PO Box 504
Mt Gravatt 4122
info@redrosefoundation.com.au
Ph: 07) 3065 9043
ABN:29616801579
www.redrosefoundation.com.au

9 May 2025

Queensland Law Reform Commission
PO Box 13312
George Street Post Shop
Brisbane QLD 4003

By online submission: https://www.qlrc.qld.gov.au/reviews/review-of-particular-criminaldefences/submission

---

The Red Rose Foundation provides this submission

In Memory of Sandy

who was brutally killed by her husband on 1 March 2016 at their matrimonial home at Kippa Ring on the Redcliffe Peninsula. Sandy's story helped bring forth a review into whether the partial defence of provocation should be amended or repealed.

Dear Queensland Law Reform Commission,

RE: Equality and Integrity: Reforming Criminal Defences in Queensland

Thank you for the opportunity to provide the knowledge and experience of The Red Rose Foundation to this critical review of criminal defences in Queensland.

We recognise and are grateful for the Queensland Law Reform Commission's significant background work, research and consultation in relation to the proposed amendments to the law, grounded in the key principles of protecting human rights and better reflecting and considering circumstances involving domestic and family violence, including coercive control.

We also acknowledge the work of the Women's Safety and Justice Taskforce, professionals across the domestic violence and sexual assault sectors and survivors of violence against women who have advocated in this space for many years.

Organisational Details

The Red Rose Foundation Australia is a national not for profit organisation focused on improving responses to high risk, high harm domestic and family violence and preventing fatal domestic abuse. We seek to address systemic, cross-sectoral gaps through training, education, awareness raising and research as well as the provision of long-term support to women who have experienced non-lethal strangulation. Our service is unique to Australia, and we know of no other such service worldwide.

Our Board of Directors includes sector management and legal professionals, violence prevention consultants and researchers who have vast experience and expertise in domestic, family and sexual violence. Our direct client service is undertaken by a small team of highly qualified counsellors. We are supported by our Patron, Her Excellency the Honourable Dr Jeannette Young AC PSM, Governor of Queensland and our First Nations Advisory Committee, who provide direction and guidance on the issues that matter most to First Nations women experiencing domestic and family violence.

The Red Rose Foundation has partnered with the Training Institute for Strangulation Prevention USA, which is their first partnership outside the USA. Through our international partnership we have joined the International Alliance of Strangulation Educators and Researchers which includes Dr Jacquelyn Campbell who has led the way with research and education on high-risk domestic violence. The Red Rose Foundation has also partnered with Central Queensland University to provide groundbreaking research on the health impact and long terms consequences for victims of non-lethal strangulation.

The Red Rose Foundation maintains strategic partnerships with a range of government agencies, non-government organisations and academic institutions including domestic, family and sexual violence counselling and crisis services, refuges, family support, and child protection agencies. We adopt an intersectional, trauma-informed and feminist approach to all aspects of our work, which is informed by the voices of people with a lived experience of high risk, high harm domestic and family violence.

The following submission draws upon the knowledge and experience of the Red Rose Foundation supporting victim-survivors of Domestic and Family Violence (DFV) and in our work to prevent domestic abuse related deaths. Our response includes insights gained from our work with the Australian Domestic and Family Violence Death Review Network and the Queensland Domestic and Family Violence Death Review and Advisory Board, complemented by learnings from the Queensland Law Reform Commission's Background Papers, the research report and the most recent consultation paper "Equality and integrity: Reforming criminal defences in Queensland released February 20, 2025[1].

[1] https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0019/821143/20250219-qlrc-cdr-cp-final.pdf

Proposal 1

Repeal self-defence provisions (ss 271, 272, 273) and replace with a single test requiring:

(a) Belief conduct was necessary for self-defence/defence of another/preventing unlawful deprivation of liberty.
(b) Conduct was a reasonable response in the circumstances as perceived.
(c) Self-defence for murder only if belief in necessity to defend against death/serious injury.
(d) Exclude self-defence if responding to lawful conduct.

Question 1: What are your views on Proposal 1?

The Red Rose Foundation broadly supports Proposal 1 to repeal sections 271, 272, and 273 of the Criminal Code and replace them with a simplified self-defence provision but recommends amendments to help ensure the accessibility for domestic abuse victim-survivors, including:

Removing the imminence requirement: Allowing self-defence claims based on non-immediate threats, recognising the "slow burn" nature of coercive control and that survivors often act pre-emptively due to entrenched fear of inevitable harm. It also helps recognise the dynamics of social entrapment and systemic barriers experienced by victim-survivors of DFV.

Explicitly permitting disproportionate force: Aligning with reforms in Victoria where legislation acknowledges that survivors' responses may exceed the immediacy or scale of the threat due to power imbalances and cumulative trauma.

Integrating social context evidence: Requiring courts to consider systemic failures (e.g., inadequate police responses, lack of shelters) and intersectional barriers (e.g., racism, economic dependency) that limit survivors' options.

The above recommended amendments aim to help remove the outdated distinction between provoked and unprovoked assaults, which disproportionately disadvantage DFV victim-survivors and assists in consideration of the reasonableness of the defendant's actions in their perceived circumstances, including the cumulative impact of coercive control and intimate partner sexual violence.

Question 2: 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?

(a) Defining "Serious Injury"

Through our work with victim-survivors of DFV, and the research and data shared with the sector from member organisations of QSAN, The Red Rose Foundation recommends defining "serious injury" to explicitly include sexual violence, mirroring reforms in Victoria. The wording of this amendment should prevent misuse (e.g., homophobic violence – such as a sexual advance from one male to another male being a defence to murder) by clarifying that sexual advances alone do not constitute "serious injury".

This helps ensure:

Recognition of sexual assault as a life-threatening act justifying defensive force.

Alignment with the Domestic and Family Violence Act 2012, which acknowledges sexual violence as a form of DFV.

Question Q2(b): Non-Exhaustive Factors for Assessing Reasonableness

The Red Rose Foundation supports a non-exhaustive list of factors developed in consultation with DFV experts, including:

History of DFV/IPSV: Patterns of coercive control, prior threats, or sexual violence.

Power imbalances: Size, age, gender, and physical capabilities of the parties.

Cumulative harm: Psychological impact of prolonged abuse on threat perception.

Social entrapment: Barriers to seeking help (e.g., systemic failures, economic dependence).

We recommend excluding references to "imminence" or the "duration of the relationship," which risk reintroducing concepts of imminent danger and subjective timeframes over which violence will escalate and an assumed linear trajectory[2], which as noted in our response to question 1, weaken the consideration of coercive control in cases of self-defence.

[2] As noted in UK research by Monckton-Smith (2019), Intimate Partner Femicide: using Foucauldian analysis to track an eight stage relationship progression to homicide, which led to the development of the Homicide Timeline.

Proposal 2

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.

Question 3: What are your views on Proposal 2?

The Red Rose Foundation supports Proposal 2, which integrates domestic and family violence (DFV) dynamics into self-defence assessments. This reform aligns with other DFV sector leaders' recommendations and addresses systemic barriers faced by DFV victim-survivors by:

> Recognising non-imminent threats: Allowing self-defence claims in response to cumulative harm or coercive control, even where immediate danger is not easily identifiable.
>
> Permitting disproportionate force: Acknowledging that DFV victim-survivors may use greater force due to power imbalances and entrapment, including in cases where the victim-survivor has experienced significant harm previously, such as non-fatal strangulation.

In line with the Red Rose Foundation's experience from working with victim-survivors of DFV, proposal 2 ensures courts consider the history of abuse (e.g., coercive control, intimate partner sexual violence, known reports of DFV) when assessing the reasonableness of a defendant's actions. This aligns with reforms in Victoria and New South Wales, where DFV expert evidence is mandatory to counter victim-blaming myths.

The Red Rose Foundation also recommends that evidence be sought from friends, family and wider community networks for consideration, as a significant number of victim-survivors do not reach out to statutory services for support and are therefore not known to the system and have no formal records relating to DFV disclosures or help-seeking[3].

Further, this proposal considers the effects of Social Entrapment, reflecting Queensland's shift toward a holistic understanding of DFV, in line with the

[3] Families from CARM migrant backgrounds experience a range of compounding structural and interpersonal factors that limit help-seeking and exacerbate the impacts of DFV (Block et al., 2022; Hourani et al., 2021; Segrave, 2018; Vasil, 2023; Vaughan et al., 2016)

Domestic and Family Violence Act 2012, and addresses the reality that victim-survivors may act pre-emptively to escape lethal harm.

To prevent misuse, the Red Rose Foundation recommends:

> Guidelines for identifying the "person most in need of protection" (aligned with section 22A of the Domestic and Family Violence Act).
>
> Mandatory DFV expert evidence to contextualise the victim-survivor's behaviour and help avoid misidentification of primary aggressors, particularly when considering the effects of coercive control on a victim-survivor of DFV.

Proposal 3:

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.

Question 4: What are your views on Proposal 3?

The Red Rose Foundation strongly opposes Proposal 3, which excludes self-defence claims where self-induced intoxication substantially affects the defendant's belief in the necessity/reasonableness of their actions. This risks disproportionately harm to DFV victim-survivors who may self-medicate with alcohol or drugs due to trauma or as a coping mechanism.

Further, intoxication may be weaponised to discredit victim-defendants, reinforcing victim-blaming myths.

The Red Rose Foundation recommends retaining judicial discretion to consider intoxication alongside DFV history and expert evidence when assessing reasonableness.

Question 5: 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?

The Red Rose Foundation's position on the defence of compulsion (resisting unlawful violence) **should not be repealed if Proposal 1 (simplified self-defence) is adopted.**

Our position is based on compulsion applying to resisting "actual violence" as defined in Section 31 of the Queensland Criminal Code Act[4], while self-defence under Proposal 1 covers *perceived threats*. Retaining compulsion ensures clarity for non-confrontational DFV scenarios (e.g., pre-emptive acts) and retains existing protections for victims of non-imminent threats.

[4] Queensland Supreme and District Court Criminal Directions Benchbook 86 Compulsion 31(1)(c) – March 2025.

We recommend that s31 (1)(c) is retained but that its interaction with reformed self-defence provisions is clarified.

Question 6: 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?

The Red Rose Foundation recommends that s 31 (1)(d) is retained but that jury directions are updated to align with DFV dynamics, and that all judges are required to undertake DFV training in tandem with or prior to these legislative changes, including the new law relating to coercive control.

Based on our knowledge and experience of working with victim-survivors of DFV over many years, both in Queensland and nationally, we believe that changes to duress (responding to threats of harm/detriment) are not required, but exclusions in s 31(2) (e.g., unlawful associations) should remain. A key consideration in relation to this clause is to ensure that the scope of the defence of duress is appropriate and applies to threats beyond physical violence (e.g., property damage, economic harm, coercive control), which self-defence under Proposal 1 does not cover. Retaining the defence of duress also helps ensure victim-survivors coerced into non-violent offences (e.g., theft) can access a defence and their case be considered through a DFV lens.

Proposal 4:

The partial defence of killing for preservation in an abusive domestic relationship in section 304B of the Criminal Code should be repealed.

Question 7: What are your views on Proposal 4?

The Red Rose Foundation opposes repealing section 304B of the Criminal Code, which provides a partial defence for victims of abusive domestic relationships who kill their abuser. This position aligns with wider DFV sector recommendations to retain safeguards for DFV victim-survivors while broader self-defence reforms are implemented.

Our position is based on section 304B acknowledging the unique dynamics of DFV, including coercive control and social entrapment, which may not always meet the threshold for full self-defence under Proposal 1. Retaining section 304B ensures victim-survivors have access to some legal protection even if their actions are deemed disproportionate or pre-emptive. Until reforms in Proposals 1–2 are fully operationalised and tested, repealing section 304B risks leaving victim-survivors without adequate protections in law, particularly where courts misapply the new self-defence provisions or do not adequately understand the effects and dynamics of coercive control.

We therefore, recommend retaining section 304B until the impact of self-defence reforms (Proposals 1–2) can be evaluated. If the revised self-defence framework proves effective in addressing DFV contexts, we recommend revisiting the concept of repealing section 394B at a later stage, involving consultation with the DFV sector and victim-survivors of DFV at that time.

Proposal 5:

The partial defence of killing on provocation in section 304 of the Criminal Code should be repealed.

Question 8: What are your views on Proposal 4?

The Red Rose Foundation supports repealing the partial defence of killing on provocation in section 304 of the Criminal Code. This reform aligns with contemporary understandings of DFV and addresses systemic risks of misuse by perpetrators.

Our key justifications for this position include:

Gendered Misuse: Section 304 has historically allowed perpetrators of DFV to reduce murder charges to manslaughter by claiming they were provoked by a partner's actions (e.g., ending the relationship or perceived infidelity[56]). This reinforces harmful stereotypes that excuse male violence rooted in jealousy or entitlement.

Victim-Blaming: The defence risks shifting culpability to victims by framing their conduct as justification for lethal retaliation. For example, in R v Peniamina (2020), a man who killed his wife after she sought to leave the relationship successfully argued provocation, resulting in a manslaughter conviction.

Community Attitudes: Queensland's community attitudes survey[7] undertaken by the QLRC, found strong opposition to provocation defences in DFV contexts, particularly where violence is motivated by anger, control, or jealousy.

Alignment with Reforms: Repealing s 304 aligns with reforms in Victoria, Tasmania, and New Zealand, where provocation has been abolished to prevent excusing gender-based violence. It also complements proposed changes to self-defence (Proposals 1–2), which better address DFV victim-survivors' experiences of cumulative harm and coercive control.

[5] The Hon Justice Peter Davis (2022): A paper delivered to the Queensland Bar Association Annual Conference.
[6] QLRC (2008), *A review of the excuse of accident and the defence of provocation*, page 225.
[7] Queensland Law Reform Commission (2024): Community-Attitudes-Survey-Research-Report.

Alternatives providing a defence of reduced culpability could include sentencing discretion under manslaughter (if mandatory life imprisonment is abolished) and trauma-informed jury directions can be used address cases where culpability is genuinely diminished, without excusing reactive violence, which is an option explored by the Centre for Women's Justice in the UK in relation to making self-defence accessible to victims of DFV who use force against their abuser[8].

Question 9: 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?

The Red Rose Foundation opposes introducing a trauma-based partial defence for domestic violence (DFV) victim-survivors who kill their abusers.

This position aligns with wider sector -recommendations, and the risks identified within the QLRC consultation materials. The reasons for our opposition are to the introduction of a new trauma-based partial defence to murder that applies when a victim-survivor of domestic violence kills their abuser include:

> Misuse by Perpetrators: A trauma-based defence could be exploited by primary aggressors who falsely claim victimhood, particularly in cases where misidentification occurs. For example, perpetrators might weaponise trauma narratives to justify retaliatory violence or frame themselves as the "person most in need of protection".
>
> Undermining Self-Defence Claims: Such a defence risks diverting attention from legitimate self-defence arguments, which should be the primary avenue for DFV victim-survivors. It may pressure survivors to plead guilty to manslaughter rather than pursue full acquittal.
>
> Medicalisation of DFV: Framing trauma as a mental health issue risks pathologising victim-survivors' responses to abuse, rather than recognising their actions as reasonable in the context of social or systemic entrapment and coercive control.

Instead of a trauma-based defence, the Red Rose Foundation recommends the consideration of:

> Reforming Self-Defence Laws by integrating DFV context into self-defence assessments, allowing consideration of non-imminent threats and disproportionate force where justified by a history of abuse, and removing requirements for a "triggering assault" and focus instead on the cumulative harm of coercive control.

[8] CWJ (2023) Making self-defence accessible to victims of domestic abuse who use force against their abuser: Learning from reforms in Canada, New Zealand and Australia.

Procedural Safeguards through mandating DFV expert evidence to contextualise behaviour and counter victim-blaming myths.

Mandatory training for all judges on DFV, including coercive control, and developing and adopting guidelines in tandem with or prior to these legislative changes, in consultation with the DFV sector, to identify the "person most in need of protection", aligned with Domestic and Family Violence Act 2012 s 22A.

The inclusion of an Excessive Self-Defence Partial Defence through the Introduction of a limited partial defence of excessive self-defence for DFV victim-survivors, coupled with judicial directions on DFV dynamics.

If a Trauma-Based Defence proceeds against the recommendations of multiple professionals within the DFV sector, we recommend the application of strict safeguards, such as:

Limiting eligibility to defendants identified as the primary victim through section 22A criteria.

A requirement to corroborate evidence of DFV history (e.g., protection orders, police reports, witness testimony).

Excluding perpetrators with a history of coercive control or prior DFV offences.

Including witness testimonies of friends, family and community in the body of evidence considered, giving these testimonies and reports, equal status to the records of statutory agencies.

Question 10: 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?

The Red Rose Foundation supports introducing a partial defence of excessive self-defence limited to domestic and family violence (DFV) contexts where the person most in need of protection kills their abuser. This aligns with the wider DFV sectors recommendations and addresses systemic barriers faced by DFV victim-survivors.

Our key recommendations in relation to this amendment and its application are as follows:

Limited to DFV Contexts:
The defence should apply only where the defendant is identified as the primary victim under the Domestic and Family Violence Act 2012 (s 22A). This helps prevent misuse by perpetrators and ensures the defence aligns with the gendered dynamics of coercive control.

That the defence requires corroborating evidence of DFV history (e.g., protection orders, police reports, witness testimony) to confirm the defendant's status as the "person most in need of protection".

Elements of the Defence:
The defendant must have believed their conduct was necessary for self-defence, even if the force used was considered objectively unreasonable.

Courts must consider the cumulative impact of DFV, including coercive control and social entrapment, when assessing reasonableness.

Safeguards & Training:
Mandate DFV expert evidence to contextualise the defendant's actions and counter victim-blaming myths.

Exclude perpetrators with a history of DFV offenses or coercive control from accessing the defence.

Mandatory training for all judges on DFV, including coercive control, and developing and adopting guidelines in tandem with or prior to these legislative changes, in consultation with the DFV sector.

A broader application risks misuse by perpetrators in non-DFV contexts (e.g., bar fights, retaliatory violence). Community attitudes, as reflected in the QLRC's survey, support reduced culpability for DFV victim-survivors but oppose excusing disproportionate force in other scenarios.

This proposal complements proposed changes to self-defence as provided in proposals 1–2 above, which integrate DFV dynamics into assessments of reasonableness. Retaining a partial defence ensures victim-survivors have a legal pathway if their actions are deemed excessive due to trauma or social or systemic entrapment.

Question 11: 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

The Red Rose Foundation supports option (d), to replace the mandatory life sentence for murder with a maximum life sentence. This option addresses systemic barriers faced by domestic and family violence (DFV) victim-survivors who kill their abusers.

Our position is shaped by the following considerations:

Disproportionate Impact: Mandatory life sentences disproportionately harm DFV victim-survivors, who may plead guilty to manslaughter to avoid the risk of a murder conviction despite having valid self-defence claims. It will further reduce pressure on DFV victim-survivors to accept plea deals for manslaughter.

Judicial Discretion: A maximum life sentence allows courts an element of flexibility to consider DFV context, coercive control, and the cumulative harm experienced by victim-survivors when sentencing. This would enable courts to account for DFV dynamics, such as entrapment and trauma, when assessing culpability.

Community Attitudes: Queensland's community attitudes survey found strong opposition to mandatory life sentences, with support for sentencing to reflect culpability and circumstances.

However, we note that retaining mandatory life sentences risks the continuation of perpetuating systemic inequities, particularly for Aboriginal and Torres Strait Islander women victim-survivors of DFV, who face higher rates of misidentification as perpetrators, institutional racism and barriers to accessing defences[9].

Question 12: 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?

[9] Buxton-Namisnyk (2021) Domestic Violence Policing of First Nations Women in Australia: 'Settler' Frameworks, Consequential Harms and the Promise of Meaningful Self Determination. British Journal of Criminology.

The Red Rose Foundation supports option (d), replacing the current minimum non-parole periods for murder with an entirely discretionary approach. Our recommendation aligns with the wider DFV sector and addresses systemic inequities faced by DFV victim-survivors and Aboriginal and Torres Strait Islander peoples.

Our position has been shaped by the following considerations:

> Judicial Discretion: A discretionary approach allows courts to consider DFV dynamics, coercive control, and the cumulative harm experienced by victim-survivors when setting non-parole periods, and the opportunity for experts in the DFV support sector to be a witness in a case.
>
> Systemic Inequities: Mandatory minimums disproportionately harm DFV victim-survivors (who may plead guilty to manslaughter to avoid life sentences) and Aboriginal and Torres Strait Islander peoples, who face higher rates of misidentification as perpetrators.
>
> Guilty Plea Incentives: A discretionary framework may encourage guilty pleas, reducing trial delays and trauma for victims' families.
>
> Community Attitudes: Queensland's community attitudes survey found strong support for sentencing to reflect culpability and circumstances, rather than rigid minimums.

The Red Rose Foundation also strongly supports recommendations to abolish mandatory minimums, as they:

- Pressure DFV victim-survivors into accepting disadvantageous plea deals.
- Fail to account for the gendered and intersectional impacts of DFV.

If a discretionary approach is introduced, safeguards should ensure consistency, such as developing and circulating guidelines for courts to weigh DFV history, cooperation with authorities, and guilty pleas; and training for judicial officers on DFV dynamics and cultural competency for Aboriginal and Torres Strait Islander cases, with regular refresher training as part of their mandatory training requirements.

Question 13: Do you have a preferred approach when combining reforms to the head sentence and non-parole period?

The Red Rose Foundation supports replacing the mandatory life sentence with a maximum life sentence (head sentence) and adopting an entirely discretionary approach to non-parole periods.

Our view is that this option:

Allows judicial discretion to consider DFV context, coercive control, and systemic barriers faced by victim-survivors when setting both the head sentence and parole eligibility.

Helps address systemic inequities, particularly for Aboriginal and Torres Strait Islander women, who face higher rates of misidentification as perpetrators and barriers to accessing defences.

The key justifications underpinning our position are as follows:

Individualised Sentencing: A maximum life sentence enables courts to weigh factors like cumulative harm, trauma, and social entrapment when determining culpability, and discretionary non-parole periods allow flexibility to account for cooperation with authorities, guilty pleas, and rehabilitation efforts.

Community Attitudes: Queensland's community attitudes survey found strong opposition to mandatory penalties, with support for sentences reflecting the defendant's circumstances and the dynamics experienced by the victim-survivor of DFV.

Alignment with Procedural Reforms: This approach complements proposed changes to self-defence laws (as provided under Proposals 1–2) and expert evidence requirements, ensuring DFV victim-survivors are not pressured into disadvantageous plea deals.

To safeguard the appropriate implementation of replacing the mandatory life sentence with a maximum life sentence (head sentence) and adopting an entirely discretionary approach to non-parole periods, we recommend the following actions are also undertaken:

Training Guidelines for Courts: Mandatory training for all judges on DFV, including coercive control, and developing and adopting guidelines for assessing DFV history, power imbalances, and social entrapment, informed by consultations with DFV experts, rolled out in tandem with or prior to these legislative changes.

Cultural Competency Training: Mandatory training to ensure judicial officers understand intersectional challenges faced by Aboriginal and Torres Strait Islander communities, again, rolled out in tandem with or prior to these legislative changes and informed by consultations with experts from the community.

Proposal 6:

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 14: What are your views on Proposal 6?

The Red Rose Foundation supports amending section 269 of the Criminal Code to exclude domestic violence (DV) offences from the defence of provocation. This reform aligns with the need to prioritise victim-survivor safety and prevent perpetrators from exploiting the defence to excuse DFV-related assaults.

Our position has been developed with the following considerations:

> Gendered Misuse: 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.
>
> Community Attitudes: Queensland's community attitudes survey found strong opposition to provocation defences in DFV contexts, particularly where violence is motivated by anger or control.
>
> Alignment with DFV Definitions: Excluding DV offences (as defined in the Criminal Code s1) ensures the defence cannot be used to justify assaults occurring within coercive or controlling relationships, which are already recognised as systemic and cumulative harms under the Domestic and Family Violence Act 2012.

As part of the amendment work, we recommend retaining the element of limited use: retaining provocation for non-DFV contexts (e.g., public altercations) and emphasising strict safeguards to prevent misuse in cases involving racial or homophobic violence. We also recommend pairing this amendment with the reforms to self-defence in Proposals 1 and 2 and procedural measures (e.g., mandatory DFV expert evidence) to ensure victim-survivors' actions are appropriately contextualised.

Proposal 7:

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 15: What are your views on Proposal 7?

The Red Rose Foundation supports amending section 270 of the Criminal Code to limit the defence of prevention of repetition of insult to offences where assault is an element, and excluding its application to DFV offences. This reform aligns with the need to prioritise victim-survivor safety and prevent DFV perpetrators from exploiting the defence to excuse coercive control or retaliatory violence.

Our concern in relation to section 270 of the Criminal Code is its misuse in DFV contexts. In its current form, it allows for the application of force to prevent the repetition of provocative acts/insults, even in non-confrontational scenarios which risks enabling DFV perpetrators to excuse controlling or retaliatory violence under the guise of "preventing insults," particularly where coercive control exists.

Our position reflects those of wider Queensland's community attitudes survey which found a strong opposition to defences that excuse violence in DFV contexts, particularly where the defendant's conduct is motivated by anger, jealousy, or control.

We support retaining the defence for non-DFV contexts (e.g., public altercations) but recommend strict safeguards to prevent misuse in cases involving racial or homophobic violence.

As part of the amendment work, this amendment should be paired with reforms to self-defence as discussed under Proposals 1 and 2 above, and procedural measures (e.g., mandatory DFV expert evidence) to ensure victim-survivors' actions are contextualised appropriately.

Question 16: What reforms are needed to improve DFV victim-survivors' access to defences?

The Red Rose Foundation recommends the following reforms to address systemic barriers faced by domestic and family violence (DFV) victim-survivors in accessing defences:

1. Mandatory DFV Expert Evidence

Contextualising behaviour: Require courts to consider DFV expert testimony to explain coercive control dynamics, cumulative harm, and social entrapment, countering victim-blaming myths.

Guidelines for experts: Develop standards for expert evidence to ensure consistency and relevance to DFV contexts, including intersectional experiences of Aboriginal and Torres Strait Islander women.

2. Specialist Multidisciplinary Legal Units

Prosecution/defence teams: Establish specialist units with DFV-trained lawyers, social workers, and cultural liaison officers to ensure trauma-informed representation and evidence gathering.

Early case screening: Implement protocols to identify DFV victim-defendants during police investigations and prosecutions to prevent misidentification.

3. Trauma-Informed Police Interviews

Protective measures: Prohibit aggressive questioning tactics and mandate breaks during interviews for DFV victim-defendants.

Advocacy support: Guaranteed access to DFV and culturally competent specialists during police interviews to assist with disclosure of abuse history.

4. Improved Bail Access

Presumption of bail: Exempt DFV victim-defendants identified as the "person most in need of protection" from strict "show cause" requirements.

Risk assessments: Require courts to consider DFV history and self-defence claims when assessing bail eligibility.

5. Jury Directions and Evidence Reforms

Social entrapment framework: Direct juries to consider systemic failures (e.g., lack of police intervention or support from other statutory services in relation to the DFV) when assessing reasonableness of actions.

Exclude victim-blaming evidence: Limit admissibility of prior sexual history or "provocative" behaviour unrelated to the alleged offence.

6. Cultural Competency and Intersectionality

Training for legal professionals: Mandating DFV and cultural awareness training for judges, lawyers, and police, particularly for cases involving Aboriginal and Torres Strait Islander victim-survivors.

Community-led solutions: Partner with Indigenous organisations to design culturally safe legal processes.

7. Procedural Safeguards

Early resolution: Encouraging prosecutorial discretion to accept manslaughter pleas where self-defence is arguable but risky.

Post-conviction reviews: Establishing a mechanism to re-examine cases where DFV context was inadequately presented at trial.

Question 17: What reforms are needed for:

Early identification of self-defence.
Early resolution of prosecutions?

The Red Rose Foundation recommends the following reforms to improve early identification of self-defence claims in domestic and family violence (DFV) contexts:

> Mandatory DFV Screening: Implement protocols for police to screen for DFV history during investigations, using criteria from the Domestic and Family Violence Act 2012 (s 22A) to identify the "person most in need of protection".
>
> Specialist DFV Units: Establish multidisciplinary teams (police, prosecutors, DFV experts) to assess self-defence claims early, ensuring trauma-informed processes and reducing misidentification risks.
>
> Training for Police and Lawyers: Mandate DFV and cultural competency training for officers and legal professionals to recognise coercive control dynamics and cumulative harm, and indicators of non-fatal strangulation.

Question 18: What reforms are needed to facilitate DFV evidence in trials?

Based on our experience of working with DFV victim-survivors, we recommend the following reforms to improve the admission and effectiveness of domestic and family violence (DFV) evidence in trials:

- **Mandatory Use of DFV Expert Evidence**: Courts should routinely admit expert evidence on the nature, dynamics, and impact of DFV-including coercive control and intimate partner sexual violence-so that juries and judges can effectively contextualise the accused's actions and beliefs. This reform will help dispel myths and stereotypes, counter victim-blaming, and ensure that juries understand why victim-survivors may act in ways that appear irrational without the context of prolonged abuse.

- **Holistic and Contextual Approach to Evidence**: The court should adopt a holistic approach, considering the full history and pattern of DFV, not just isolated incidents, as required by contemporary definitions in the Domestic and Family Violence Act 2012. For example, in Victoria there is the *Jury Directions Act 2015* (s60) which requires judges to give specific directions to juries about the nature and impact of family violence, including that it may consist of a pattern of behaviour and that people may react differently to such violence. This helps juries understand why a victim-survivor may not leave or report abuse or may use force in a non-confrontational situation.

- **Legislative and Procedural Amendments**: Consider amending the Evidence Act and relevant criminal procedure laws to explicitly allow for the broad admission of DFV evidence, including social context and expert testimony, as has been done in Victoria, Western Australia, and South Australia. Requiring judges to provide jury directions on the nature and dynamics of DFV, including the realities of coercive control, social entrapment, and why victim-survivors may not leave, or report abuse immediately. Recognising DFV victim-survivors as special witnesses, providing them with protections during testimony and police interviews. For example, the UK allows for the admission of "bad character" evidence in criminal proceedings if certain gateways are met (e.g., relevance to an important matter in issue, explanatory value, or to correct a false impression). This can include evidence of the abusive partner's history of violence or coercive control.

- **Specialist Legal Practice**: For example, offering specialist multidisciplinary units for both prosecution and defence, including DFV and sexual violence experts, to gather and present evidence effectively and sensitively, and mandatory DFV and trauma-informed training for all criminal lawyers, prosecutors, and judges to improve understanding and application of DFV evidence.

- **Limiting Victim-Blaming and Character Evidence**: Limiting the admissibility of evidence that blames the victim or focuses on their character, prior sexual history, or "so-called provocative" behaviour unrelated to the offence. Developing clear guidelines for courts on what DFV evidence is relevant and how it should be weighed in the context of self-defence and other defences.

Question 19: What reforms are needed to improve access to justice for Aboriginal and Torres Strait Islander peoples?

We are pleased to know that specialist by-and-for Aboriginal and Torres Strait Islander peoples organisations and individuals have provided a submission to this review process.

The Red Rose Foundation recognises their unique knowledge and experience, and offers our ongoing support to affect positive change.

Question 20: Are reforms needed for majority verdicts in murder/manslaughter cases?

The Red Rose Foundation's position is that no reforms are needed to majority verdicts in murder and manslaughter cases in Queensland at this time. The current law requires unanimous jury verdicts for murder trials, as set out in section 59 of the Jury Act 1995 (Qld), while majority verdicts (11 out of 12 jurors) are permitted for manslaughter if the jury cannot agree unanimously on murder and proceeds to consider manslaughter.

This approach is consistent with the seriousness of murder charges, which carry a mandatory life sentence, and reflects the principle that a conviction for such a grave offence should only occur if all jurors are convinced beyond reasonable doubt. There is no strong evidence or community demand supporting a change to majority verdicts for murder, and Queensland's system is designed to ensure the highest standard of proof and community confidence in the justice system. Other Australian jurisdictions require either unanimous or a majority (10/12) after up to 6 hours.

The Queensland Law Reform Commission and community consultations have not identified a compelling need for reform in this area, noting that the risk of a single "rogue" juror is low and that the current system minimises the risk of miscarriages of justice, The Red Rose Foundation support this position.

Question 21: Do you support:

(a) Repealing the domestic discipline defence (s 280)?
(b) Limiting s 280 (specify how)?
(c) Another approach?

The Red Rose Foundation supports repealing section 280 of the Criminal Code-the domestic discipline defence. This position is grounded in the following evidence and recommendations from the provided materials:

Children's Rights and Protection: Repeal would give children the same legal protection from assault as adults, aligning with contemporary human rights standards and child protection principles.

Inconsistency and Harm: The current defence is inconsistent with other Queensland laws and policies that prohibit corporal punishment in schools, child care, and youth detention. Research demonstrates that corporal punishment is ineffective, can cause long-term harm, and increases the risk of physical abuse.

Excusing Serious Violence: The defence has been used to excuse serious violence against children, including cases where there is a history of domestic and family violence within the family unit.

Community Standards: Community attitudes support criminal consequences where force is significant or causes injury, and do not support corporal punishment as a justified response to child behaviour.

We have considered the submissions provided by National Children's Commissioner, Anne Hollands[10], the former Children's Commissioner for Wales,

[10] https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0011/825833/7.-anne-hollonds-national-childrens-commissioner.pdf

Professor Sally Holland PhD[11], the Parenting and Family Support Centre at the University of Queensland[12], Haslam, D & Joint Consortium[13], Queensland College of Teachers[14] and the Queensland Teachers' Union[15], in the development of our response, and thank the QLRC and the organisations concerned for making their position and reasoning publicly available.

Thank you for your consideration of our submission and please advise if we can assist further.

Kind Regards,

[redacted]

Lucy Lord
CEO Red Rose Foundation

[11] https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0010/825832/6.-sally-holland.pdf
[12] https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0003/825834/8.-parenting-and-family-support-centre-the-university-of-queensland.pdf
[13] https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0006/825837/19.-divna-haslam-and-joint-consortium.pdf
[14] https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0007/825838/21.-queensland-college-of-teachers.pdf
[15] https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0007/825838/21.-queensland-college-of-teachers.pdf