

Review of particular criminal defences

Quick reference jurisdiction guide

Version November 2023

Jurisdiction	Penalty for murder				Defences to offences involving the use of force			Partial defences to murder		
	Maximum life	Presumptive life	Mandatory life	Minimum non-parole period	Self-defence	Provocation: assault	Domestic discipline	Provocation: murder	Excessive self-defence	Preservation in an abusive domestic relationship
Qld			✓ or an indefinite sentence	20-30 years	✓	✓	✓	✓		✓
ACT	✓			* no parole if life sentence but may be released on licence after 10 years	✓		✓	✓		

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NSW	✓		✓ for murder of police officer & in certain other circumstances	20-25 years but if sentenced to life must serve whole of life	✓		✓	✓	✓	
NT			✓	20-25 years	✓		✓	✓		
SA			✓	20 years	✓		✓		✓	
Tas	✓			for sentence less than life: half of term	✓		✓			
Vic	✓			60% of term, 70% of term or 30 years depending on length of sentence	✓		✓			
WA		✓ otherwise maximum 20 years (& minimum 15 years if aggravated home invasion)		10-15 years	✓	✓	✓		✓	
Cth	✓			* but court may fix a non-parole period	✓					

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MCC	✓				✓		✓			
NZ		✓		10-17 years	✓		✓			
Canada			✓	10-25 years	✓		✓	✓		
England			✓	15 years-whole of life	✓		✓ (excluding certain offences)	* provocation abolished ✓ introduced loss of control		
Wales			✓	15 years-whole of life	✓			* provocation abolished ✓ introduced loss of control		
Northern Ireland			✓	* court must usually set tariff to serve, but no minimum stipulated	✓		✓ (excluding certain offences)	* provocation abolished ✓ introduced loss of control		
Scotland	✓ adults under 21 years		✓ 21 years and above	* court must set punishment part of sentence to serve, but no minimum stipulated	✓			✓		

Other provisions about defences and evidence in the context of domestic and family violence	<p>Some jurisdictions have laws:</p> <ul style="list-style-type: none"> • explaining how particular elements of self-defence operate in the context of domestic and family violence: e.g. SA and Vic • explaining what evidence of domestic and family violence can be, how it may be relevant (in general or for specific defences) and how it may be given (including as expert evidence): e.g. Qld, SA, Vic and WA • providing for jury directions where domestic and family violence is an issue in criminal proceedings (in general or where self-defence in response to domestic and family violence is an issue): e.g. Qld and WA
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Notes

Caution should be exercised in making direct comparisons across jurisdictions as criminal and sentencing laws are structured differently. In some jurisdictions, criminal laws are set out in a code (namely Queensland, Western Australia, the Northern Territory and Tasmania). Codes typically have standardised rules about criminal responsibility which exclude common law rules. In non-Code jurisdictions, common law offences and rules often still operate, with modifications made by legislation.

The MCC refers to the Model Criminal Code. It is not a separate jurisdiction and it is not in force as legislation. It was developed in the 1990s by the Criminal Law Officers Committee (a subcommittee of the Standing Committee of Attorneys-General). The aim was to develop uniform laws with a consistent and principled approach that could be adopted by all Australian jurisdictions. Some jurisdictions have made changes to their criminal legislation consistent with the Model Criminal Code, but many have not. View a consolidated version of the Model Criminal Code, parts of the Model Criminal Code and information about it on the Australian Attorney-General's website

<https://www.ag.gov.au/crime/publications/model-criminal-law-officers-committee-reports>.

This document gives a high-level overview only. For further details of the defences and the penalty for murder in each jurisdiction, view the other information sheets on our website <https://www qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences>.

Reference list of legislation

Queensland (Qld)

Criminal Code (Qld) ss 268, 269, 271, 272, 280, 304, 304B, 305
Corrective Services Act 2006 (Qld) s 181
Evidence Act 1977 (Qld) ss 103CA–103CD, 103T–103ZC

Australian Capital Territory (ACT)

Crimes Act 1900 (ACT) ss 12,13
Criminal Code (ACT) s 42
Crimes (Sentencing) Act 2005 (ACT) s 65
Crimes (Sentence Administration) Act 2005 (ACT) ss 288, 290

New South Wales (NSW)

Crimes Act 1900 (NSW) ss 19A, 19B, 23, 61AA, 418, 421
Crimes (Sentencing Procedure) Act 1999 (NSW) ss 54A table, 61

Northern Territory (NT)

Criminal Code (NT) ss 11, 27, 29, 43BD, 157, 158
Sentencing Act 1995 (NT) s 53A

South Australia (SA)

Criminal Law Consolidation Act 1935 (SA) ss 11, 14B, 15, 15B, 20
Evidence Act 1929 (SA) ss 34U–34Z
Sentencing Act 2017 (SA) s 47

Tasmania (Tas)

Criminal Code (Tas) ss 46, 50, 158
Corrections Act 1997 (Tas) s 68
Sentencing Act 1997 (Tas) ss 17, 18

Victoria (Vic)

Crimes Act 1958 (Vic) ss 3, 3B, 322J, 322K, 322M
Sentencing Act 1991 (Vic) ss 11, 11A

Western Australia (WA)

Criminal Code (WA) ss 245, 246, 248, 257, 279
Evidence Act 1906 (WA) ss 37–39G
Sentencing Act 1995 (WA) s 90

Commonwealth of Australia (Cth)

Criminal Code (Cth) ss 10.4, 71.2, 115.1
Crimes Act 1914 (Cth) s 19AB

Model Criminal Code (MCC)

Model Criminal Code cll 2.3.17, 5.1.9, 5.1.44

New Zealand (NZ)

Crimes Act 1961 (NZ) ss 48, 59, 172
Sentencing Act 2002 (NZ) ss 102, 103, 104

Canada

Criminal Code RSC 1985 c C–46, ss 34, 43, 232, 235, 745

United Kingdom (UK)

Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 (Wales) s 1
Children (Equal Protection from Assault) (Scotland) Act 2019 (Scot) s 1
Children Act 2004 (UK) s 58
Coroners and Justice Act 2009 (UK) ss 54, 55, 56
Criminal Justice and Immigration Act 2008 (UK) s 76
Criminal Procedure (Scotland) Act 1995 (UK) s 205
Custodial Sentences and Weapons (Scotland) Act 2007 (Scot) s 20
Life Sentences (Northern Ireland) Order 2001 (NI) art 5
Murder (Abolition of Death Penalty) Act 1965 (UK) s 1
Northern Ireland (Emergency Provisions) Act 1973 (UK) s 1
Sentencing Act 2020 (UK) ss 321, 322, sch 21
The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 (NI) art 2