 (1992): Article 10 (Humane Treatment of Persons Deprived of Their Liberty), UN Doc CCPR/C/GC/21 (10 April 1992) [4].

74 United Nations Standard Minimum Rules for the Treatment of Prisoners, GA Res 70/175, UN Doc A/RES/21/199 (17 December 2015) 2–3.

75 R v McFarlane (1923) 32 CLR 518, 541–2.

76 Australian Constitution ch 3. See discussion in Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 282.

77 Queensland Sentencing Advisory Council, The '80 per Cent Rule': The Serious Violent Offences Scheme in the Penalties and Sentences Act 1992 (Qld) (Final Report, 2022) 293.

78 Roberts v Harkness & Anor (2018) 57 VR 334, 355.

79 Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 282.

80 Human Rights Act 2019 (Qld) s 32(1); Human Rights Committee, General Comment No. 32: Article 14 — Right to Equality Before Courts and Tribunals and to A Fair Trial, UN Doc CCPR/C/GC/32 (23 August 2007) 9.

81 Human Rights Committee, General Comment No. 32: Article 14 — Right to Equality Before Courts and Tribunals and to A Fair Trial, UN Doc CCPR/C/GC/32 (23 August 2007) 10.

82 Human Rights Act 2019 (Qld) ss 32(2)(g)–(h).

83 Human Rights Act 2019 (Qld) s 32(4).

84 Explanatory Notes, Human Rights Bill 2018 (Qld) 28.

85 Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 331.

86 Kylie Evans and Nicholas Petrie, Annotated Queensland Human Rights Act (Thomson Reuters, 2022) 332.

87 Committee on the Rights of the Child, General Comment No. 1 (2001): Article 29(1): The Aims of Education, UN Doc CRC/GC/2001/1 (17 April 2001) [8].

Review of particular criminal defences
Queensland Law Reform Commission
www.qlrc.qld.gov.au