

## Terms of Reference

### A review of the defences and excuses in the Criminal Code

#### Background

The Criminal Code provides for a range of defences and excuses. Some generally apply to any offence against the statute law of Queensland, such as insanity and compulsion. Others are limited to particular types of offences, such as self-defence, provocation, and killing for preservation in an abusive relationship.

In March 2021, the Palaszczuk Government established the independent Women's Safety and Justice Taskforce (the Taskforce), chaired by the Honourable Margaret McMurdo AC. The first report released by the Taskforce in December 2021, was titled *Hear her voice: Report one, Addressing coercive control and domestic and family violence in Queensland* (the report).

The Taskforce examined a range of defences and excuses in the context of coercive control and domestic and family violence (DFV) in Queensland. The Taskforce recommended, at recommendation 71, that the Attorney-General refer the defences and excuses in the Criminal Code, for independent review. The recommendation states that the review should particularly consider the defences of provocation, self-defence, and killing for preservation in an abusive domestic relationship.

In making this recommendation, the Taskforce highlighted a number of issues with respect to the current operation of specific defences and excuses. For example, the Taskforce identified that the partial defence of killing for preservation in an abusive relationship had not been used successfully before a jury in any reported case. The Taskforce was also concerned that the partial defence of provocation 'is still being used by perpetrators of domestic violence to reduce their culpability at law for killing their partners in a jealous rage', citing the High Court decision in *Peniamina v R* (2020) 385 ALR 367. The Taskforce considered that the defence of provocation should be reviewed in conjunction with a review of the mandatory sentence of life imprisonment for murder, the existence of which is consistently used to justify retaining the defence.

The Queensland Government in principle supported this recommendation in its response to the report released on 10 May 2022.

As the Criminal Code defences and excuses apply to a very broad range of offending and offenders, the Taskforce acknowledged that any reform to the defences and excuses and the mandatory penalty of life imprisonment for murder will affect cases far beyond DFV.

#### Terms of Reference

1. I, YVETTE MAREE D'ATH, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence (Attorney-General), refer to the Queensland Law Reform Commission (the Commission) pursuant to section 10 of the *Law Reform Commission Act 1968* for review and investigation, the operation of defences and excuses in the Criminal Code.

## Scope

2. The Commission is asked to examine the following defences and excuses in the Criminal Code:
  - (a) the defence of self-defence (sections 271 and 272), and specifically:
    - i. whether it should be clarified and simplified or expanded to cover circumstances when a victim of DFV (including of coercive control) acts reasonably to protect themselves from a perpetrator; and
    - ii. whether the defence should distinguish between provoked and unprovoked assaults and whether it should be limited to circumstances of assault against a person.
  - (b) the excuse of provocation for an offence involving an assault (sections 268 and 269) and the partial defence to murder of provocation (section 304), and specifically whether either or both should be repealed or amended;
  - (c) the partial defence of killing for preservation in an abusive domestic relationship (section 304B); and
  - (d) the defence of domestic discipline (section 280).
3. The Commission is also asked to consider the mandatory penalty of life imprisonment for the offence of murder, its impact on the operation of those defences and excuses and whether it should be removed. The Commission is invited to collaborate with the Queensland Sentencing Advisory Council on this aspect of the review.
4. The Commission is not asked to examine or have regard to the age of criminal responsibility (section 29) or double jeopardy (section 17) as part of this referral.
5. The Commission is asked to make recommendations on:
  - (a) whether there is a need for reform of the law, practices or procedures relating to those defence or excuses;
  - (b) whether the mandatory penalty of life imprisonment for the offence of murder should be removed; and
  - (c) any other matters the Commission considers relevant having regard to the issues relating to the referral.
6. If the Commission recommends reform of the relevant Criminal Code provisions, or other legislative reforms, the Commission is asked to prepare draft legislative provisions based on its recommendations, noting that the decision whether or not to progress those recommended reforms is a matter for the Queensland Government.
7. In making its recommendations on those defences and excuses, the Commission should have regard to:
  - (a) the findings and recommendations of the Taskforce;
  - (b) the nature and impacts of DFV and criminal conduct on victims and survivors, and their families;
  - (c) existing legal principles of criminal responsibility;

- (d) the need to ensure Queensland's criminal law reflects contemporary community standards;
  - (e) the need for Queensland's criminal law to ensure just outcomes by balancing the interests of victims and accused persons;
  - (f) the experiences of victims and survivors, and their families, in the criminal justice system;
  - (g) the views and research of relevant experts, including those with specialist expertise in relation to criminal law, DFV, and the experience of victims and survivors;
  - (h) recent developments, legislative reform, and research in other Australian and international jurisdictions;
  - (i) the compatibility of the recommendations with the *Human Rights Act 2019* (including balancing the rights of victims and accused persons); and
  - (j) any other matters that the Commission considers relevant having regard to the issues relating to the referral.
8. In conducting its review, the Commission should consult experts with specialist expertise in DFV and the impacts of criminal conduct on victims and survivors.

### **Consultation**

The Commission shall consult with:

- (a) legal stakeholders;
- (b) people who have experienced DFV or who have been the victim of other criminal conduct, and relevant bodies that work with or represent victims and survivors, or the family of victims, of DFV and other offences;
- (c) Aboriginal and Torres Strait Islander stakeholders;
- (d) the public generally; and
- (e) any group or individual, in or outside Queensland, the Commission considers relevant having regard to the issues relating to the referral,

### **Timeframe**

The Commission is to provide its final report, including any draft legislative provision/s and/or information required to give effect to its recommendations, to the Attorney-General no later than 1 December 2025.

Dated the 15<sup>th</sup> of November 2023.



**YVETTE D'ATH MP**

Attorney-General and Minister for Justice and  
Minister for the Prevention of Domestic and Family Violence