



Review of particular criminal defences

Our terms of reference

Background paper 1

November 2023

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

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Introduction

This is the first publication in our review of particular criminal defences.

The paper introduces our terms of reference. It outlines what our review is about, describes the current law and explains the general scope and focus of the review.

The paper identifies some of the key issues and matters for our consideration, and **invites feedback on what issues we should look at in the review**. It also outlines our review process and next steps. Information on how to give us your feedback is at the end of the paper.

The paper is accompanied by a series of information sheets and other supporting resources, which are available on our [website](#). These resources include the full text, diagrams and information about key provisions, comparative tables of provisions in other jurisdictions and some other background information.

Our 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 [domestic and family violence] (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269) and the partial defence to murder of provocation (section 304), and specifically whether either or both should be repealed or amended;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 defences 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 [Women’s Safety and Justice] 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.

View the full terms of reference on our [website](#).¹

What we are asked to do

1. The Government has asked the Commission to examine and make recommendations about particular defences in the Criminal Code:
 - self-defence in sections 271 and 272,
 - provocation as a defence to assault in sections 268 and 269,
 - provocation as a partial defence to murder in section 304,
 - the partial defence to murder of killing for preservation in an abusive domestic relationship in section 304B, and
 - domestic discipline in section 280.
2. We are asked to recommend if any changes are needed to reform the law, practice or procedure concerning those defences, including if:
 - self-defence should be made simpler and clearer,
 - self-defence should be expanded to cover circumstances when a victim-survivor of domestic and family violence acts reasonably to protect themselves from their abuser,
 - self-defence should continue to distinguish between provoked and unprovoked assaults and whether it should be limited to circumstances of assault against a person,
 - the defence of provocation to assault should be repealed or amended, or
 - the partial defence to murder of provocation should be repealed or amended.
3. The Government has also asked us to consider the mandatory penalty of life imprisonment for murder, specifically:
 - the impact of the mandatory penalty on the operation of the defences, and
 - whether the mandatory penalty should be removed.
4. If we recommend changes to the relevant provisions in the Criminal Code or other legislative reforms, we are asked to prepare draft legislative provisions based on our recommendations.

Scope of our review

5. Our review is limited to the matters stated in the terms of reference. When we look at the defences in the review, we will take into account other relevant provisions as well as comparative approaches in other jurisdictions.
6. 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.²

The current law

7. Most serious criminal offences in Queensland are in the Criminal Code. This includes offences against the person like common assault, assault occasioning bodily harm, grievous bodily harm, manslaughter and murder.
8. The Criminal Code also provides legal defences against criminal charges. They include:
 - general defences that apply to most offences in the Criminal Code, and
 - defences that apply to some offences only.
9. Defences can be described in different ways. Most of the defences in the Criminal Code state when a person's conduct is 'lawful' or when a person is 'not criminally responsible' for particular behaviour. Judges and legal writers also sometimes distinguish between 'justifications' and 'excuses': see box 1.³ The terms 'defences' and 'excuses' are often used interchangeably.
10. The Criminal Code has both complete and partial defences. A complete defence entitles the person to be found not guilty (acquitted) of the charge. Self-defence, the defence of provocation to assault and domestic discipline are complete defences.
11. A partial defence reduces but does not remove a person's criminal responsibility. Killing on provocation and killing for preservation in an abusive domestic relationship are partial defences to murder. They reduce the person's criminal liability so that they are not guilty of murder but are guilty of manslaughter. One of the outcomes of a partial defence to murder is to overcome the mandatory sentence of life imprisonment.
12. The usual rule is that the prosecution has the burden of proving, beyond reasonable doubt, all the elements of the offence and of excluding (disproving or negating) any defence raised on the evidence or by the defendant. The defendant may need to show there is some evidence to raise a defence, but does not usually have to prove it. The partial defence of provocation to murder is an exception to this, where the defendant has the burden of proving the defence on the balance of probabilities.
13. The defences in our review are examples of defences that apply when a person uses some kind of force against another person, brought about by the other person's conduct or some circumstance of necessity. The partial defence of killing for preservation in an abusive domestic relationship and the defence of domestic discipline are limited to specific relationships. Self-defence and provocation can apply in a variety of situations, including those involving intimate partners, family members or strangers. Sometimes more than one defence might be raised in the same case.

Box 1: Justifications, excuses or defences?

There is no precise agreed meaning to these terms.

Justification tends to be used where conduct is not regarded as wrongful, even though it may be harmful.

Excuse tends to be used where conduct is wrongful, but there are extenuating factors that affect the law's response to it.

Defence can be used in many ways and can include both justifications and excuses.

Self-defence

14. The use of force against a person without their consent can be an offence. But the law does not always expect people to be passive when someone threatens their safety. With certain

limitations, self-defence allows a person to use force that is reasonably necessary to defend themselves. There are 2 forms of self-defence when a person is assaulted:

- self-defence against an unprovoked assault in section 271, and
 - self-defence against a provoked assault in section 272.
15. Different requirements apply depending on the nature and seriousness of the conduct involved. Sections 271 and 272 provide complete defences to an offence involving the use of force, including assault and homicide.
 16. Section 271 provides for self-defence against an unprovoked assault, that is, where a person is unlawfully assaulted and did not provoke the assault. In this case the person may use such force as is reasonably necessary to defend themselves, provided it is not intended or likely to cause death or grievous bodily harm. However, if the person reasonably fears death or grievous bodily harm from their attacker, they may use the force that is necessary to defend themselves, even if it may cause death or grievous bodily harm.
 17. Section 272 provides for self-defence against a provoked assault, in limited cases. If a person unlawfully assaults or provokes an assault from someone else, they may use reasonable force to defend themselves from retaliation. But they may do so only if the other person's response is so violent that the person reasonably fears death or grievous bodily harm. The defence is not available if the person:
 - first started the assault with intent to kill or do grievous bodily harm
 - used force causing death or grievous bodily harm before it became necessary
 - did not decline further conflict and try to retreat from it before such force became necessary.
 18. The self-defence provisions have attracted criticisms, for example that:
 - they are complex, difficult to understand and difficult for judges to direct juries on⁴
 - some requirements have been given conflicting interpretations in case law⁵
 - in some circumstances they may be difficult to run as a defence for a victim-survivor of domestic and family violence who uses force against their abuser.⁶
 19. In a recent Queensland Court of Appeal decision, Dalton JA found that section 272 is ambiguous and observed that the self-defence provisions need reform.⁷
 20. Queensland is the only Australian jurisdiction to keep a distinction between self-defence against unprovoked and provoked assaults. Many other places have simplified their self-defence provisions, focusing on the use of force that is reasonable in the circumstances.⁸ A few jurisdictions also have a partial defence to murder of excessive self-defence, and some include provisions about the operation of self-defence in the context of domestic and family violence.⁹
 21. View the full text and a diagram of the self-defence provisions in the information sheet on our [website](#).¹⁰

Provocation

22. Provocation has been explained as 'a concession to human frailty', by recognising circumstances when a person loses self-control and is not acting 'deliberately and in cold blood'.¹¹

23. The Criminal Code contains 2 provocation defences:
 - provocation as a defence to assault in sections 268 and 269, and
 - provocation as a partial defence to murder in section 304.
24. Both defences apply if the person was provoked by the victim to such an extent that the person lost and acted without self-control. Although they have similarities, the 2 defences are distinct.
25. Section 269 provides a complete defence to an offence containing assault as an element. This includes assaults occasioning bodily harm and serious assaults, but does not include offences such as wounding, grievous bodily harm, choking, suffocation or strangulation in a domestic setting, manslaughter or murder. The defence requires a wrongful act or insult by the victim that was serious enough to cause an ordinary person to lose self-control. It applies only if the force used was not out of proportion to the provocation and not intended or likely to cause death or grievous bodily harm. Section 268 defines 'provocation' for the purpose of this defence.
26. Section 304 provides a partial defence to murder if the person was provoked and acted 'in the heat of passion'. Section 304 relies on the common law definition of provocation. Conduct will not amount to provocation unless it was serious enough to cause an ordinary person to lose self-control. Section 304 qualifies the meaning of provocation by excluding some types of conduct. Unless there are exceptional circumstances, provocation cannot be based on:
 - words alone,
 - anything done, or believed to be done, by the deceased to end or change their domestic relationship with the defendant, or
 - an unwanted sexual advance.
27. Those limits on the partial defence were introduced by amendments made in 2011 and 2017, which aimed to 'address its bias and flaws' and 'reflect changes in community expectations'.¹² This reflects the idea that 'what might be provocative in one age might be regarded with comparative equanimity in another, and a greater measure of self-control is expected as society develops'.¹³
28. The amendments made in 2011 also shifted the burden of proof under section 304 to the defendant. Usually the prosecution must exclude a defence that arises on the evidence. However, under section 304 the defendant has the burden of proving the elements of the defence to reduce their criminal liability from murder to manslaughter.
29. Criticisms of provocation, especially the partial defence, include concerns that it:¹⁴
 - is outdated and gender-biased, having developed at a different time when violent retaliation by men to particular conduct was tolerated more by society
 - is complicated, difficult to understand and difficult for judges to direct juries on
 - in the case of the complete defence of provocation to assault, is limited to offences containing assault as an element¹⁵
 - may operate unfairly or inconsistently.
30. Queensland and Western Australia are the only Australian jurisdictions with a complete defence of provocation to assault. Although some places have kept a partial defence of provocation to murder, several others have abolished it.¹⁶
31. View the full text and diagrams of the provocation defences in the information sheets on our [website](#).¹⁷

Killing for preservation in an abusive domestic relationship

32. Section 304B is a partial defence to murder, which was added to the Criminal Code in 2010. It applies to reduce an unlawful killing from murder to manslaughter in cases where:
 - the deceased has committed acts of serious domestic violence against the person in the course of an abusive domestic relationship, and
 - the person believes on reasonable grounds that their conduct is necessary to preserve them from death or grievous bodily harm.
33. The abusive domestic relationship and all the circumstances of the case are taken into account to decide if the person has reasonable grounds for their belief.
34. The defence was introduced to overcome the possible limitations of other defences and the mandatory penalty for murder in cases where a person in a seriously abusive relationship kills their abuser. It was said to recognise that 'this category of offender is deserving of some mitigation of punishment' to reflect a reduced level of blame.¹⁸
35. Queensland is the only Australian jurisdiction with this partial defence. Some other jurisdictions, like Western Australia, have a different partial defence of excessive self-defence which may also help this category of defendants.¹⁹ Some other jurisdictions, such as Victoria, have provisions about the operation of self-defence in cases involving domestic and family violence.²⁰
36. Criticisms of the defence in section 304B include concerns that it:²¹
 - is a partial defence only, in contrast with the complete defence of self-defence
 - does not apply where the person kills their abuser to protect someone else, such as a child or other family member
 - may be underused.
37. View the full text and a diagram of this defence in the information sheet on our [website](#).²²

Domestic discipline

38. The defence of domestic discipline in section 280 of the Criminal Code allows such force as is reasonable under the circumstances to be used to correct, discipline, manage or control a child. It applies to a parent or person in the place of a parent, a schoolteacher or master. Most cases raising the defence relate to parents, although many earlier cases concerned schoolteachers.²³
39. Section 280 is a complete defence to an offence involving the use of force. This includes common assault but could also include more serious offences involving bodily harm.
40. Each of the other Australian jurisdictions has a similar defence, either in their criminal legislation or under the common law. In New South Wales, the defence excludes some conduct, such as force applied to the head or neck if it is not trivial or negligible in the circumstances. In New Zealand, the use of reasonable force by a parent is protected for some purposes, such as preventing harm to the child, but not for the purpose of correction.²⁴
41. The defence of domestic discipline raises issues about the ability for parents to discipline their children, and the rights of children to be protected from violence or abuse. The defence has attracted criticisms, including that:²⁵

- the defence is unclear and open to different views about what is 'reasonable'
 - physical (corporal) punishment of children is undesirable, is not effective and can result in long-term harm
 - the defence is out of step with contemporary views against the use of violence and with the protection of the best interests and human rights of children, including their right to equal protection under the law.
42. Under legal and policy frameworks, the use of physical punishment is prohibited in settings where a child is in care, in youth detention or at an early childhood education and care service.²⁶ It is also prohibited in government schools at a policy level.²⁷
43. View the full text and a diagram of the defence on our [website](#).²⁸

The penalty for murder

44. The penalty for murder is in section 305 of the Criminal Code. It requires the court to sentence a person who is convicted of murder to life imprisonment or an indefinite sentence. The court cannot order a shorter or different sentence. It is therefore described as a mandatory penalty.
45. In contrast, the penalty for manslaughter in section 310 is a maximum of life imprisonment. This allows the court to impose a shorter or different sentence, up to the maximum of life imprisonment. In exercising this sentencing discretion, the court considers the individual circumstances, including the conduct involved in the killing, particular characteristics of the person, and whether the person pleaded guilty or not guilty.
46. A person given a life sentence (even if it is mandatory) can be released on parole after serving a period of time in prison. The minimum period that the person must stay in prison is stated in the law,²⁹ but the court can choose to order that they serve a longer period before being eligible for parole.³⁰ If a person serving a life sentence is granted parole, they are subject to parole conditions for their whole life, and if those conditions are not followed it can mean they are returned to prison.³¹
47. Throughout Australia the penalty for murder involves life imprisonment. In some jurisdictions, like Victoria, life imprisonment is a maximum penalty. New South Wales has a maximum penalty of life imprisonment, but imposes a mandatory penalty in certain cases (such as where a police officer is murdered). In Western Australia (and New Zealand), the court must order life imprisonment unless it would be clearly unjust. Like Queensland, life imprisonment for murder is mandatory in the Northern Territory and South Australia.³²
48. Arguments in support of mandatory life imprisonment for murder include the ideas that it reflects the uniquely serious nature of murder, helps protect the public, and promotes consistency in sentencing and public confidence in the administration of justice. Criticisms of a mandatory penalty for murder include concerns that it limits the court's ability to consider the individual circumstances of the case, can discourage pleas of guilty to murder and does not represent truth in sentencing because a mandatory life sentence does not necessarily mean life-long imprisonment.³³
49. View the information sheet on the penalty for murder on our [website](#).³⁴

Background to the review

50. Most of the defences in our review have been in the Criminal Code since it was first enacted. Case law on how the defences operate continues to develop, but many of the provisions remain unchanged. Most changes have focused on defences to murder: the partial defence of killing for preservation in an abusive domestic relationship was introduced in 2010;³⁵ and the partial defence of provocation to murder was amended in 2011 and 2017.³⁶
51. Previous reviews and inquiries have proposed various changes to simplify, update or remove some of the defences, including to address gender bias in the law, prevent unfair outcomes and reflect changes in community expectations. The mandatory penalty for murder has also been raised from time to time, especially in the context of partial defences to murder. A timeline of legislative reforms and proposals in Queensland (and a quick reference guide to the position in other jurisdictions) can be viewed on our [website](#).³⁷
52. The Women’s Safety and Justice Taskforce has recommended review of defences in the Criminal Code, ‘including their operation in relation to homicide’. The taskforce was established in 2021 to examine coercive control and the experiences of women and girls across the criminal justice system. The taskforce considered an extensive range of issues and recommended many law and practice reforms. Our review of particular criminal defences is the focus of recommendation 71 of its first report: see box 2.³⁸

Box 2: Recommendation 71 of the Women’s Safety and Justice Taskforce

‘The Attorney-General ... [should] refer for independent review the defences and excuses in the Criminal Code, including their operation in relation to homicide. Consideration should be given to making a reference to the Queensland Law Reform Commission.

In particular, the review should consider the following provisions:

- Provocation: section 304; sections 268 and 269
- Self-defence: section 271 and section 272
- Killing for preservation in an abusive domestic relationship: section 304B

... It should also consider changes to laws, practices and procedures including: ... the mandatory penalty for a conviction for murder, its impact on the operation of the defences and excuses, and whether it should be removed. ...’

53. The taskforce noted concerns that current laws do not protect the rights of ‘desperate victims forced to defend themselves from perpetrators of serious domestic abuse’. It considered that existing defences need to be reviewed so they ‘meet our current knowledge about the effects of domestic and family violence’ and ‘evolve beyond outdated, gendered understandings’. The taskforce recommendation stated that the review should consider self-defence, provocation and killing for preservation in an abusive domestic relationship.³⁹
54. The taskforce recognised that changes to the defences and the mandatory penalty for murder would affect cases far beyond coercive control and domestic and family violence.⁴⁰

Amending existing defences and excuses and the mandatory minimum sentence of life imprisonment for murder in the Criminal Code will affect cases far beyond coercive control and domestic and family violence and is likely to affect more men than women. These issues are broader than the gendered terms of this Taskforce.

55. View report one of the taskforce on its [website](#).⁴¹
56. In addition, the Queensland Sentencing Advisory Council has expressed concerns about the potential unfair effects of mandatory sentencing and in 2019 recommended that mandatory sentencing provisions be reviewed, including the mandatory penalty for murder. It suggested a review should consider the objectives of the provisions, the importance of judicial discretion, the need for judges to have flexible sentencing options, and the disproportionate impact of mandatory sentencing provisions on Aboriginal and Torres Strait Islander people.⁴²
57. Further, the introduction of the Human Rights Act 2019 and developments in other jurisdictions have raised interest in changing or removing the defence of domestic discipline in the Criminal Code, including to better recognise the right of children to be protected from violence.⁴³

Issues and matters for consideration

58. Our terms of reference ask us to have regard to several matters, including:
 - existing legal principles of criminal responsibility,
 - the need for Queensland's criminal law to ensure just outcomes by balancing the rights and interests of victims and accused persons,
 - compatibility of recommended reforms with the Human Rights Act,
 - contemporary community standards,
 - the experiences of victims, survivors and their families in the criminal justice system,
 - the nature and impacts of domestic and family violence and criminal conduct on victims, survivors and their families, and
 - the findings and recommendations of the Women's Safety and Justice Taskforce.
59. Criminal law involves many complex considerations, including the need to balance the public interest and the interests of victims and defendants. Some of these considerations are highlighted here: see box 3.

Box 3: Some considerations relevant to the criminal law

An important principle of criminal law is that criminal responsibility for an offence will usually arise only if the defendant has acted in a wrongful or blameworthy way.⁴⁴ The criminal law assumes that a person 'had the capacity to understand what was happening, to distinguish between right and wrong, and to choose to act differently'.⁴⁵ It also recognises there may be differing degrees of culpability. Not all offences or offenders are the same. Contextual factors may be relevant to criminal responsibility and punishment. Each case is decided on its own facts.

The jury plays a significant role in our criminal justice system, allowing 'for the ordinary experiences of ordinary people to be brought to bear in the determination of factual matters'.⁴⁶ As part of their duty to ensure a fair trial, judges in criminal trials are required to sum up the case and give the jury directions about the law and how to apply it, and how to assess the evidence. An important consideration is to ensure the law can be understood and applied.

Where trials are necessary, there is public interest in minimising the trauma, and re-trauma, that can be caused to victims and witnesses in giving evidence and participating in criminal proceedings. Further, there is public interest in reducing costs that might otherwise be increased due to complexity in the law, appeals and retrials.

The criminal law must keep pace with social change. Changes to the law should be informed by the best available evidence, including understandings about the experience of domestic and family violence.

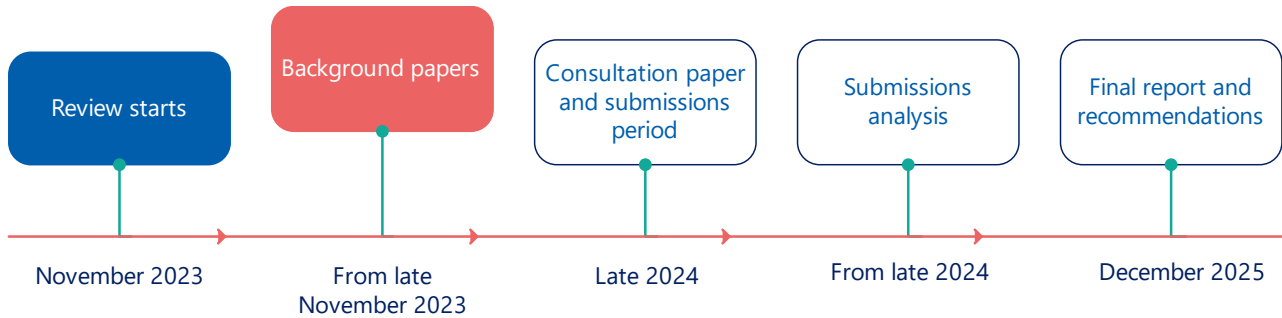
The Human Rights Act 2019 reflects the obligation to recognise, protect and balance fundamental rights, including the right to life, protection from torture and cruel, inhuman or degrading treatment, the right to equal treatment and non-discrimination before the law, and the right to a fair trial.⁴⁷

60. Some of the particular issues we will look at in our review include:

- whether the defences can be made simpler and clearer so it is easier for police, prosecutors, defence lawyers, judges, juries, victims and the wider community to understand and apply them
- whether the defences remain fit for purpose and meet contemporary community expectations
- whether any changes to the defences are needed to better reflect circumstances involving domestic and family violence, including coercive control
- whether the defence of domestic discipline remains appropriate in today's society
- if any of the defences are removed, whether defendants would be appropriately protected by other existing defences and whether any gaps might result in anomalies or unintended unfair outcomes
- whether the mandatory penalty of life imprisonment for murder should be changed
- whether perceived problems with the current law can be addressed by changes to practice and procedure, including the rules of evidence and jury directions.

Our next steps

Figure 1: Review timeline



61. Our review started on 15 November 2023.
62. At this early stage we have not formed any views. We invite you to **give us your feedback** on any specific issues you think the review should address. This will help us identify the key issues and inform our work for this review. We will consider all the feedback we receive in response to this paper, along with our own research.
63. This is the first of a series of background papers we plan to release. These papers and accompanying supporting resources aim to provide helpful background information to the law and issues, including approaches in other jurisdictions.
64. There will be several opportunities to participate during the review, including consultation, public events and making formal submissions. We propose to release a consultation paper in late 2024 calling for formal submissions. It will include questions for consultation and allow a period for submissions to be made.
65. To help inform our review, we plan to carry out research on community attitudes and the outcomes of Queensland cases where the defences have been raised.
66. We will give our final report with recommendations and any draft legislation to the Attorney-General by 1 December 2025.
67. You can send us your feedback or register your interest in the review by emailing qlrc-criminaldefence@justice.qld.gov.au. All of our publications and updates for our review, including information about events, will be available on our [website](#).

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

References

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- 1 Queensland Law Reform Commission (QLRC), 'Review of particular criminal defences', 2023
<https://www qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences>.
- 2 See terms of reference para 4.
- 3 See generally E Colvin, J McKechnie & E Greene, *Criminal Law in Queensland and Western Australia: Cases and commentary*, 9th edn, LexisNexis, 2021, pp 281–83.
- 4 See e.g. *R v Dayney* [2023] QCA 62 at [76] (Dalton JA); *R v Gray* (1998) 98 A Crim R 589 at 592 (and generally at 591–5); *R v Messent* [2011] QCA 125 at [29].
- 5 See e.g. *R v Dayney* [2020] QCA 264 at [41]–[51] (Sofronoff P), [112]–[114] (Fraser and McMurdo JJA), discussing Criminal Code (Qld) s 272(2).
- 6 See e.g. Women's Safety and Justice Taskforce, *Options for Legislating against Coercive Control and the Creation of a Standalone Domestic Violence Offence*, Discussion paper 1, 2021, p 24; G Mackenzie & E Colvin, *Victims who Kill their Abusers*, Discussion paper, April 2009, pp 21–2; Report of the Taskforce on Women and the Criminal Code, February 2000, p 148.
- 7 See *R v Dayney* [2023] QCA 62 at [39], [54], [76] (Dalton JA).
- 8 See e.g. Crimes Act 1900 (NSW) s 418; Criminal Code (Tas) s 46; Crimes Act 1961 (NZ) s 48.
- 9 See e.g. Criminal Law Consolidation Act 1935 (SA) ss 15(2), 15B(1); Crimes Act 1958 (Vic) s 322M(1).
- 10 QLRC, 'Self-defence information sheet', November 2023 <https://www qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences>.
- 11 *R v Chhay* (1994) 72 A Crim R 1 at 11; *Parker v The Queen* (1963) 111 CLR 610 at 651–2. See also *McGhee v The Queen* (1995) 183 CLR 82 at 90, 103, 106.
- 12 Explanatory Notes, Criminal Code and Other Legislation Amendment Bill 2011 (Qld) 1–3; Explanatory Notes, Criminal Law Amendment Bill 2016 (Qld) 4. See also *R v Jansen* [2021] QSCPR 5 at [28].
- 13 *Moffa v The Queen* (1977) 138 CLR 601 at 616–17 (Gibbs J).
- 14 See e.g. Report of the Taskforce on Women and the Criminal Code, February 2000, pt 5; Law Reform Commission of Western Australia, *Review of the Law of Homicide*, Final report 97, September 2007, pp 210–16; The Hon Justice Peter Davis, 'Ongoing issues with the defence of provocation', Country Special Continuing Professional Development Conference, 25 February 2023, pp 10–11, <https://www.sclqld.org.au/judicial-papers/judicial-profiles/profiles/pdavis/papers>.
- 15 See e.g. Final Report of the Criminal Code Review Committee to the Attorney-General, June 1992, sch 4 p 175; Report of the Taskforce on Women and the Criminal Code, February 2000, p 196, rec 58; QLRC, *A Review of the Excuse of Accident and the Defence of Provocation*, Report 64, September 2008, pp 513–15.
- 16 See e.g. Criminal Law Consolidation Act 1935 (SA) s 14B; Criminal Code (Tas) s 160, repealed by the Criminal Code Amendment (Abolition of Defence of Provocation) Act 2003 (Tas) s 4(b); Crimes Act 1958 (Vic) s 3B; Criminal Code (WA) s 281, repealed by the Criminal Law Amendment (Homicide) Act 2008 (WA) s 12. See also Crimes (Provocation Repeal) Amendment Act 2009 (NZ).
- 17 QLRC, 'Killing on provocation information sheet' and 'Provocation to assault information sheet', November 2023 <https://www qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences>.
- 18 See generally Explanatory Notes, Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Bill 2009, 1–2.
- 19 See e.g. Criminal Code (WA) s 248(3).
- 20 See e.g. Criminal Law Consolidation Act 1935 (SA) s 15B; Crimes Act 1958 (Vic) ss 322M (and s 322J).
- 21 See e.g. A Hopkins & P Easteal, 'Walking in her shoes: battered women who kill in Victoria, Western Australia and Queensland', *Alternative Law Journal*, vol 35(3), 2010, pp 135–7, doi:[10.1177/1037969X1003500301](https://doi.org/10.1177/1037969X1003500301); M Edgely & E Marchetti, 'Women who kill their abusers: how Queensland's new abusive domestic relationships defence continues to ignore reality', *Flinders Law Journal*, vol 13, 2011, pp 129–30, 152, 170–71; H Douglas, 'A consideration of the merits of specialised homicide offences and defences for battered women', *Australian and New Zealand Journal of Criminology*, vol 45(3), 2012, pp 374–8, doi:[10.1177/0004865812456851](https://doi.org/10.1177/0004865812456851); Women's Safety and Justice Taskforce, *Hear Her Voice Report One: Addressing coercive control and domestic and family violence in Queensland*, 2021, vol 2 pp 259–60, 322, vol 3 p 714.

22 QLRC, 'Killing for preservation in an abusive domestic relationship information sheet', November 2023
<https://www.qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences>.

23 See e.g. *Sparkes v Martin; Ex parte Martin* (1908) 2 QJPR 12; *Horan v Ferguson* [1995] 2 Qd R 490.

24 See Crimes Act 1961 (NZ) s 59; Crimes Act 1900 (NSW) s 61AA.

25 See e.g. SS Havinghurst et al, 'Corporal punishment of children in Australia: The evidence-based case for legislative reform', *Australian and New Zealand Journal of Public Health*, vol 47(3), 2023, doi:[10.1016/j.anzjph.2023.100044](https://doi.org/10.1016/j.anzjph.2023.100044); S McInnes-Smith, 'The inconsistency of the "lawful correction" of children defence with Queensland's new Human Rights Act 2019 (Qld)', *University of Queensland Law Journal*, vol 41(3), 2022, pp 327–62, doi:[10.38127/uqlj.v41i3.6439](https://doi.org/10.38127/uqlj.v41i3.6439); L Savage, 'Time children had the same protection from the use of physical force as adults', *Brief*, vol 47(6), 2020, pp 30–31; Tasmania Law Reform Institute, *Physical Punishment of Children*, Final report 4, October 2003, pp 22–6, 29–30, 32–6.

26 See Child Protection Act 1999 (Qld) s 122(2); Education and Care Services National Law (Queensland) s 166; Youth Justice Regulation 2016 (Qld) s 16.

27 Department of Education and Training (Qld), *Standard of Practice*, February 2016, p 7.

28 QLRC, 'Domestic discipline information sheet', November 2023 <https://www.qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences>.

29 Criminal Code s 305(2)–(4); Corrective Services Act 2006 (Qld) s 181(1)–(2)(d).

30 See *R v Appleton* [2017] QCA 290.

31 See generally Corrective Services Act 2006 (Qld) ch 5 pt 1 (parole orders), including ss 200(1)(a)(i), 205–206.

32 See e.g. Crimes Act 1958 (Vic) s 3; Crimes Act 1900 (NSW) ss 19A, 19B; Crimes (Sentencing Procedure) Act 1999 (NSW) s 61; Criminal Code (WA) s 279(4); Criminal Code (NT) s 157(1)–(2); Criminal Law Consolidation Act 1935 (SA) s 11. See also Crimes Act 1961 (NZ) s 172; Sentencing Act 2002 (NZ) s 102.

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35 See Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Act 2010 (Qld).

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