



QUEENSLAND
LAW REFORM
COMMISSION

Community attitudes to defences in cases of homicide and assault in Queensland

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THE
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OF QUEENSLAND,
AND THE
CRIMINAL PRACTICE RULES OF 1900
S. H. Phipps

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Research methods



Survey

- 2,485 Queensland residents 18 years and older
- Recruited through online research panels
- Also asked about their attitudes towards DFV, victimisation history and experiences attending court



Focus groups

- 58 Queensland residents participated in 12 online focus groups
- Recruited via community organisations and social media platforms (LinkedIn and Facebook).

Assault scenarios

Self-defence

1. Two known acquaintances get into a fight in a park

Provocation

1. Two known acquaintances get into a fight in a park
2. A man harms his female partner after a dispute
3. A football fan assaults a fan who is heckling them

Domestic discipline

4. A mother lays hands on her child, who is disobeying the rules of the house
5. A teacher lays hands on a student who is disobeying the rules of the class

Scenario 1

Donald and Vaughan knew each other through mutual friends and disliked each other. One day, when they were at the park together with a group of friends, **Donald shoved Vaughan.**

Vaughan punched Donald in the face and continued to move towards him. **At that point, Donald could have run away, but he didn't.** Donald punched Vaughan **and, after Vaughan fell to the ground, Donald stomped on his chest and face.**

Vaughan had a **broken jaw and concussion and had to stay in hospital for several days.**

Homicide scenarios

Self-defence

6. A primary victim of DFV kills the perpetrator
7. A victim of sexual assault kills the perpetrator

Killing for preservation

6. A primary victim of DFV kills the perpetrator

Provocation

7. A victim of sexual assault kills the perpetrator
8. An intimate partner kills their spouse, who they believe is having an affair

Scenario 6

Vernon had abused his partner Diana for several years. **This included Vernon calling Diana names and telling her she is worthless, as well as punching, slapping, kicking and shoving her, resulting in bruising, black eyes and hospitalisation for broken bones.** A couple of times, Vernon's abuse led Diana's family or friends to call the police. However, **Diana always declined to make a statement.**

One afternoon, they were in the kitchen together and started to argue. Vernon slapped Diana on the face and told her that she was useless. **Then, he said no one would miss Diana, if he killed her.** In fear of her life, Diana decided she couldn't take anymore abuse, so **she waited until Vernon was asleep,** took a knife from the kitchen and killed him.

Key findings

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Provocation

- Little support for the defence of provocation where the defendant's conduct is motivated by anger, jealousy, or control, particularly in cases involving DFV.
- Scenarios 2 and 8: Defendants described as being driven by a desire to control the victim, or to punish her for challenging him.
- A successful defence of provocation in this context was viewed as:
 - devaluing the victim's safety/life, and
 - telling the defendant they are not responsible for controlling behaviours.

2. A man harms his female partner after a dispute

- 96% said defendant should be found guilty of assault

8. An intimate partner kills their spouse, who they believe is having an affair

- 84% said defendant should be found guilty of murder

Provocation

- Some evidence that community members are influenced by gender norms.
- Scenario 2: Victim-blaming and minimising attitudes decreased culpability
- Scenario 8:
 - Nature of provoking conduct increased culpability (82.6% vs 88.6%; Victim had had an affair and said her new partner was better in bed vs Victim denied affair and asked for a separation
 - Minimising attitudes decreased culpability

“I think the idea that you can get a partial defence for murder for essentially being told you're a dud shag is deeply offensive to the person who's been murdered. So in those sort of defences or the gay panic defence type provocation stuff, I find that abhorrent to be honest ... the idea that someone can just use words in a one -off situation, like ‘I shagged the best mate and he was better in bed than you’, I just think that's revolting”

(Female, 45-54 yrs, non-Indigenous, focus group participant).

Provocation

- The community does not support provocation as a defence to assault if there is a risk of significant injury.
- Scenario 1:
 - 82% vs 51% = (Stomping on face and chest vs Punch to face)
 - 72% vs 61% = (broken jaw and hospital stay vs minor bruising)

1. Two known acquaintances get into a fight in a park

- 66% said defendant should be found guilty of assault

2. A man harms his female partner after a dispute

- 96% said defendant should be found guilty of assault

3. A football fan assaults a fan who is heckling them

- 85% said defendant should be found guilty of murder

Domestic discipline (family contexts)

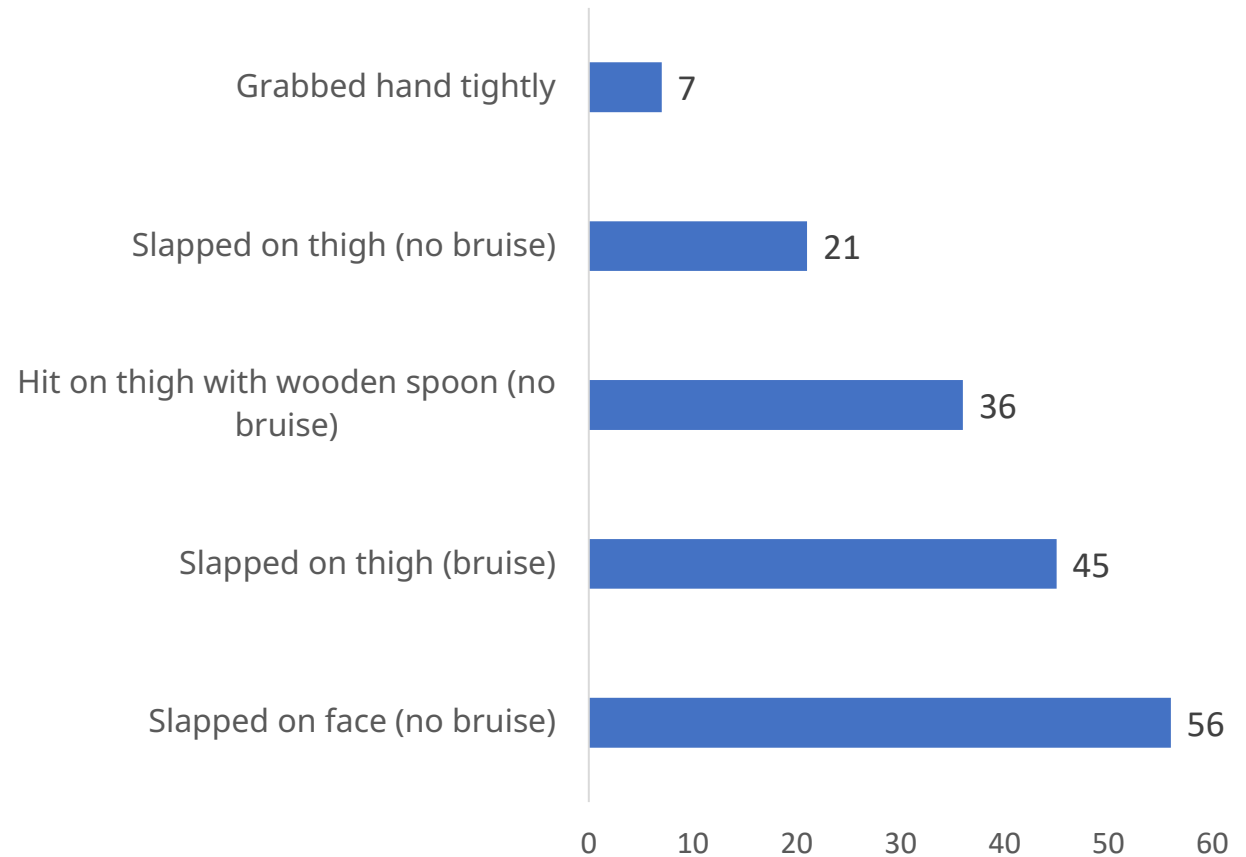
- The community support alternatives to criminal prosecution where parents use minimal force to discipline children.
- Community members had high levels of empathy for Dora who was described as a struggling mum.
- Preference for alternative options that focused on education and familial support – particularly raised in scenarios where victim was described as having a disability.
- Questioned who would benefit from Dora being charged and convicted of assault.

4. A mother lays hands on her child, who is disobeying the rules of the house

- 33% said defendant should be found guilty of assault

Domestic discipline (family contexts)

- Perceptions of culpability influenced by level of force and harm caused
- Use of weapon viewed as being indicative of intent (to cause harm)
- Question of whether a one-off minor incident of violence could be experienced as harmful



Domestic discipline (education contexts)

- The community supports teachers' ability to use force for the purpose of management or control but not for discipline or correction.
- 30% of participants said Davina should be found guilty when she was described as using minor force (grabbing hand or shirt) to control the victim (her student).
- But, strong condemnation from focus group members when Davina was described as slapping victim on the thigh to punish her.

5. A teacher lays hands on her child, who is disobeying the rules of the class

- 30% said defendant should be found guilty of assault

Defences for victims of DFV who kill

- Strong community support for partial and complete defences for victim-survivors of DFV who kill an abusive partner in the context of fear.
- Discomfort convicting Diana of murder - questions about whether it would serve 'justice' for her to be convicted of murder.
- Imminence influenced attitudes about culpability – viewed as indicative of planning, and that the victim had other options:
 - 25% vs 14% (waited until Vernon was asleep before killing him vs killing him immediately following an argument)

6. A primary victim of DFV kills the perpetrator

- 19% said defendant should be found guilty of murder
- 64% = MS
- 16% = Not guilty

Defences for victims of DFV who kill

- Community members who had experienced IPV were less likely to say Diana should be found guilty.
- Lived experience was used to understand Diana's mindset at time of killing abuser, and why leaving may not have been viewed as a legitimate and safe option.
- Highlighted role of 'entrapment' in Diana's use of lethal violence.

Her actions were that of self-preservation after extended abuse, she may feel that this is the only way she can end the abuse (which there is evidence of given that police have been involved historically and not enough has been done to protect her/end the abuse)

(Female, Aboriginal, 25-34 years old, survey participant)

Self-defence

- Community attitudes align with traditional rules of self-defence, and participants were able to weigh relevant factors to assess culpability:
 - Ability to retreat increased defendant culpability in Scenarios 1, 3 and 7
 - Excessive use of force (i.e., beyond what is reasonable to protect safety) increased defendant culpability in Scenarios 1 and 7
 - Availability of other options increased culpability in Scenarios 3 and 7
- Considerations for self-defence are well accepted and understood by members of the Queensland community.

Self-defence

- 1 in 5 survey participants believed that Daisy should be acquitted of killing the victim who was attempting to sexually assault her.
- Suggests that there may be a need to amend the law of self-defence, to allow scope for the use of force, in response to an actual or apprehended sexual assault (rather than self-defence being limited to apprehension of death or grievous bodily harm).

Mandatory sentencing for murder

- The community expects that a person's degree of culpability for killing should be reflected in the sentence they receive.
- Community members were influenced by the nature of the scenario – very different responses across the three homicide vignettes.
- Some cases of murder were perceived as 'worse' than others, which they believed should be reflected in sentencing.
- Even among community members who said they did support mandatory sentencing, their statements (in the survey and focus groups) indicated otherwise.

6. A primary victim of DFV kills the perpetrator

- 72% reduce sentence

7. A victim of sexual assault kills the perpetrator

- 36% reduce sentence

8. A partner kills their spouse, who they believe is having an affair

- 10% reduce sentence

I think the only problem with mandatory [sentencing] is any extenuating circumstances can't then be taken to consideration and that's why the courts often steer away from it. Yeah, it makes it very restrictive.

Would you like to see more flexibility?

I'm not saying that. I'm just saying it takes away from that ability. There's so many variables to any crime. And it takes away from taking into consideration any of those variables whatsoever. So, say the lady who committed the domestic violence, so throw a spanner in the works, say the lady who stabbed the guy in his sleep, say she's done for murder. So, would everybody in this group then be happy that she does 20 years? Do you know what I'm saying? That means no extenuating circumstances can be taken into consideration once that decision is made.

(Female, 45-54 yrs, non-Indigenous, focus group participant)

Variation in attitudes towards defences within the community

- Community is not a monolith.
- Perceptions of culpability varied across the community, by:
 - Gender
 - Age
 - Victimization history
 - Attitudes towards domestic and family violence
 - Indigenous status

Gendered Variations in Attitudes Towards Defences: General Findings

Women:

- Women consistently held defendants to stricter standards of accountability, particularly in cases of IPV and DFV (**69.7%** vs. **63.4%** men, Donald scenario).
- Critical of excessive force in severe injury cases (**81.5%**, Vaughan scenario)
- Demonstrated significantly lower victim-blaming (**6.2** vs. **7.5 men**) and minimising attitudes (**8.0** vs. **9.0 men**), reflecting greater awareness of the gendered impacts of violence.
- More likely to support manslaughter (**67%**) or acquittal (**16%**) for IPV survivors who killed abusive partners, emphasising empathy for survivors and understanding of coercive control.

Men:

- Men were more lenient in their assessments of defendant culpability, especially in scenarios involving provocation or physical force as discipline.
- Showed less understanding of the psychological and non-physical impacts of DFV, indicating a gap in awareness of coercive control dynamics.
- More likely to justify actions under provocation, aligning with traditional gender norms around conflict and accountability.

Trans/Non-binary:

- Highlighted systemic risks and the premeditated nature of violence faced by their demographic.
- Their perspectives underscored the need for nuanced, context-specific evaluations of culpability and a broader understanding of interpersonal and systemic violence.
- Limited data due to small sample sizes restricts broader statistical conclusions, but qualitative insights stress unique vulnerabilities.

Indigenous Status and Culpability (Part 1)

- Aboriginal and Torres Strait Islander participants were less likely than non-Indigenous participants to find Derek guilty of assault (63.8% vs. 85%)
 - Many non-Indigenous participants believed Derek could have de-escalated by removing himself or calling security.
- Indigenous participants were more likely to empathise with defendants responding to public provocation, reflecting lived experiences of systemic racism and harassment.
- Other options for de-escalation (e.g., calling security) were often viewed as less legitimate or safe due to distrust in authority stemming from historical and systemic discrimination.

Derek did what any of us would want to do in that situation, shut the idiot up. The other guy deserved it

(Female, 35-44 yrs, Torres Strait Islander, survey participant)

People have a right to go to a sporting event and cheer and support there [sic] team without being harassed [by] some idiot

(Female, 55-64 yrs, non-Indigenous, survey participant).

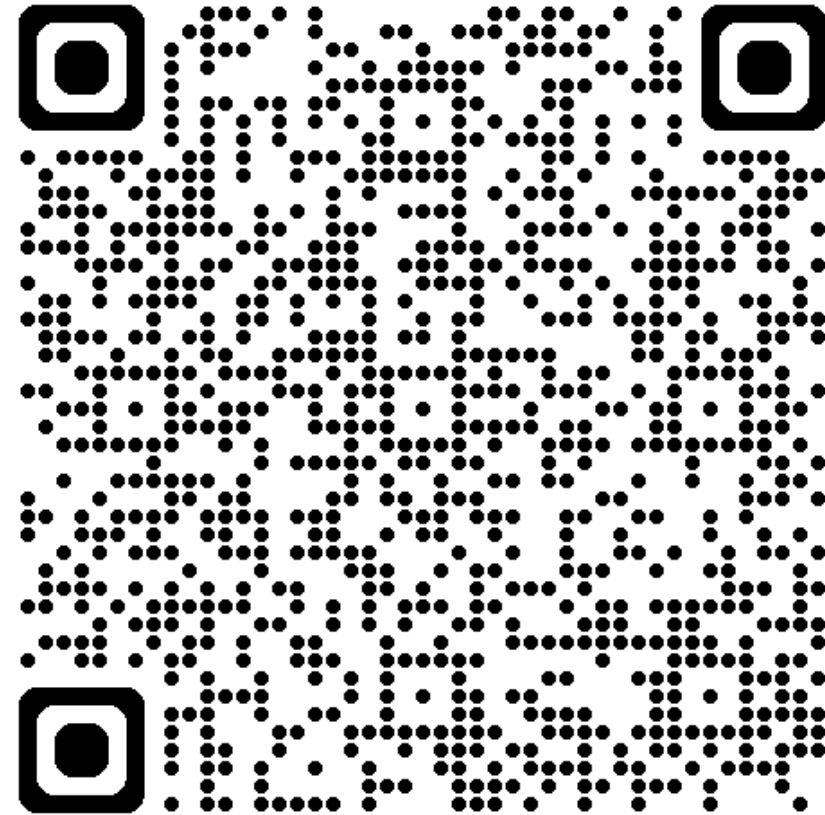
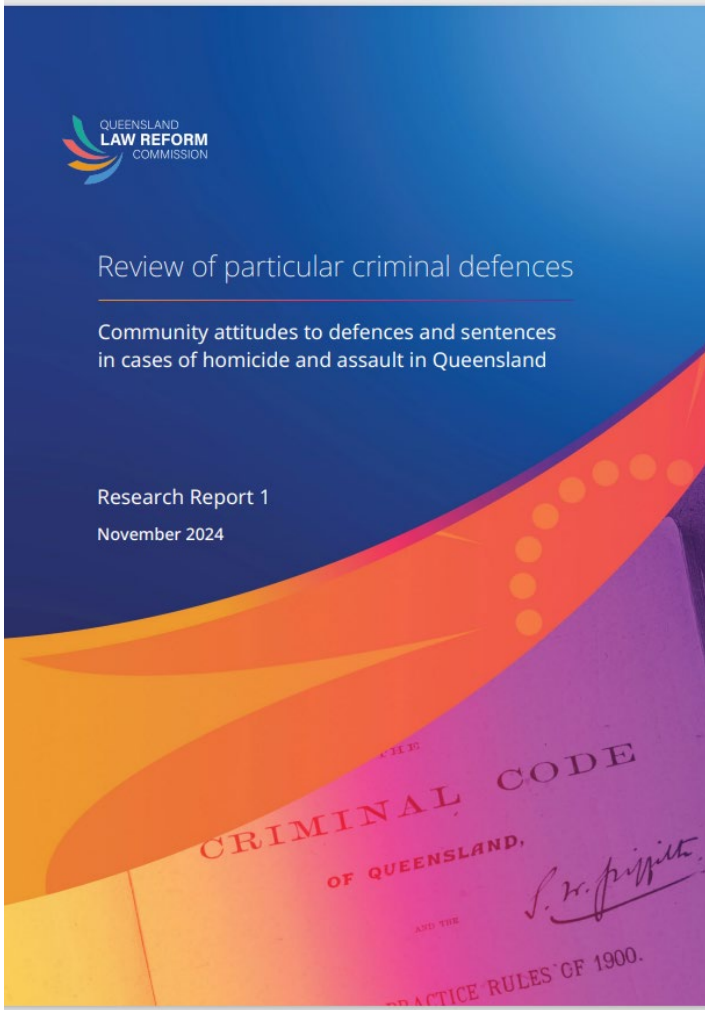
Vince assaulted him if you ask me. Why should he use abusive words on him because they aren't on the same team

(Female, 35-44 yrs, Aboriginal, survey participant)

Indigenous Status and Culpability (Part 2)

- Limited evidence suggested that the nature of victim-blaming attitudes differed significantly between Indigenous and non-Indigenous participants.
- Indigenous participants were less likely to hold minimising attitudes toward DFV but showed similar attitudes toward non-physical abuse.
- These findings highlight the importance of considering cultural and systemic contexts when evaluating community attitudes towards defences and culpability.

Access the report here....



Thank you

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