

Review of particular criminal defences

Collected information sheets

November 2023

Contents

Self-defence information sheet	3
Provocation to assault information sheet	13
Killing on provocation information sheet	21
Killing for preservation in an abusive domestic relationship information sheet	33
Domestic discipline information sheet	39
Penalty for murder information sheet	49
Timeline of legislative reforms and proposals in Queensland	61
Quick reference jurisdiction guide	71
References	77

Self-defence information sheet

Version November 2023

Self-defence is in sections 271 and 272 of the Criminal Code.

With certain limitations, **self-defence allows a person to use force that is reasonably necessary to defend themselves** from assault. The law attempts to balance the interests of the attacker and the person who responds, as well as broader community values.

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.

The application of the defences also depends on whether the assault causes a reasonable apprehension of death or grievous bodily harm.

Sections 271 and 272 provide complete defences to an offence involving the use of force, including assault and homicide.

Section 271 provides for self-defence against an **unprovoked assault**. It applies if a person is unlawfully assaulted and has not provoked 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.

271 Self-defence against unprovoked assault

- (1) When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for the person to use such force to the assailant as is reasonably necessary to make effectual defence against the assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.
- (2) If the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm, and the person using force by way of defence believes, on reasonable grounds, that the person can not otherwise preserve the person defended from death or grievous bodily harm, it is lawful for the person to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous bodily harm.

Section 272 provides for self-defence against a **provoked assault**. It applies in limited cases to a person who started the fight or provoked the assault and then finds the need to defend themselves from retaliation. If a person unlawfully assaults or provokes an assault from someone else, they may use reasonable force to defend themselves 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.

272 Self-defence against provoked assault

- (1) When a person has unlawfully assaulted another or has provoked an assault from another, and that other assaults the person with such violence as to cause reasonable apprehension of death or grievous bodily harm, and to induce the person to believe, on reasonable grounds, that it is necessary for the person's preservation from death or grievous bodily harm to use force in self-defence, the person is not criminally responsible for using any such force as is reasonably necessary for such preservation, although such force may cause death or grievous bodily harm.
- (2) This protection does not extend to a case in which the person using force which causes death or grievous bodily harm first begun the assault with intent to kill or to do grievous bodily harm to some person; nor to a case in which the person using force which causes death or grievous bodily harm endeavoured to kill or to do grievous bodily harm to some person before the necessity of so preserving himself or herself arose; nor, in either case, unless, before such necessity arose, the person using such force declined further conflict, and quitted it or retreated from it as far as was practicable.

Section 273 of the Criminal Code allows the use of force to defend another person on the same conditions as sections 271 and 272, as long as the person using force acts in good faith.

273 Aiding in self-defence

In any case in which it is lawful for any person to use force of any degree for the purpose of defending himself or herself against an assault, it is lawful for any other person acting in good faith in the first person's aid to use a like degree of force for the purpose of defending the first person.

The Criminal Code also authorises the use of force in particular circumstances to defend the possession of property – under sections 267 and 274–279.

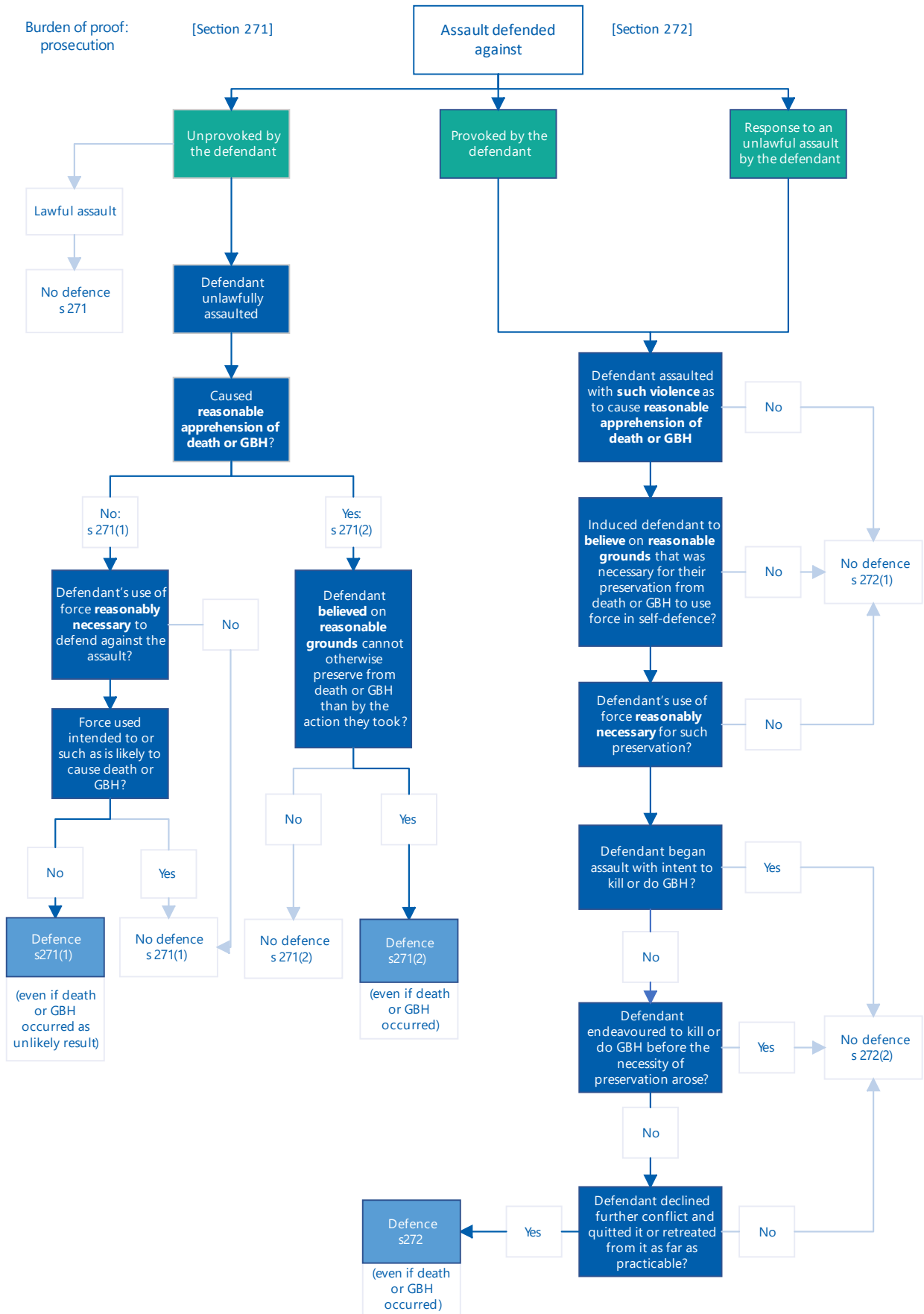
The self-defence provisions in sections 271–272 were based on earlier common law and included in the Code when it first came into force in 1901. The provisions have not been changed since that time. But case law on what the provisions mean and how the defences operate has continued to develop.

The self-defence provisions have attracted criticisms, for example that:

- they are complex, difficult to understand and difficult for judges to direct juries on¹
- some requirements have been given conflicting interpretations in case law²
- 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.³

In a recent Court of Appeal decision, Dalton JA found that section 272 is ambiguous and observed that the self-defence provisions need reform.⁴

Figure 1: self-defence provisions in Queensland



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. To help judges with this, suggested directions in the Queensland Supreme and District Courts Criminal Directions Benchbook offer guidance on the directions that should be given.

The following extracts are from the suggested directions in the benchbook on self-defence under sections 271(1), 271(2) and 272. View the full text on the [Queensland Courts website](#).⁵

Suggested directions for section 271(1): self-defence against unprovoked assault

The criminal law does not only punish; it protects as well. It does not expect citizens to be unnaturally passive, especially when their safety is threatened by someone else. Sometimes an attacker may come off second best but it does not follow that the one who wins the struggle has committed a crime. The law does not punish someone for reasonably defending himself or herself.

... You should appreciate that the law of self-defence is drawn in fairly general terms to cover any situation that may arise. Each jury has to apply it to a particular situation according to the facts of the particular case. No two cases are exactly alike, so the results depend heavily on the common sense and community perceptions that juries bring into court.

... You will see from the section that there are four matters you must consider in respect of this defence.

They are –

1. whether there has been an unlawful assault on the defendant;
2. whether the defendant has provoked that assault;
3. whether the force used by the defendant upon the complainant was reasonably necessary to make effectual defence against the assault; and
4. whether the force used was intended, or such as was likely, to cause death or grievous bodily harm.

The burden remains on the prosecution at all times to prove that the defendant was not acting in self-defence (that is, that the defendant was acting unlawfully), and the prosecution must do so beyond reasonable doubt before you could find the defendant guilty.

... Whether the degree of force used was reasonably necessary to make effectual defence against an assault is a matter for your objective consideration and does not depend on the defendant's state of mind about what he/she thought was reasonably necessary.

In considering whether the force used by the defendant was reasonably necessary to make effectual defence, bear in mind that a person defending himself/herself cannot be expected to weigh precisely the exact amount of defensive action that may be necessary. Instinctive reactions and quick judgments may be essential. You should not judge the actions of the defendant as if he/she had the benefit of safety and leisurely consideration.

...

Suggested directions for section 271(2): self-defence against unprovoked assault when there is death or GBH

... A defendant who has been the victim of an unprovoked assault may lawfully respond in self-defence with lethal force (that is, force which may kill or do grievous bodily harm) when the assault upon him/her was of such a nature as to cause reasonable apprehension of death or grievous bodily harm.

... Speaking generally, you will not be surprised to know that if the violence of the attacker is such that the person defending himself/herself reasonably fears for his/her life or safety, then the justifiable (or lawful) level of violence which may be used by the person attacked in self-defence will be greater also.

The level of violence in self-defence that is justifiable, or lawful, depends on the level of danger created by the attacker and the reasonableness of the defendant's reaction to it.

... Several matters arise for your consideration.

They are -

1. whether there has been an unlawful assault upon the defendant;
2. whether the defendant has provoked that assault.
3. whether the nature of the assault was such as to cause reasonable apprehension of death or grievous bodily harm;
4. whether the defendant believed, on reasonable grounds, that he/she could not otherwise preserve themselves from death or grievous bodily harm, other than by acting as they did.

...

Suggested directions for section 272: self-defence against provoked assault, including when death or grievous bodily harm occurs

... Section 272 of the Criminal Code excuses a person from using lethal or near lethal force in certain circumstances. By 'lethal or near lethal' I mean force that kills or does grievous bodily harm.

This section may apply where the defendant had good reason to believe he/she was in serious danger of losing his/her own life, or suffering a very serious injury, even though he himself provoked the assault.

... This section raises several matters for your consideration, namely:

1. Whether the defendant unlawfully assaulted the deceased/complainant or provoked an assault from them?
2. Whether the response from the deceased/complainant was so violent as to cause reasonable apprehension of death or grievous bodily harm?
3. Whether the defendant **believed**, on **reasonable grounds**, that it was **necessary**, in order to preserve himself/herself from death or grievous bodily harm, to use force in self-defence?
4. Whether the force in fact used was such as was **reasonably necessary** for his/her preservation from death or grievous bodily harm?

Suggested directions for section 272: self-defence against provoked assault, including when death or grievous bodily harm occurs cont.

... The defence does not apply where:

- The defendant first began the assault with intent to kill or to do grievous bodily harm to the [deceased/complainant/some person]; or
- The defendant endeavoured to kill or to do grievous bodily harm to the [deceased/complainant] before the necessity of so preserving himself arose;
- **Nor unless**, the defendant declined further conflict, and quitted it or retreated from it as far as was practicable, before the necessity to preserve himself/herself from death or grievous bodily harm arose.

The burden remains on the prosecution at all times to prove that the defendant was not acting in self-defence (that is, was acting unlawfully), and the prosecution must do so, beyond reasonable doubt before you may find the defendant guilty.

...

Queensland is the only Australian jurisdiction to distinguish between self-defence against unprovoked and provoked assaults. Many places have simplified their self-defence provisions, focusing on the use of force that is reasonable in the circumstances.⁶ Some follow the approach of the Model Criminal Code⁷ and some, like New Zealand, reduce the defence to a single statement.

Some jurisdictions, like Western Australia, also include a partial defence to murder of excessive self-defence which applies if the person uses greater force than is reasonable but believes it is necessary.⁸ And some places, like Victoria, include a provision about the operation of self-defence in the context of domestic and family violence – for example, to provide that a person’s use of force in self-defence may be reasonable even if it exceeds the force that was used against them.⁹

Model Criminal Code

10.4 Self-defence

- (1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self-defence.
- (2) A person carries out conduct in self-defence if and only if he or she believes the conduct is necessary:
 - (a) to defend himself or herself or another person; or
 - (b) to prevent or terminate the unlawful imprisonment of himself or herself or another person; or
 - (c) to protect property from unlawful appropriation, destruction, damage or interference; or
 - (d) to prevent criminal trespass to any land or premises; or
 - (e) to remove from any land or premises a person who is committing criminal trespass;and the conduct is a reasonable response in the circumstances as he or she perceives them.
- (3) This section does not apply if the person uses force that involves the intentional infliction of death or really serious injury:
 - (a) to protect property; or
 - (b) to prevent criminal trespass; or
 - (c) to remove a person who is committing criminal trespass.
- (4) This section does not apply if:
 - (a) the person is responding to lawful conduct; and
 - (b) he or she knew that conduct was lawful.

However, conduct is not lawful merely because the person carrying it out is not criminally responsible for it.

The Model Criminal Code is not in force as legislation but is a draft of suggested provisions developed in the 1990s with the aim of providing for uniform or consistent criminal laws around Australia.¹⁰

Crimes Act 1961 (NZ)

48 Self-defence and defence of another

- (1) Every one is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.

...

Criminal Code (WA)

248 Self-defence

- (1) In this section—

harmful act means an act that is an element of an offence under this Part other than Chapter XXXV.

- (2) A harmful act done by a person is lawful if the act is done in self-defence under subsection (4).

- (3) If—

(a) a person unlawfully kills another person in circumstances which, but for this section, would constitute murder; and

(b) the person's act that causes the other person's death would be an act done in self-defence under subsection (4) but for the fact that the act is not a reasonable response by the person in the circumstances as the person believes them to be,

the person is guilty of manslaughter and not murder.

- (4) A person's harmful act is done in self-defence if—

(a) the person believes the act is necessary to defend the person or another person from a harmful act, including a harmful act that is not imminent; and

(b) the person's harmful act is a reasonable response by the person in the circumstances as the person believes them to be; and

(c) there are reasonable grounds for those beliefs.

- (5) A person's harmful act is not done in self-defence if it is done to defend the person or another person from a harmful act that is lawful.

- (6) For the purposes of subsection (5), a harmful act is not lawful merely because the person doing it is not criminally responsible for it.

Table 1: self-defence provisions in Queensland and other jurisdictions

Name of Act and jurisdiction	Defence of self or others	Defence of property	Partial defence to murder of excessive self-defence	Related provisions
Criminal Code (Qld)	<ul style="list-style-type: none"> ✓ self-defence against unprovoked and provoked assaults: ss 271, 272 ✓ aiding others in self-defence: s 273 	<ul style="list-style-type: none"> ✓ separate provisions for defence of property: ss 267, 274-279 	✗	<ul style="list-style-type: none"> ✓ provisions about jury directions and evidence, including when self-defence in response to domestic violence is an issue: pt 6A Evidence Act 1977
Criminal Code (ACT)	<ul style="list-style-type: none"> ✓ to defend self or others or to prevent or end unlawful imprisonment: s 42 	<ul style="list-style-type: none"> ✓ to protect property, to prevent criminal trespass or remove a criminal trespasser: s 42 	✗	-
Crimes Act 1900 (NSW)	<ul style="list-style-type: none"> ✓ to defend self or others or to prevent or end unlawful deprivation of liberty: s 418 	<ul style="list-style-type: none"> ✓ to protect property, to prevent criminal trespass or remove a criminal trespasser: ss 418, 420 	<ul style="list-style-type: none"> ✓ if the conduct is not a reasonable response but the person believes it is necessary to defend self or others or to prevent or end unlawful deprivation of liberty: s 421 	-
Criminal Code (NT)	<ul style="list-style-type: none"> ✓ to defend self or others or to prevent or end unlawful imprisonment: ss 29, 43BD 	<ul style="list-style-type: none"> ✓ to protect property, to prevent criminal trespass or remove a criminal trespasser: ss 29, 43BD 	✗	-
Criminal Law Consolidation Act 1935 (SA)	<ul style="list-style-type: none"> ✓ to defend self or another, or to prevent or end unlawful imprisonment: s 15(1) 	<ul style="list-style-type: none"> ✓ to protect property, to prevent criminal trespass or remove a criminal trespasser: s 15A(1) 	<ul style="list-style-type: none"> ✓ if the conduct is not reasonably proportionate to the threat but the person genuinely believes it is necessary and reasonable: ss 15(2), 15A(2) 	<ul style="list-style-type: none"> ✓ provisions about self-defence in the context of family violence: s 15B ✓ provisions about serious home invasion: s 15C
Criminal Code (Tas)	<ul style="list-style-type: none"> ✓ in defence of self or another: s 46 	<ul style="list-style-type: none"> ✓ separate provisions for defence of property: ss 40-45 	✗	-

Name of Act and jurisdiction	Defence of self or others	Defence of property	Partial defence to murder of excessive self-defence	Related provisions
Crimes Act 1958 (Vic)	✓ in self-defence, defence of another or to prevent or end unlawful deprivation of liberty; limited in the case of murder to where the person believes the conduct is necessary to defend self or another from death or really serious injury: s 322K	✓ in the protection of property: s 322K	*	✓ provisions about self-defence in the context of family violence: ss 322J, 322M
Criminal Code (WA)	✓ to defend self or another against unlawful harmful acts, including acts that are not imminent: s 248(2), (4)	✓ separate provisions for defence of property: ss 251-256	✓ if the act is not a reasonable response but the person believes, on reasonable grounds, that it is necessary to defend self or another from harmful act: s 248(3)	✓ provisions about home invasion: s 244
Criminal Code (Cth)	✓ to defend self or others against unlawful conduct, or to prevent or end unlawful imprisonment: s 10.4	✓ to protect property, to prevent criminal trespass or remove a criminal trespasser: s 10.4	*	-
Crimes Act 1961 (NZ)	✓ in defence of self or another: s 48	✓ separate provisions for defence of property: ss 52-56	*	-
Criminal Justice and Immigration Act 2008 (UK)	✓ to defend self or others, under common law as modified by statute in England, Wales and Northern Ireland: s 76(2)(a) ✓ to defend self or others, under common law defence in Scotland ¹¹	✓ in defence of property, under common law as modified by statute in England, Wales and Northern Ireland: s 76(2)(b)	*	✓ provisions about use by 'householders' of disproportionate force in self-defence in England, Wales and Northern Ireland: s 76(5A), (8A)-(8F)
Canada Criminal Code RSC 1985 c C-46	✓ in defence of self or another: s 34	✓ to protect property, prevent entry to or to remove a person from property: s 35	*	-

Provocation to assault information sheet

Version November 2023

Provocation as a defence to assault is in sections 268 and 269 of the Criminal Code.

The use of force against a person without their consent is an assault, which is unlawful unless it is authorised, justified or excused by law.¹² If the use of force is covered by the defence of provocation, it is excused by law.

Sections 268 and 269 provide a complete defence to an offence containing assault as an element.¹³ This includes common assault, assault occasioning bodily harm and serious assault.¹⁴ But, it does not include an offence such as wounding, grievous bodily harm, and choking, suffocation or strangulation in a domestic setting.¹⁵ It also does not apply to unlawful homicide.¹⁶ A separate partial defence to murder for killing on provocation is in section 304 of the Code.¹⁷

Section 268 defines provocation for the defence. It requires **a wrongful act or insult** by the victim that was **serious enough to cause an ordinary person to lose self-control** and assault the victim. The ordinary person test is an objective standard for measuring the defendant's conduct. The 'governing principles' of the test are 'equality and individual responsibility, so that all persons are held to the same standard notwithstanding their distinctive personality traits and varying capacities to achieve the standard'.¹⁸

268 Provocation

- (1) The term provocation, used with reference to an offence of which an assault is an element, means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under the person's immediate care, or to whom the person stands in a conjugal, parental, filial, or fraternal, relation, or in the relation of master or servant, to deprive the person of the power of self-control, and to induce the person to assault the person by whom the act or insult is done or offered.
- (2) When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.
- (3) A lawful act is not provocation to any person for an assault.
- (4) An act which a person does in consequence of incitement given by another person in order to induce the person to do the act, and thereby to furnish an excuse for committing an assault, is not provocation to that other person for an assault.
- (5) An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.

The elements of the defence are in section 269. It requires that:

- there was provocation for the assault,
- the provocation actually deprived the person of their power of self-control,
- the person acted on the provocation **on the sudden, before there was time for their passion to cool**, and
- the force used by the person was not out of proportion to the provocation and not intended or likely to cause death or grievous bodily harm.

If provocation is available on the evidence, the prosecution has the burden of excluding it beyond a reasonable doubt. If it is not excluded, the defence is a complete defence which entitles the person to be found not guilty (acquitted) of the charge.

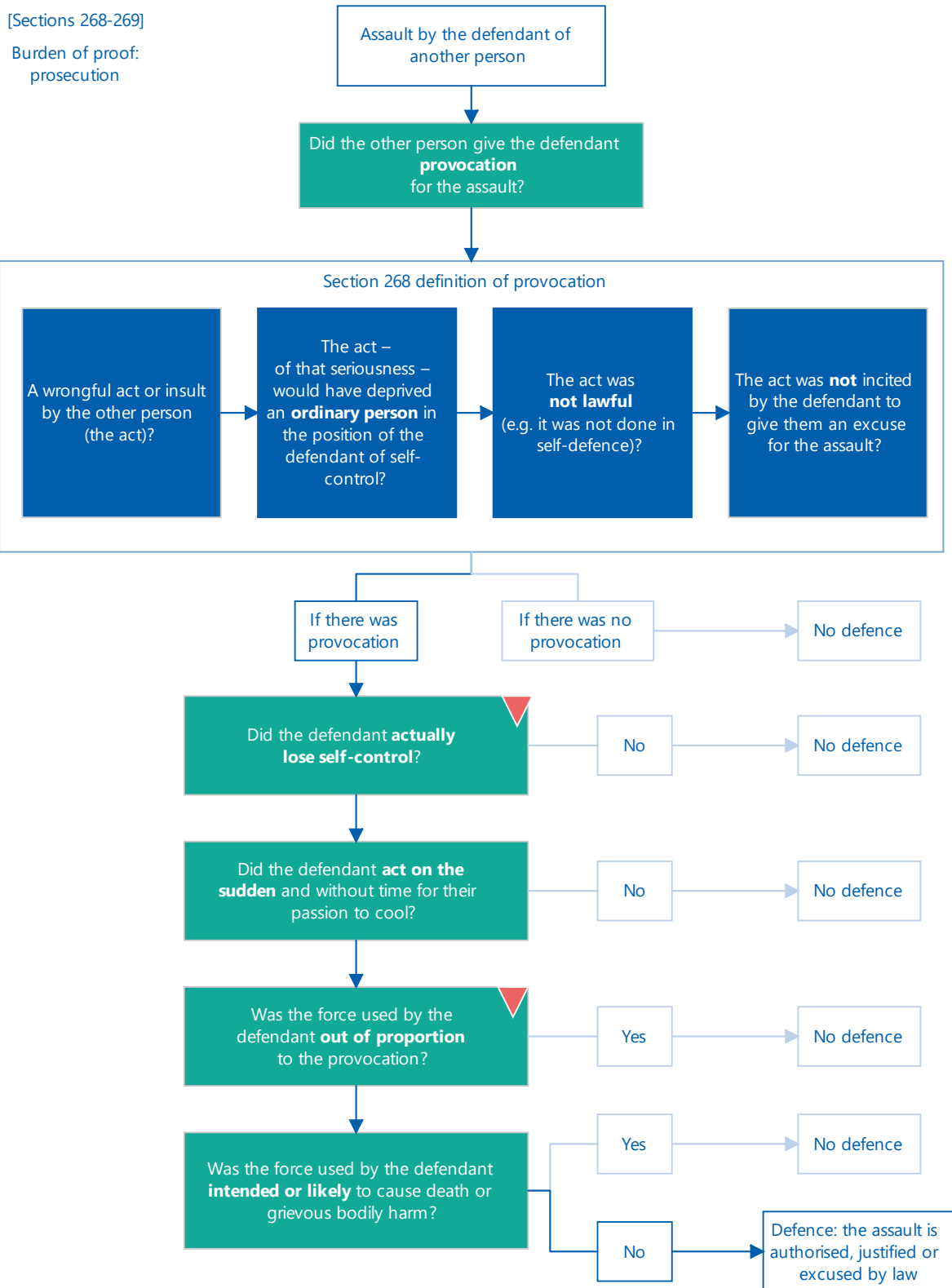
269 Defence of provocation

- (1) A person is not criminally responsible for an assault committed upon a person who gives the person provocation for the assault, if the person is in fact deprived by the provocation of the power of self-control, and acts upon it on the sudden and before there is time for the person's passion to cool, and if the force used is not disproportionate to the provocation and is not intended, and is not such as is likely, to cause death or grievous bodily harm.
- (2) Whether any particular act or insult is such as to be likely to deprive an ordinary person of the power of self-control and to induce the ordinary person to assault the person by whom the act or insult is done or offered, and whether, in any particular case, the person provoked was actually deprived by the provocation of the power of self-control, and whether any force used is or is not disproportionate to the provocation, are questions of fact.
- (3) A lawful act is not provocation to any person for an assault.

Provocation is not a defence to assault at common law.¹⁹ The defence of provocation to assault was a new defence included in the Criminal Code when it first came into force in 1901. With some differences, it was based on the partial defence of provocation to murder and was said to recognise what was 'in common life assumed to be a natural rule'.²⁰ Sections 268 and 269 have not been changed since that time.

Concerns about the defence have tended to focus on the fact it is limited to offences containing assault as an element.²¹

Figure 1: provocation to assault provision in Queensland



▼ Taking into account all the circumstances e.g. characteristics of the defendant and the defendant's relationship with the person

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. To help judges with this, suggested directions in the Queensland Supreme and District Courts Criminal Directions Benchbook offer guidance on the directions that should be given.

The following extract is from the suggested directions in the benchbook on the complete defence of provocation under sections 268 and 269. View the full text on the [Queensland Courts website](#).²²

Suggested directions for sections 268, 269: provocation

An assault is excused by law if, at the time of the assault, the defendant was acting under what our law defines as 'provocation'. Provocation, as defined in our law, is a defence to an assault.

Provocation is defined in our Criminal Code as

... any wrongful act or insult of such a nature as to be likely when done to an ordinary person to deprive the person of the power of self-control, and to induce the person to assault the person by whom the act or insult is done or offered ...

Our law provides that:

When such an act or insult is done or offered by one person to another, the former is said to give the latter provocation for an assault.

The defence of provocation operates in this way:

A person is not criminally responsible for an assault committed upon a person who gives the person provocation for the assault, if –

- the person is in fact deprived by the provocation of the power of self-control; and
- acts upon it on the sudden and before there is time for the person's passion to cool, and
- if the force used is not disproportionate to the provocation and is not intended, and is not such as is likely to cause death or grievous bodily harm.

It is not for the defendant to establish the defence by proving that he or she was provoked to assault the complainant.

It is for the prosecution to exclude the defence by satisfying you, beyond a reasonable doubt, that it does not apply.

You need to consider –

- whether the complainant has offered the defendant provocation for the assault;
- whether the defendant was deprived by the provocation of the power of self-control;
- whether the defendant acted on the sudden and before there was time for their passion to cool; and
- whether their response to the provocation was proportionate.

Suggested directions for sections 268, 269: provocation cont.

... For the wrongful act or insult to amount to provocation, it must be of such a nature as to be likely, if done to an ordinary person, to deprive the ordinary person of the power of self-control.

In other words, the wrongful act or insult must have been serious enough to cause an ordinary person to lose self-control.

An ordinary person in this context is a person with the ordinary human weaknesses and emotions common to all members of the community and with the same level of self-control as an ordinary person of the defendant's age.

It means an ordinary person, in the position of the defendant, who has been provoked to the same degree of severity and for the same reason as the defendant.

So, the first question for you is whether the wrongful act or insult would have deprived an ordinary person in the defendant's position of the power of self-control?

... The next question for you is whether the defendant was in fact deprived of the power of self-control by the wrongful act or insult.

You must consider the gravity of the provocation to the particular defendant. His/her race, colour, habits and relationship to the complainant may all be part of this assessment.

Conduct which might not be insulting to one person may be extremely insulting to another because of that person's age, race, ethnic or cultural background, physical features, personal attributes, personal relationships or past history ...

In considering whether the defendant was in fact deprived of the power of self-control by the wrongful act or insult, you must view the conduct or the words in question as a whole in light of any history or dispute between the defendant and the complainant. Particular acts or words which, considered separately, could not amount to provocation, may, in combination or cumulatively, be enough to cause the defendant to lose self-control in fact.

Also, the wrongful act or insult must have in fact induced the assault. A deliberate act of vengeance, hatred or revenge may not have in fact been induced by the wrongful act or insult despite the fact that such an act or insult was offered.

... Provocation only applies if the defendant has, in response to the provocation, acted on the sudden and before there is time for his/her passion to cool – before there is time for him/her to think about his/her response.

... The force used by the defendant must not be disproportionate to the provocation.

The question of whether force was disproportionate depends on all the circumstances of the case, including the physical attributes of the person offering the provocation, the nature of the attack, whether a weapon was used, what type of weapon and whether the person was alone or in company ...

The focus is on serious provocation, which would cause a sudden and proportionate response to it.

Queensland and Western Australia are the only Australian jurisdictions with a complete defence of provocation to assault. The Model Criminal Code does not include the defence. The Northern Territory previously had a complete defence of provocation for any offence where the defendant's conduct did not cause, and was not intended or likely to cause, death or grievous harm. However the provision was repealed in late 2006 to align with the Model Criminal Code.²³

Criminal Code (WA)

245 Term used: provocation

The term **provocation** used with reference to an offence of which an assault is an element, means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial, or fraternal relation, to deprive him of the power of self control, and to induce him to assault the person by whom the act or insult is done or offered.

When such an act or insult is done or offered by one person to another, or in the presence of another, to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.

A lawful act is not provocation to any person for an assault.

An act which a person does in consequence of incitement given by another person in order to induce him to do the act and thereby to furnish an excuse for committing an assault, is not provocation to that other person for an assault.

An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.

246 Defence of provocation

A person is not criminally responsible for an assault committed upon a person who gives him provocation for the assault, if he is in fact deprived by the provocation of the power of self-control, and acts upon it on the sudden and before there is time for his passion to cool; provided that the force used is not disproportionate to the provocation, and is not intended, and is not such as is likely to cause death or grievous bodily harm.

Criminal Code (NT) (repealed provision)

34 Provocation, etc.

- (1) A person is excused from criminal responsibility for an act or its event if the act was committed because of provocation upon the person or the property of the person who gave him that provocation provided:
 - (a) he had not incited the provocation;
 - (b) he was deprived by the provocation of the power of self-control;
 - (c) he acted on the sudden and before there was time for his passion to cool;
 - (d) an ordinary person similarly circumstanced would have acted in the same or a similar way;
 - (e) the act was not intended and was not such as was likely to cause death or grievous harm; and
 - (f) the act did not cause death or grievous harm.

Table 1: provocation to assault provisions in Queensland and other jurisdictions

Act name and jurisdiction	Defence of provocation to assault	Definition of provocation	Exclusions from the defence
Criminal Code (Qld)	<p>✓ applies to offences for which assault is an element if:</p> <ul style="list-style-type: none"> the assault is provoked, and the person is deprived of the power of self-control and acts on it on the sudden and before there is time for the person's passion to cool: ss 268–269 	any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another who is under their immediate care or to whom they have a conjugal, parental, filial or fraternal relationship, or in the relation of master or servant, to deprive the person of the power of self-control, and to induce the person to assault the person by whom the act or insult is done or offered	<ul style="list-style-type: none"> provocation does not include a lawful act, or an act incited and induced by the defendant to give an excuse for the assault an unlawful arrest is not necessarily provocation but may be evidence of provocation if the person knows of the illegality defence does not apply if the force used is disproportionate, or is intended, and likely to cause death or grievous bodily harm
Crimes Act 1900 (ACT)	* no defence	-	-
Crimes Act 1900 (NSW)	* no defence	-	-
Criminal Reform Amendment Act (No 2) 2006 (NT)	* the complete defence of provocation in former s 34(1) of the Criminal Code repealed in 2006: s 8	-	-
Criminal Law Consolidation Act 1935 (SA)	* no defence	-	-
Criminal Code (Tas)	* no defence	-	-
Crimes Act 1958 (Vic)	* no defence	-	-

Act name and jurisdiction	Defence of provocation to assault	Definition of provocation	Exclusions from the defence
Criminal Code (WA)	<ul style="list-style-type: none"> ✓ applies to offences for which assault is an element if: <ul style="list-style-type: none"> • assault is provoked, and • the person is deprived of power of self-control and acts on it on the sudden before there is time for his passion to cool: ss 245–246 	any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial, or fraternal relation, to deprive him of the power of self-control, and to induce him to assault the person by whom the act or insult is done or offered	<ul style="list-style-type: none"> • provocation does not include a lawful act, or an act incited and induced by the defendant to give an excuse for the assault • an unlawful arrest is not necessarily provocation but may be evidence of provocation if the person knows of the illegality • defence does not apply if the force used is disproportionate, or is intended, and likely, to cause death or grievous bodily harm
Criminal Code (Cth)	* no defence	-	-
Crimes Act 1961 (NZ)	* no defence	-	-
United Kingdom	* no defence at common law or in legislation	-	-
Canada Criminal Code RSC 1985 c C-46	* no defence	-	-

Killing on provocation information sheet

Version November 2023

Provocation as a partial defence to murder is in section 304 of the Criminal Code.

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’ when they kill.²⁴ The law aims to balance this concession to human weakness and the need for objective standards of behaviour to protect human life.²⁵

Section 304 applies if the elements of murder are met. It offers a partial defence if the person was provoked by the victim to such an extent that the person lost and acted without self-control, ‘in the heat of passion’. The common law definition of provocation applies to section 304. This means 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 for this defence 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 person, or
- an unwanted sexual advance.

Usually the prosecution must exclude a defence. However, the defence under section 304 must be proved by the defendant on the balance of probabilities. The defence reduces the person’s criminal liability so that they are guilty of manslaughter, not murder. This gives the court a wider sentencing discretion as murder carries a mandatory sentence of life imprisonment.²⁶

304 Killing on provocation

- (1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation, and before there is time for the person’s passion to cool, the person is guilty of manslaughter only.
- (2) Subsection (1) does not apply if the sudden provocation is based on words alone, other than in circumstances of an exceptional character.
- (3) Also, subsection (1) does not apply, other than in circumstances of an exceptional character, if—
 - (a) a domestic relationship exists between 2 persons; and
 - (b) one person unlawfully kills the other person (the **deceased**); and
 - (c) the sudden provocation is based on anything done by the deceased or anything the person believes the deceased has done—
 - (i) to end the relationship; or
 - (ii) to change the nature of the relationship; or
 - (iii) to indicate in any way that the relationship may, should or will end, or that there may, should or will be a change to the nature of the relationship.

304 Killing on provocation cont.

- (4) Further, subsection (1) does not apply, other than in circumstances of an exceptional character, if the sudden provocation is based on an unwanted sexual advance to the person.
- (5) For subsection (3)(a), despite the Domestic and Family Violence Protection Act 2012, section 18(6), a domestic relationship includes a relationship in which 2 persons date or dated each other on a number of occasions.
- (6) Subsection (3)(c)(i) applies even if the relationship has ended before the sudden provocation and killing happens.
- (7) For proof of circumstances of an exceptional character mentioned in subsection (2) or (3) regard may be had to any history of violence that is relevant in all the circumstances.
- (8) For proof of circumstances of an exceptional character mentioned in subsection (4), regard may be had to any history of violence, or of sexual conduct, between the person and the person who is unlawfully killed that is relevant in all the circumstances.
- (9) On a charge of murder, it is for the defence to prove that the person charged is, under this section, liable to be convicted of manslaughter only.
- (10) When 2 or more persons unlawfully kill another, the fact that 1 of the persons is, under this section, guilty of manslaughter only does not affect the question whether the unlawful killing amounted to murder in the case of the other person or persons.
- (11) In this section—
unwanted sexual advance, to a person, means a sexual advance that—
 - (a) is unwanted by the person; and
 - (b) if the sexual advance involves touching the person—involves only minor touching.
Examples of what may be minor touching depending on all the relevant circumstances—
patting, pinching, grabbing or brushing against the person, even if the touching is an offence against section 352(1)(a) or another provision of this Code or another Act

Section 304 was based on earlier common law and included in the Code when it first came into force in 1901. It was substantively amended in 2011 and 2017.²⁷

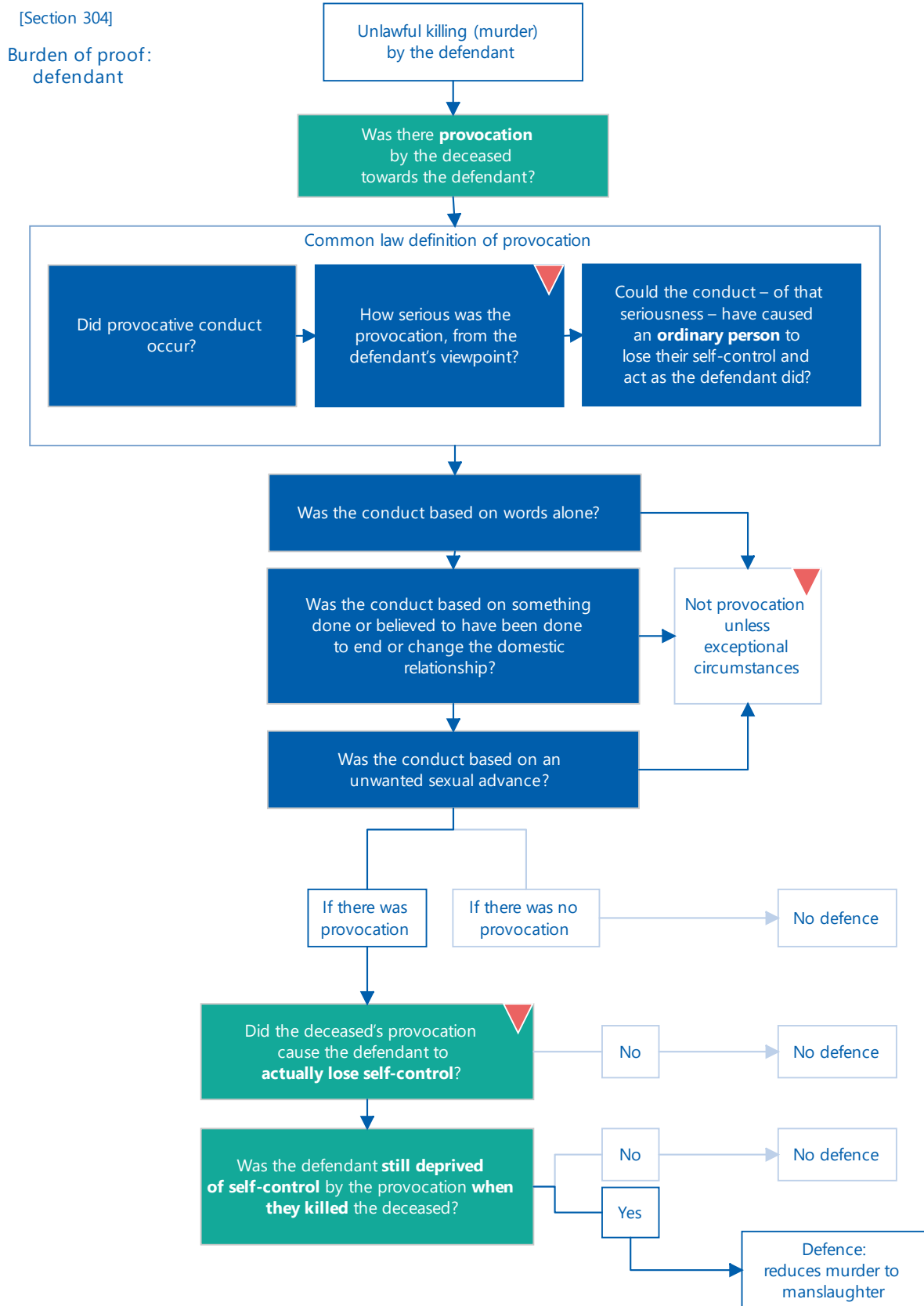
In 2011, the defence was limited so that it does not apply if the provocation is based on words alone (such as an insult) or on anything done by the deceased to end or change their domestic relationship with the defendant, other than in exceptional circumstances. The 2011 amendments also provided for any relevant history of violence to be considered in proof of exceptional circumstances, and shifted the burden of proof from the prosecution to the defendant. The changes were intended to 'recast the partial defence ... to address its bias and flaws'.²⁸

In 2017, the defence was limited so that it does not apply if the provocation is based on an unwanted sexual advance, other than in exceptional circumstances. This reflected 'changes in community expectations that such conduct should not be able to establish a partial defence of provocation to murder'.²⁹

The defence has been considered in many reviews and applied in some controversial cases.³⁰ Criticisms of the defence include concerns that it:³¹

- 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
- may operate unfairly or inconsistently.

Figure 1: killing on provocation provision in Queensland



▼ Taking into account all the circumstances, including any history between the defendant and deceased

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. To help judges with this, suggested directions in the Queensland Supreme and District Courts Criminal Directions Benchbook offer guidance on the directions that should be given.

The following extracts are from the suggested directions in the benchbook on the partial defence of provocation under section 304, for offences committed after and before the amendments made in 2011. View the full text on the [Queensland Courts website](#).³²

Suggested directions for section 304: provocation (for offences post-4 April 2011)

... Our law recognises that a person may be killed in circumstances where the defendant was so provoked by something done by that person as to lose the power of self-control, such that this provides an explanation for his/her actions which should be taken into account.

Under our law if a person acts under provocation, he/she is not guilty of murder but is guilty of manslaughter only. Provocation is therefore something which operates only as a partial defence, not a complete defence, because it reduces what otherwise would be a verdict of murder to one of manslaughter.

In this context, provocation has a particular legal meaning. It consists of conduct which causes a loss of the power of self-control on the part of the defendant and which might have caused an ordinary person to lose the power of self-control and to act in the way in which the defendant did.

There are three questions of fact that are involved here. ...

The defendant must satisfy you that, more probably than not:

1. There was provocation by [V] towards the defendant,
2. The defendant was provoked by [V] and
3. The defendant was acting, while still provoked, when he/she did the act (or acts) by which [V] was killed.

... You have [to] assess the conduct of [V] from the viewpoint of the defendant. Unless you understand the defendant's personal circumstances and any history between the defendant and [V], you may not understand how serious was the conduct of [V] from the defendant's perspective. ...

With that understanding of the conduct of [V] towards the defendant, you have to ask whether that conduct could have caused an **ordinary person** to lose his/her self-control and act as he/she did. An ordinary person is simply a person who has the minimum powers of self-control expected of an ordinary citizen [who is sober/not affected by drugs]. An ordinary person has the ordinary human weaknesses and emotions which are common in the community.

Particular conduct, when considered in isolation, might not amount to provocation but might, in combination with other conduct by the person who was killed, be enough to cause a loss of self-control.

Suggested directions for section 304: provocation (for offences post-4 April 2011) cont.

[In a case where the provocation is based on **words alone**, the following direction should be added:

... The law is that this defence of provocation does not usually apply in a case where the provocation is based on words alone, because usually an ordinary person would not lose self-control, and act with an intention to kill or do grievous bodily harm, in response to mere words. However, the defence can be available if you are satisfied that circumstances of this case are exceptional. To decide that, you have to consider all of the circumstances, including any history of violence between the defendant and [V]. ...]

... [In a case where provocation was based upon **something done by the deceased, or believed to have been done by him/her, in respect of a domestic relationship**, the following direction could be given:

... The law is that this defence of provocation does not usually apply where the provocation is based on something done by the person who was killed to [end a domestic relationship between them], because usually an ordinary person would not lose self-control, and act with an intention to kill or do grievous bodily harm, in response to that conduct. However, the defence is available here if you are satisfied that the circumstances of this case are exceptional. To decide that, you have to consider all of the circumstances, including any history of violence between the defendant and [V]. ...]

[In a case where the provocation is based on an **unwanted sexual advance** by the person who was killed to the defendant, the following may be added:

... The law is that this defence of provocation does not usually apply in a case where the provocation is based on an unwanted sexual advance, because usually an ordinary person would not lose self-control and act with an intention to kill or do grievous bodily harm, in response to an unwanted sexual advance. An unwanted sexual advance means a sexual advance that is unwanted and, if it involves touching, involves only minor touching. ... If you find that the conduct by [V] was an unwanted sexual advance, then the defence is available if you are satisfied that the circumstances of this case are exceptional. To decide that, you have to consider all of the circumstances [including any history of violence, or of sexual conduct, between the defendant and [V]. ...]

... Provocation is not necessarily excluded simply because there is an interval between the provocative conduct and the defendant's emotional response to it. So you have to consider whether the defendant remained deprived of his/her self-control and killed [V] whilst still without that self-control.

...

Suggested directions for section 304: provocation (for offences pre-4 April 2011)

The final thing that the prosecution must establish, in order to prove that the defendant is guilty of murder, is that he/she was not acting under provocation when he/she killed [V]. It is not for the defendant to prove that he/she was acting whilst provoked; it is for the prosecution to prove to you, beyond reasonable doubt, that he/she was not doing so.

... The prosecution will have proved that matter if the prosecution satisfies you, beyond reasonable doubt, of any of these things:

1. That the conduct upon which the defendant relies as provocation did not occur.
2. That the conduct upon which the defendant relies as provocation could not have caused an ordinary person [where relevant: of the defendant's age] to lose his/her self-control and to act as the defendant did, with an intent to cause death or grievous bodily harm.
3. That the conduct on which the defendant relies did not cause the defendant to lose his/her self-control.
4. That when the defendant killed [V], he/she was [not] still deprived of his/her self-control, by [V's] provocative conduct.

If you are satisfied beyond reasonable doubt as to any of those matters, then the prosecution has proved that the defendant did not kill [V] under provocation, and if you are satisfied beyond reasonable doubt as to all of the elements of murder, to which I have earlier referred, then the appropriate verdict is 'guilty of murder'.

... For this defence to apply it must be caused by a 'sudden' provocation. But there may [be] a sudden provocation in this sense although there is an interval between the provocative conduct and the defendant's response to it [where appropriate, add this: the loss of self-control can develop after a lengthy period of abuse, and without the necessity for a specific triggering incident].

...

Provocation is a partial defence to murder in Queensland, the Australian Capital Territory, New South Wales and the Northern Territory. However, the Model Criminal Code does not include the defence and many jurisdictions have abolished it, including Western Australia and New Zealand.³³ Legislation in the United Kingdom abolished the common law defence in England, Wales and Northern Ireland and created a new partial defence of 'loss of control' based on particular qualifying triggers.³⁴

Where it applies, the scope of the defence differs between jurisdictions. In some places, like the Northern Territory, provocation includes 'grossly insulting words or gestures'.³⁵ While in New South Wales, provocation is limited to conduct that amounts to a serious indictable offence, excludes non-violent sexual advances, or excludes conduct incited by the defendant.³⁶ Queensland is the only Australian jurisdiction where the defendant has the legal burden of proof.

Crimes Act 1900 (NSW)

- 23 Trial for murder—partial defence of extreme provocation
- (1) If, on the trial of a person for murder, it appears that the act causing death was in response to extreme provocation and, but for this section and the provocation, the jury would have found the accused guilty of murder, the jury is to acquit the accused of murder and find the accused guilty of manslaughter.
 - (2) An act is done in response to extreme provocation if and only if—
 - (a) the act of the accused that causes death was in response to conduct of the deceased towards or affecting the accused, and
 - (b) the conduct of the deceased was a serious indictable offence, and
 - (c) the conduct of the deceased caused the accused to lose self-control, and
 - (d) the conduct of the deceased could have caused an ordinary person to lose self-control to the extent of intending to kill or inflict grievous bodily harm on the deceased.
 - (3) Conduct of the deceased does not constitute extreme provocation if—
 - (a) the conduct was only a non-violent sexual advance to the accused, or
 - (b) the accused incited the conduct in order to provide an excuse to use violence against the deceased.
 - (4) Conduct of the deceased may constitute extreme provocation even if the conduct did not occur immediately before the act causing death.
 - (5) For the purpose of determining whether an act causing death was in response to extreme provocation, evidence of self-induced intoxication of the accused (within the meaning of Part 11A) cannot be taken into account.
 - (6) For the purpose of determining whether an act causing death was in response to extreme provocation, provocation is not negated merely because the act causing death was done with intent to kill or inflict grievous bodily harm.
 - (7) If, on the trial of a person for murder, there is any evidence that the act causing death was in response to extreme provocation, the onus is on the prosecution to prove beyond reasonable doubt that the act causing death was not in response to extreme provocation.
 - (8) This section does not exclude or limit any defence to a charge of murder.
 - (9) The substitution of this section by the Crimes Amendment (Provocation) Act 2014 does not apply to the trial of a person for murder that was allegedly committed before the commencement of that Act.
 - (10) In this section—

act includes an omission to act.

Criminal Code (NT)

158 Trial for murder – partial defence of provocation

- (1) A person (the defendant) who would, apart from this section, be guilty of murder must not be convicted of murder if the defence of provocation applies.
- (2) The defence of provocation applies if:
 - (a) the conduct causing death was the result of the defendant's loss of self-control induced by conduct of the deceased towards or affecting the defendant; and
 - (b) the conduct of the deceased was such as could have induced an ordinary person to have so far lost self-control as to have formed an intent to kill or cause serious harm to the deceased.
- (3) Grossly insulting words or gestures towards or affecting the defendant can be conduct of a kind that induces the defendant's loss of self-control.
- (4) A defence of provocation may arise regardless of whether the conduct of the deceased occurred immediately before the conduct causing death or at an earlier time.
- (5) However, conduct of the deceased consisting of a non-violent sexual advance or advances towards the defendant:
 - (a) is not, by itself, a sufficient basis for a defence of provocation; but
 - (b) may be taken into account together with other conduct of the deceased in deciding whether the defence has been established.
- (6) For deciding whether the conduct causing death occurred under provocation, there is no rule of law that provocation is negated if:
 - (a) there was not a reasonable proportion between the conduct causing death and the conduct of the deceased that induced the conduct causing death; or
 - (b) the conduct causing death did not occur suddenly; or
 - (c) the conduct causing death occurred with an intent to take life or cause serious harm.
- (7) The defendant bears an evidential burden in relation to the defence of provocation.

Note for subsection (7)

Under section 43BR(2), the prosecution bears a legal burden of disproving a matter in relation to which the defendant has discharged an evidential burden of proof. The legal burden of proof on the prosecution must be discharged beyond reasonable doubt – see section 43BS(1).
- (8) A defendant who would, apart from this section, be liable to be convicted of murder must be convicted of manslaughter instead.

Coroners and Justice Act 2009 (UK)

54 Partial defence to murder: loss of control

- (1) Where a person ('D') kills or is a party to the killing of another ('V'), D is not to be convicted of murder if—
 - (a) D's acts and omissions in doing or being a party to the killing resulted from D's loss of self-control,
 - (b) the loss of self-control had a qualifying trigger, and
 - (c) a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.

Coroners and Justice Act 2009 (UK) cont.

- (2) For the purposes of subsection (1)(a), it does not matter whether or not the loss of control was sudden.
- (3) In subsection (1)(c) the reference to 'the circumstances of D' is a reference to all of D's circumstances other than those whose only relevance to D's conduct is that they bear on D's general capacity for tolerance or self-restraint.
- (4) Subsection (1) does not apply if, in doing or being a party to the killing, D acted in a considered desire for revenge.
- (5) On a charge of murder, if sufficient evidence is adduced to raise an issue with respect to the defence under subsection (1), the jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (6) For the purposes of subsection (5), sufficient evidence is adduced to raise an issue with respect to the defence if evidence is adduced on which, in the opinion of the trial judge, a jury, properly directed, could reasonably conclude that the defence might apply.
- (7) A person who, but for this section, would be liable to be convicted of murder is liable instead to be convicted of manslaughter.
- (8) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

55 Meaning of 'qualifying trigger'

- (1) This section applies for the purposes of section 54.
- (2) A loss of self-control had a qualifying trigger if subsection (3), (4) or (5) applies.
- (3) This subsection applies if D's loss of self-control was attributable to D's fear of serious violence from V against D or another identified person.
- (4) This subsection applies if D's loss of self-control was attributable to a thing or things done or said (or both) which—
 - (a) constituted circumstances of an extremely grave character, and
 - (b) caused D to have a justifiable sense of being seriously wronged.
- (5) This subsection applies if D's loss of self-control was attributable to a combination of the matters mentioned in subsections (3) and (4).
- (6) In determining whether a loss of self-control had a qualifying trigger—
 - (a) D's fear of serious violence is to be disregarded to the extent that it was caused by a thing which D incited to be done or said for the purpose of providing an excuse to use violence;
 - (b) a sense of being seriously wronged by a thing done or said is not justifiable if D incited the thing to be done or said for the purpose of providing an excuse to use violence;
 - (c) the fact that a thing done or said constituted sexual infidelity is to be disregarded.
- (7) In this section references to 'D' and 'V' are to be construed in accordance with section 54.

Table 1: provocation to murder provisions in Queensland and other jurisdictions

Act name and jurisdiction	Partial defence of provocation to murder	Exclusions from the defence	Burden of proof
Criminal Code (Qld)	✓ killing on provocation (where act done in the heat of passion caused by sudden provocation): s 304	✓ unless exceptional circumstances, does not apply to words alone, anything done to end or change the domestic relationship, or an unwanted sexual advance	defendant
Crimes Act 1900 (ACT)	✓ trial for murder–provocation (where act done as result of loss of self-control induced by the deceased’s conduct, including ‘grossly insulting words or gestures’): s 13	✓ does not apply to a non-violent sexual advance alone (but this may be taken into account with other conduct of the deceased)	prosecution
Crimes Act 1900 (NSW)	✓ trial for murder–partial defence of extreme provocation (where the provocation by the deceased was a serious indictable offence): s 23	✓ does not apply to a non-violent sexual advance, or if defendant incited the deceased’s conduct	prosecution
Criminal Code (NT)	✓ trial for murder–partial defence of provocation (where act done as result of loss of self-control induced by the deceased’s conduct, including ‘grossly insulting words or gestures’): s 158	✓ does not apply to a non-violent sexual advance alone (but this may be taken into account with other conduct of the deceased)	prosecution
Criminal Law Consolidation Act 1935 (SA)	* the common law defence of provocation abolished in 2021: s 14B	-	-
Criminal Code Amendment (Abolition of Defence of Provocation) Act 2003 (Tas)	* the partial defence of provocation in former s 160 of the Criminal Code (Tas) repealed in 2003: s 4(b)	-	-
Crimes Act 1958 (Vic)	* the partial defence of provocation abolished in 2005: s 3B	-	-
Criminal Law Amendment (Homicide) Act 2008 (WA)	* the partial defence of killing on provocation in former s 281 of the Criminal Code (WA) repealed in 2008: s 12	-	-
Criminal Code (Cth)	* no defence of provocation	-	-
Crimes Act 1961 (NZ)	* the partial defence of provocation in former s 169 of the Crimes Act (NZ) repealed in 2009	-	-

Act name and jurisdiction	Partial defence of provocation to murder	Exclusions from the defence	Burden of proof
Coroners and Justice Act 2009 (UK) (England, Wales and Northern Ireland)	✓ provocation replaced with partial defence to murder-‘loss of control’ (where act done as result of loss of self-control that has a qualifying trigger i.e. fear of serious violence from the deceased, or something done or said of ‘an extremely grave character’ that causes ‘a justifiable sense of being seriously wronged’): ss 54-55 ✗ the common law defence of provocation abolished and former s 3 of the Homicide Act 1957 (UK) repealed in 2010: s 56	✓ does not apply if defendant acted in ‘considered desire for revenge’ or incited the triggering conduct, or to a thing done or said that constituted sexual infidelity	prosecution
Scotland ³⁷	✓ common law defence of provocation by physical violence or discovery of sexual infidelity of partner	✓ does not include words, however abusive or insulting, in cases of murder	prosecution
Canada Criminal Code RSC 1985 c C-46	✓ murder reduced to manslaughter (where act done in the heat of passion caused by sudden provocation, and the provocation by the victim is an indictable offence punishable by 5 or more years imprisonment): s 232	✓ does not apply to conduct the deceased had a legal right to do, or if defendant incited the deceased’s conduct	prosecution

Killing for preservation in an abusive domestic relationship information sheet

Version November 2023

Killing for preservation in an abusive domestic relationship as a partial defence to murder is in section 304B of the Criminal Code.

The defence gives 'special consideration' to 'victims of seriously abusive relationships' who kill their abusers. It aims to balance the punishment of those who would otherwise be guilty of murder and the need to give legal protection to victims of serious abuse.³⁸

Section 304B applies if the elements of murder are met. It offers a partial defence if:

- the deceased had committed acts of serious domestic violence against the person in the course of an abusive domestic relationship,
- the person **believed** the act or omission causing death was **necessary to preserve themselves** from death or grievous bodily harm, and
- there were reasonable grounds for the person's belief, taking into account the abusive domestic relationship and all the circumstances.

An **abusive domestic relationship** involves a history of serious acts of domestic violence. Whether the acts were 'serious' is a question of fact for the jury to decide. The defence can apply even if:

- the relationship included acts of domestic violence that may seem minor or trivial in isolation,
- the person also sometimes committed acts of domestic violence in the relationship, or
- the person's conduct in causing the deceased's death would not be warranted in response to the deceased's particular act of domestic violence, except for the history of violence.

If the defence under section 304B is raised on the evidence, the prosecution has the burden to exclude it beyond reasonable doubt. If it is not excluded, the defence reduces the person's criminal liability so that they are guilty of manslaughter, not murder. This gives the court a wider sentencing discretion as murder attracts a mandatory sentence of life imprisonment.³⁹

Section 304B operates in addition to other defences.

304B Killing for preservation in an abusive domestic relationship

- (1) A person who unlawfully kills another (the **deceased**) under circumstances that, but for the provisions of this section, would constitute murder, is guilty of manslaughter only, if—
 - (a) the deceased has committed acts of serious domestic violence against the person in the course of an abusive domestic relationship; and
 - (b) the person believes that it is necessary for the person's preservation from death or grievous bodily harm to do the act or make the omission that causes the death; and
 - (c) the person has reasonable grounds for the belief having regard to the abusive domestic relationship and all the circumstances of the case.

304B Killing for preservation in an abusive domestic relationship cont.

- (2) An **abusive domestic relationship** is a domestic relationship existing between 2 persons in which there is a history of acts of serious domestic violence committed by either person against the other.
- (3) A history of acts of serious domestic violence may include acts that appear minor or trivial when considered in isolation.
- (4) Subsection (1) may apply even if the act or omission causing the death (the **response**) was done or made in response to a particular act of domestic violence committed by the deceased that would not, if the history of acts of serious domestic violence were disregarded, warrant the response.
- (5) Subsection (1)(a) may apply even if the person has sometimes committed acts of domestic violence in the relationship.
- (6) For subsection (1)(c), without limiting the circumstances to which regard may be had for the purposes of the subsection, those circumstances include acts of the deceased that were not acts of domestic violence.
- (7) In this section—
domestic violence see the Domestic and Family Violence Protection Act 2012, section 8.

The Criminal Code applies definitions in the Domestic and Family Violence Protection Act 2012 to the defence.⁴⁰

A **domestic relationship** means a 'relevant relationship' under that Act, which is an intimate personal relationship, a family relationship or an informal care relationship.⁴¹

Domestic violence means behaviour, or a pattern of behaviour, towards a person in the relationship that is: physically, sexually, emotionally, psychologically or economically abusive; threatening; coercive; or in any other way controls or dominates the person and causes them to fear for their own or someone else's safety or wellbeing. It includes intimidation, harassment, damage to property, and threats of death or injury.⁴²

Relevant evidence about domestic violence can be admitted under the Evidence Act 1977. This can include evidence about the history of the domestic relationship, the psychological effect of domestic violence, the cumulative effect of domestic violence, and any retaliation for or factors affecting help-seeking behaviour by the person. It can include expert evidence. These provisions apply to any criminal proceeding and are not specific to cases in which section 304B is raised.⁴³

Section 304B was added to the Code by amendments made in 2010.⁴⁴ This gave effect to recommendations of a report to the government on defences to homicide in abusive relationships.⁴⁵ It was recognised that other defences, like provocation and self-defence, may not be available in cases where a person in a seriously abusive relationship kills their abuser. The new defence aimed to overcome these limitations and the lack of sentencing discretion on convictions for murder in such cases.⁴⁶

Section 304B was amended in 2011 and 2012 to add the words 'for preservation' to the section heading and apply relevant definitions under the Domestic and Family Violence Protection Act 2012 – but it has not otherwise been changed.⁴⁷

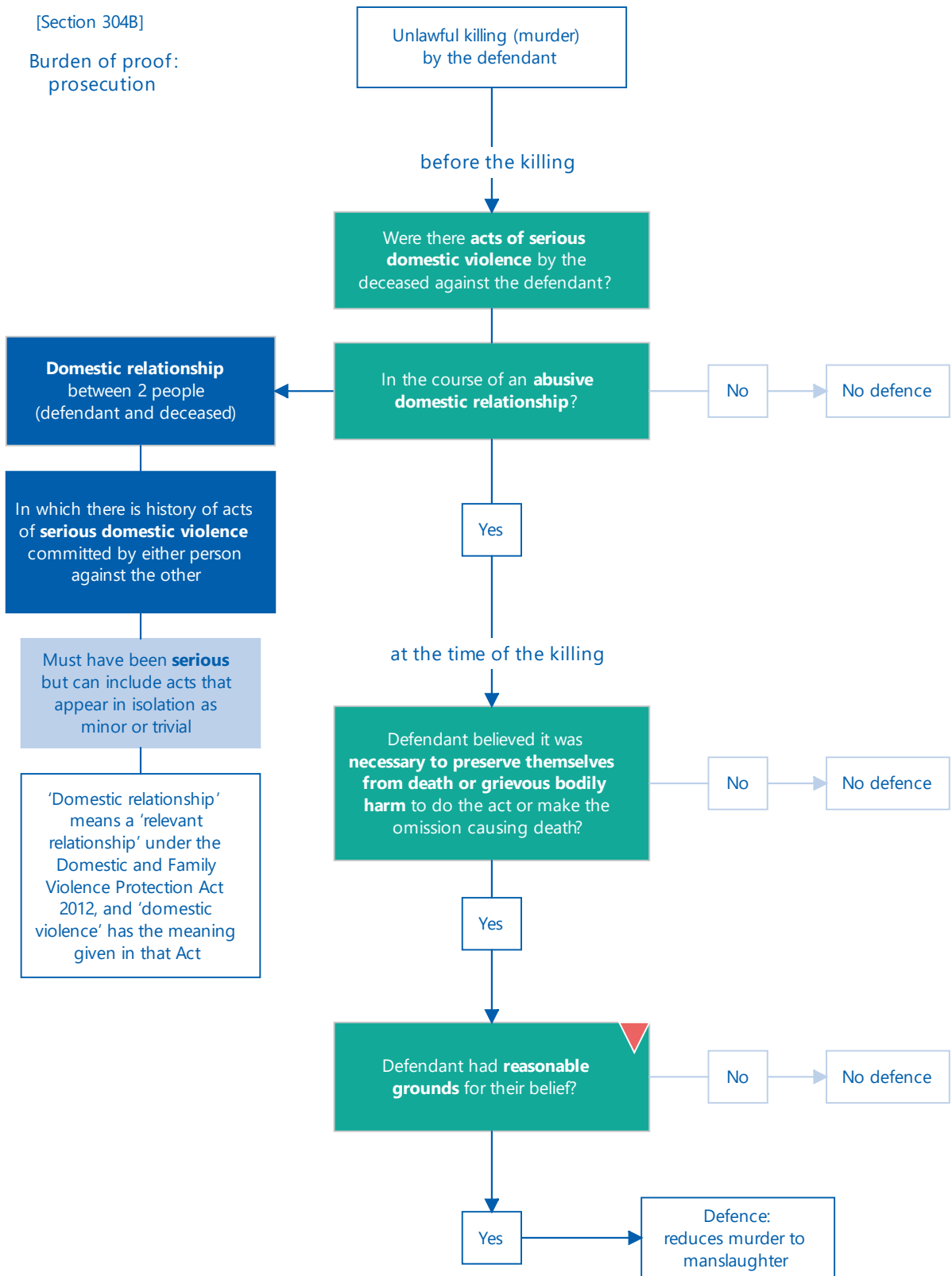
Criticisms of the defence in section 304B include concerns that it:⁴⁸

- provides a partial defence only, in contrast with the complete defence of self-defence (and could undermine legitimate self-defence claims⁴⁹)
- does not apply where the person kills their abuser to protect someone else, such as a child or other family member
- may be underused.

Queensland is the only Australian jurisdiction with the partial defence of killing for preservation in an abusive domestic relationship.

However some places, like Western Australia, have a partial defence of excessive self-defence; and some, like Victoria, have a provision about the operation of self-defence in the context of domestic and family violence.⁵⁰ For example, in Victoria, the legislation provides that self-defence may be available in a domestic and family violence context even if the person is not responding to an immediate harm or the force used in self-defence exceeds the force involved in the harm. It also allows relevant evidence of domestic and family violence to be given.⁵¹

Figure 1: killing for preservation in abusive domestic relationship provision in Queensland



▼ Taking into account the abusive domestic relationship and all the circumstances

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. To help judges with this, suggested directions in the Queensland Supreme and District Courts Criminal Directions Benchbook offer guidance on the directions that should be given.

The following extract is from the suggested direction in the benchbook on the partial defence of killing for preservation in an abusive domestic relationship under section 304B. View the full text on the [Queensland Courts website](#).⁵²

Suggested directions for section 304B: killing for preservation in an abusive domestic relationship

...

The defence [in section 304B] operates as a partial defence, not a complete defence, because if it applies its effect is to reduce what would otherwise be a verdict of murder to one of manslaughter. You only need to consider this defence if you provisionally reach the view that the defendant had the necessary intent to kill, or cause grievous bodily harm, and that the killing was unlawful (but for this defence) so that the defendant would be guilty of murder.

A matter for your consideration ... is whether the deceased committed acts of serious domestic violence against the defendant in the course of an abusive domestic relationship. An abusive domestic relationship is a domestic relationship existing between two persons in which there is a history of acts of serious domestic violence committed by either person against the other. A history of acts of serious domestic violence may include acts that appear minor or trivial when considered in isolation.

... a further matter for consideration is the requirement that 'the person believes that it is necessary for the person's preservation from death or grievous bodily harm to do the act or make the omission that causes the death'. This concerns the defendant's actual belief (not that of some hypothetical person) as to whether the act or omission was necessary to preserve the defendant from death or grievous bodily harm.

In considering the additional issue of whether the defendant had reasonable grounds for that belief, you should have regard to the evidence as you find it of an abusive domestic relationship and all the circumstances of the case, including acts of the deceased that were not acts of domestic violence.

The defence may apply even if the act or omission causing the death of the deceased (the response) was done or made in response to a particular act of domestic violence committed by the deceased that would not, if the history of acts of serious domestic violence were disregarded, warrant the response.

It is not for a defendant to prove that this partial defence applies, rather the onus is on the prosecution to exclude the defence. The defence is excluded if the prosecution satisfies you beyond reasonable doubt that:

1. the deceased did not commit acts of serious domestic violence against the defendant in the course of an abusive domestic relationship; or
2. the defendant did not believe it was necessary for the defendant's preservation from death or grievous bodily harm to do the act or make the omission that caused the death of the deceased; or
3. if the defendant had such a belief, the defendant did not have reasonable grounds for the belief, having regard to the abusive domestic relationship and all the circumstances of the case.

If you come to consider this defence, because you provisionally reach the view that the defendant unlawfully killed the deceased such that the defendant would be guilty of murder, but the prosecution does not satisfy you beyond reasonable doubt that this defence is excluded, then the defendant would be not guilty of murder, but guilty of manslaughter.

Domestic discipline information sheet

Version November 2023

Domestic discipline is in section 280 of the Criminal Code.

The use of force without consent against another person, including a child, is unlawful unless it is 'authorised, justified or excused by law'.⁵³ If the use of force is covered by the defence of domestic discipline, it is lawful.

The defence of domestic discipline 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, schoolteacher or master in relation to a child or student under their care. A child is a person under 18 years old.⁵⁴ Section 280 provides 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. The key limitation is that the force used was reasonable in the circumstances.

280 Domestic discipline

It is lawful for a parent or a person in the place of a parent, or for a schoolteacher or master, to use, by way of correction, discipline, management or control, towards a child or pupil, under the person's care such force as is reasonable under the circumstances.

This defence was based on earlier common law and included in the Code when it first came into force in 1901. At that time, it referred to the use of force by way of 'correction' towards a 'child, pupil or apprentice'. In 1997 the words 'discipline, management or control' were added and the reference to an 'apprentice' was removed.⁵⁵

In the early common law, the defence of 'lawful correction' was explained as a consequence of a parent's duty to protect and educate their child. Parental authority to discipline a child could be delegated to a schoolmaster.⁵⁶ A parent or schoolmaster could lawfully use 'moderate and reasonable corporal chastisement,' on a child 'capable of appreciating the punishment'. But the force used could not exceed the bounds of moderation 'either in the manner, the instrument or the quantity of the punishment'.⁵⁷

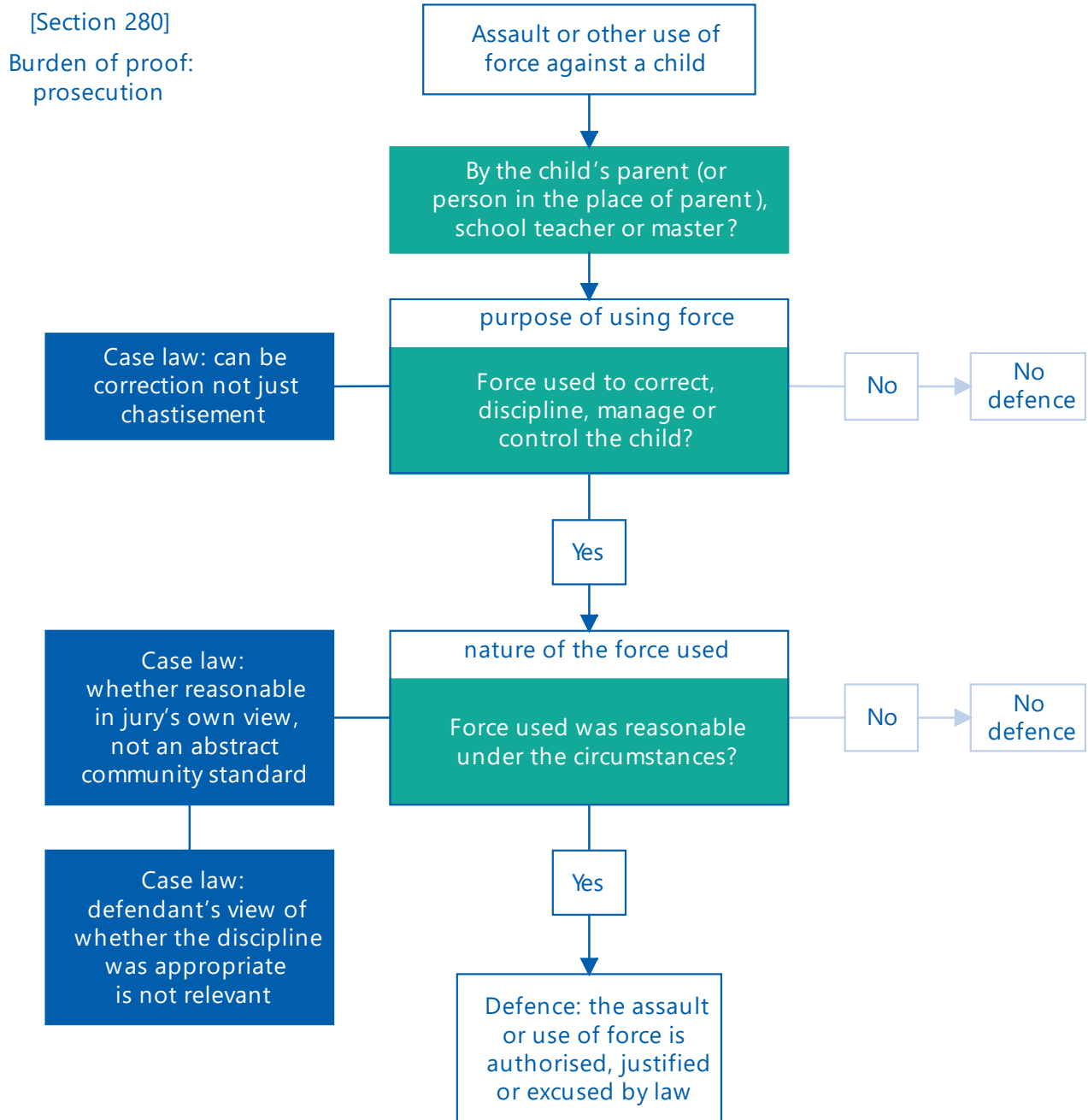
Most cases raising the defence relate to parents, although many earlier cases concerned schoolteachers.⁵⁸

The defence of domestic discipline has attracted criticisms, for example, that:⁵⁹

- 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.

Despite the criminal defence of domestic discipline in the Criminal Code, there are limits on physical punishment of children in other parts of the law in Queensland. Corporal punishment is prohibited for children in care, in youth detention, or at an early childhood education and care service (such as a long day care, family day care or outside school hours service).⁶⁰ The defence of domestic discipline can apply in school settings, but corporal punishment is prohibited in government schools at a policy level.⁶¹

Figure 1: the domestic discipline provision in Queensland



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. To help judges with this, suggested directions in the Queensland Supreme and District Courts Criminal Directions Benchbook offer guidance on the directions that should be given.

The following extract is the suggested direction in the benchbook on domestic discipline under section 280. View the full text on the [Queensland Courts website](#).⁶²

Domestic discipline: section 280

The prosecution must satisfy you beyond reasonable doubt that any assault in this case was unlawful, which means not authorised, justified or excused by the law. The law permits a parent [or a person in the place of a parent, school teacher or master] to use by way of correction, discipline, management or control towards a child under that person's care, such force as is reasonable under the circumstances.

It is accepted here that [the complainant] was in her father's care at the time. It is for the prosecution to satisfy you beyond reasonable doubt either –

1. that the defendant's actions in [describe actions] were not by way of correction, discipline, management or control of his child; or
2. that the force he used was not reasonable.

It is for you to decide what is reasonable on an objective view of the circumstances as you find them to be. It is important that you understand that the defendant does not have to prove that he was disciplining [or controlling etc] his child or that the force used was reasonable; it is for the prosecution to prove either that he was not disciplining her, or that the force used was not reasonable under the circumstances.

If the prosecution has satisfied you beyond a reasonable doubt, either that the defendant was not disciplining the child or, alternatively, that the force he used was not reasonable under the circumstances, it has established that the defendant's actions were not lawful on this basis. If it cannot do so, the defendant is entitled to be acquitted.

Each of the other Australian jurisdictions has a domestic discipline defence, either in their criminal legislation or under the common law. The Model Criminal Code also includes a defence.⁶³ The provisions in Tasmania and Western Australia are similar to Queensland. In New South Wales, the defence excludes some conduct, such as force applied to the head or neck. 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.⁶⁴

Many countries around the world have prohibited corporal punishment of children, including in the home. Sweden was the first country to do so in 1979, with Zambia and Mauritius the most recent countries in 2022.⁶⁵

Model Criminal Code

5.1.44 Correction of children

- (1) A parent of a child is not criminally responsible for an offence against Division 5 (Causing harm), 6 (Threats and stalking) or 8 (Kidnapping, child abduction and unlawful detention) committed against the child if the conduct of the parent constituting the offence amounted to reasonable correction of the child.
- (2) Any other person who has the care of a child is not criminally responsible for an offence against Division 5 (Causing harm), 6 (Threats and stalking) or 8 (Kidnapping, child abduction and unlawful detention) committed against the child if the conduct of the person constituting the offence amounted to reasonable correction of the child and:
 - (a) the parent of the child consented to such correction of the child by the person; or
 - (b) the person reasonably believed that the parent of the child consented to such correction of the child by the person; or
 - (c) the parent of the child consented to the person taking responsibility for the care and management of the child (but only in the case of an offence against Division 8).
- (3) Conduct can amount to reasonable correction of a child only if it is reasonable in the circumstances for the purposes of the discipline, management or control of the child. The following conduct does not amount to reasonable correction of a child:
 - (a) causing or threatening to cause harm to a child that lasts for more than a short period; or
 - (b) causing harm to a child by use of a stick, belt or other object (other than an open hand).

The Model Criminal Code is not in force as legislation, but is a draft of suggested provisions developed in the 1990s with the aim of providing for uniform or consistent criminal laws around Australia.⁶⁶

Crimes Act 1900 (NSW)

61AA Defence of lawful correction

- (1) In criminal proceedings brought against a person arising out of the application of physical force to a child, it is a defence that the force was applied for the purpose of the punishment of the child, but only if—
 - (a) the physical force was applied by the parent of the child or by a person acting for a parent of the child, and
 - (b) the application of that physical force was reasonable having regard to the age, health, maturity or other characteristics of the child, the nature of the alleged misbehaviour or other circumstances.
- (2) The application of physical force, unless that force could reasonably be considered trivial or negligible in all the circumstances, is not reasonable if the force is applied—
 - (a) to any part of the head or neck of the child, or
 - (b) to any other part of the body of the child in such a way as to be likely to cause harm to the child that lasts for more than a short period.
- (3) Subsection (2) does not limit the circumstances in which the application of physical force is not reasonable.
- (4) This section does not derogate from or affect any defence at common law (other than to modify the defence of lawful correction).
- (5) Nothing in this section alters the common law concerning the management, control or restraint of a child by means of physical contact or force for purposes other than punishment.
- (6) In this section—

child means a person under 18 years of age.

parent of a child means a person having all the duties, powers, responsibilities and authority in respect of the child which, by law, parents have in relation to their children.

person acting for a parent of a child means a person—

- (a) who—
 - (i) is a step-parent of the child, a de facto partner of a parent of the child, a relative (by blood or marriage) of a parent of the child or a person to whom the parent has entrusted the care and management of the child, and
 - (ii) is authorised by a parent of the child to use physical force to punish the child, or
- (b) who, in the case of a child who is an Aboriginal or Torres Strait Islander (within the meaning of the Children and Young Persons (Care and Protection) Act 1998), is recognised by the Aboriginal or Torres Strait Islander community to which the child belongs as being an appropriate person to exercise special responsibilities in relation to the child.

Note—

'De facto partner' is defined in section 21C of the Interpretation Act 1987.

Crimes Act 1900 (NSW) cont.

- (7) This section does not apply to proceedings arising out of an application of physical force to a child if the application of that force occurred before the commencement of this section.
- (8) The Attorney General is to review this section to determine whether its provisions continue to be appropriate for securing the policy objectives of the section. The review is to be undertaken as soon as possible after the period of 3 years from the commencement of this section. A report on the outcome of the review is to be tabled in each House of Parliament within 6 months after the end of the period of 3 years.

Crimes Act 1961 (NZ)

59 Parental control

- (1) Every parent of a child and every person in the place of a parent of the child is justified in using force if the force used is reasonable in the circumstances and is for the purpose of—
 - (a) preventing or minimising harm to the child or another person; or
 - (b) preventing the child from engaging or continuing to engage in conduct that amounts to a criminal offence; or
 - (c) preventing the child from engaging or continuing to engage in offensive or disruptive behaviour; or
 - (d) performing the normal daily tasks that are incidental to good care and parenting.
- (2) Nothing in subsection (1) or in any rule of common law justifies the use of force for the purpose of correction.
- (3) Subsection (2) prevails over subsection (1).
- (4) To avoid doubt, it is affirmed that the Police have the discretion not to prosecute complaints against a parent of a child or person in the place of a parent of a child in relation to an offence involving the use of force against a child, where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution.

Table 1: domestic discipline provisions in Queensland and other jurisdictions

Act name and jurisdiction	Domestic discipline defence	Who can rely on defence	What purpose the force can be used for	What type of force can be used
Criminal Code (Qld)	✓ domestic discipline: s 280	applies to a parent, person in place of parent, schoolteacher, or master	force can be used to correct, discipline, manage or control the child or pupil	force used must be reasonable under the circumstances
Australian Capital Territory	✓ lawful chastisement: common law	applies to a parent or person in the place of a parent	force can be used to punish or correct the child	see separate entry on common law below
Crimes Act 1900 (NSW)	✓ lawful correction: s 61AA	applies to a parent or person acting for a parent of the child	force can be used to punish the child	<ul style="list-style-type: none"> force used must be reasonable having regard to the child's age, health, maturity or other characteristics, the nature of the alleged misbehaviour, or other circumstances unless it is trivial or negligible, excludes force applied to any part of the child's head or neck, or to another part of the child's body if likely to cause harm that lasts for more than a short period
Criminal Code (NT)	✓ domestic discipline: ss 11, 27(p)	applies to a parent or guardian or person in their place, a school teacher of the child or other delegated person who has custody or control of the child	force can be used to discipline, manage or control the child	force used must be 'not unnecessary force', and not intended or likely to cause death or serious harm
Criminal Law Consolidation Act 1935 (SA)	✓ lawful chastisement: s 20 and common law	applies to a parent or person in the place of a parent	force can be used to punish or correct the child	conduct that is excused by law is not an assault: s 20(2)(b) see separate entry on common law below
Criminal Code (Tas)	✓ domestic discipline: s 50	applies to a parent or person in the place of a parent	force can be used to correct the child	force used must be reasonable in the circumstances

Act name and jurisdiction	Domestic discipline defence	Who can rely on defence	What purpose the force can be used for	What type of force can be used
Victoria	✓ lawful chastisement: common law	applies to a parent or person in the place of a parent	force can be used to punish or correct the child	see separate entry on common law below
Criminal Code (WA)	✓ domestic discipline: s 257	applies to a parent, person in the place of a parent or schoolmaster	force can be used to correct the child	force used must be reasonable under the circumstances
Commonwealth	*	-	-	-
Crimes Act 1961 (NZ)	✓ parental control: s 59	applies to a parent or person in the place of a parent	<p>force can be used to:</p> <ul style="list-style-type: none"> prevent or minimise harm to the child or another person prevent the child from engaging or continuing to engage in a criminal offence, or in offensive or disruptive behaviour perform the normal daily tasks that are incidental to good care and parenting <p>nothing in the section or the common law justifies force used to 'correct' a child</p>	force used must be reasonable in the circumstances

Act name and jurisdiction	Domestic discipline defence	Who can rely on defence	What purpose the force can be used for	What type of force can be used
United Kingdom	<p>✓ reasonable punishment: common law and statute in England and Northern Ireland</p> <p>✗ common law defence of reasonable chastisement abolished in Scotland and Wales</p>	<p>applies to a parent or person in the place of a parent</p>	<p>force can be used to punish the child</p>	<p>see separate entry on common law below</p> <p>defence does not apply to offences of wounding, causing grievous bodily harm, assault occasioning actual bodily harm, cruelty to persons under 16, or strangulation or suffocation</p>
<p>Children Act 2004 (UK) s 58; The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 (NI) art 2; Children (Equal Protection from Assault) (Scotland) Act 2019 (Scot) s 1; Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 (Wales) s 1</p>				
<p>Canada Criminal Code RSC 1985 c C-46</p> <p>Limited by the Supreme Court of Canada in Canadian Foundation for Children, Youth and the Law v Canada (Attorney General) [2004] 1 SCR 76</p>	<p>✓ correction of child by force: s 43</p>	<ul style="list-style-type: none"> • applies to a parent, person standing in the place of a parent, or schoolteacher: s 43 • schoolteachers may apply force only to remove a child from a classroom or secure compliance with instructions: [2004] 1 SCR 76 	<ul style="list-style-type: none"> • force can be used to correct the child or pupil: s 43 • cannot be used against a child under the age of 2 or over the age of 12 • can be used only if the child is capable of benefiting from the discipline: [2004] 1 SCR 76 	<ul style="list-style-type: none"> • force used must not exceed what is reasonable under the circumstances: s 43 • cannot cause harm or raise a reasonable prospect of harm to the child • cannot involve the use of objects or blows or slaps to the head • degrading, inhuman or harmful conduct is not protected: [2004] 1 SCR 76
<p>Common law defence: the force used by a parent to correct the child in wrong behaviour must be moderate and reasonable, have a proper relation to the child's age, physique and mentality, and be carried out with reasonable means or instrument: see generally <i>R v Terry</i> [1955] VLR 114</p>				

Penalty for murder information sheet

Version November 2023

The penalty for murder is in section 305 of the Criminal Code. It provides for **mandatory life imprisonment or an indefinite sentence** when a person is convicted of murder.

Murder is defined in section 302. It includes killing:

- with intent to cause death or grievous bodily harm,
- by acts done or omissions made with reckless indifference to human life,
- by acts likely to endanger human life that are done in the course of an unlawful purpose, and
- in particular circumstances, for the purpose of facilitating the commission of certain crimes or the flight of a person who has committed such crimes.

Under section 303 an unlawful homicide that does not amount to murder is manslaughter. Unlike murder, the penalty for manslaughter in section 310 is a maximum of life imprisonment which gives the court discretion to impose a shorter or different sentence.

The Code includes partial defences which reduce murder to manslaughter. Partial defences include killing on provocation in section 304 and killing for preservation in an abusive domestic relationship in section 304B.⁶⁷

The Code also includes other offences for acts causing death, such as killing an unborn child, unlawful striking causing death and dangerous operation of a vehicle causing death. Some of these offences may be available as alternative verdicts on a charge of murder or manslaughter.⁶⁸

305 Punishment of murder

- (1) Any person who commits the crime of murder is liable to imprisonment for life, which can not be mitigated or varied under this Code or any other law or is liable to an indefinite sentence under part 10 of the Penalties and Sentences Act 1992.

...

310 Punishment of manslaughter

- (1) Any person who commits the crime of manslaughter is liable to imprisonment for life.
- (2) The Penalties and Sentences Act 1992, section 161Q states a circumstance of aggravation for the crime of manslaughter.

A sentence of **life imprisonment** is a fixed prison sentence where the person must serve a minimum number of years in prison before they are eligible for release on parole. If the person is granted parole, it will apply to them for their whole life. They could be returned to prison in some circumstances, for example, if they breach the parole order.⁶⁹

The **minimum non-parole period** for a person sentenced to life imprisonment **for murder** is:⁷⁰

- at least 20 years, or
- at least 25 years, if the person is sentenced for the murder of a police officer in certain circumstances, or
- at least 30 years, if the person is sentenced for the murder of more than one person or has committed or previously been sentenced to another offence of murder.

The sentencing court may increase, but not decrease, the minimum non-parole period.⁷¹

A person sentenced to life imprisonment for manslaughter must serve at least 15 years before being eligible for parole. If the sentence is for a shorter term and the person is placed on parole, the time the person must usually serve in prison before being eligible for parole is:⁷²

- 80% of the sentence or 15 years (whichever is shorter), if the person is sentenced to 10 years or more or the court declares that the person is convicted of a serious violent offence, or
- 50% of the sentence, if the person is sentenced to more than 3 years, unless the court fixes another time.

An **indefinite sentence** is a prison sentence with no fixed end date. It can be imposed in exceptional circumstances for murder, manslaughter, rape and some other serious offences. It can be imposed only if the court decides the person is a serious danger to the community because of: the person's history, character, age, health or mental condition; the severity of the offence; or other special circumstances.⁷³ The court must regularly review the sentence and decide if it should be changed to a fixed term of imprisonment (such as life imprisonment). A person under an indefinite sentence cannot be granted parole until the court discharges the indefinite sentence and replaces it with a fixed term of imprisonment.⁷⁴

General sentencing principles are in the Penalties and Sentences Act 1992. It states that the only purposes of sentencing are to:⁷⁵

- punish the person
- help rehabilitate the person
- deter the person and others from committing the same type of offence
- show that the community denounces the person's behaviour
- protect the community.

A sentencing court must also look at other relevant matters. For example, when sentencing a person for an offence of violence or that results in physical harm, the court must consider factors such as:⁷⁶

- the risk of physical harm to the community if a prison sentence is not imposed, and the need to protect the community from that risk
- the victim's personal circumstances
- the circumstances of the offence and the nature or extent of its violence
- any disregard by the person for public safety

- the person's past record, personal history, age and character
- the person's remorse or lack of remorse
- any medical, psychiatric, prison or other relevant report about the person.

305 Punishment of murder cont.

...

- (2) If the person is being sentenced—
- (a) on more than 1 conviction of murder; or
 - (b) on 1 conviction of murder and another offence of murder is taken into account; or
 - (c) on a conviction of murder and the person has on a previous occasion been sentenced for another offence of murder;

the court sentencing the person must make an order that the person must not be released from imprisonment until the person has served a minimum of 30 or more specified years of imprisonment, unless released sooner under exceptional circumstances parole under the Corrective Services Act 2006.

- (3) Subsection 2(c) applies whether the crime for which the person is being sentenced was committed before or after the conviction for the other offence of murder mentioned in the paragraph.

- (4) If—

- (a) the person killed was a police officer at the time the act or omission that caused the person's death was done or made; and
- (b) the person being sentenced did the act or made the omission that caused the police officer's death—
 - (i) when—
 - (A) the police officer was performing the officer's duty; and
 - (B) the person knew or ought reasonably to have known that he or she was a police officer; or
 - (ii) because the police officer was a police officer; or
 - (iii) because of, or in retaliation for, the actions of the police officer or another police officer in the performance of the officer's duty;

the court sentencing the person must make an order that the person must not be released from imprisonment until the person has served a minimum of 25 or more specified years of imprisonment, unless released sooner under exceptional circumstances parole under the Corrective Services Act 2006.

- (5) The Penalties and Sentences Act 1992, section 161Q also states a circumstance of aggravation for the crime of murder.

When the Criminal Code came into force in 1901, the punishment for murder was death.⁷⁷ The last execution in Queensland was in 1913. In 1916, the government introduced a policy that all sentences of death would be commuted to life imprisonment.⁷⁸ In 1922 the death penalty was abolished and the penalty for murder in the Code was changed to mandatory life imprisonment.⁷⁹

Indefinite sentences were made available as a penalty for murder in 1992. Minimum non-parole periods for some murders were added in 1997 and later extended in 2012.⁸⁰ These changes reflected the view that 'murder is the most heinous of criminal offences'. They aimed to 'ensure that the punishment of murder fits the severity of the crime' and to 'promote community safety and protection'.⁸¹

Reasons given in support of mandatory life imprisonment for murder include arguments that it:⁸²

- is necessary to reflect the uniquely serious nature of murder
- helps protect the public from the risk of reoffending
- promotes consistency in sentencing and public confidence in the administration of justice.

Criticisms of a mandatory penalty for murder include concerns that it:⁸³

- limits the court's ability to consider the individual circumstances of the case, which can result in injustice
- can discourage pleas of guilty to murder as there can be no reduction in the sentence
- does not represent truth in sentencing because a mandatory life sentence does not necessarily mean life-long imprisonment.

In general, the penalty for murder in all other Australian jurisdictions is life imprisonment. In some places, including Tasmania and Victoria, the penalty for murder is a maximum of life imprisonment, where the court has discretion to impose a shorter or different sentence. This is consistent with the Model Criminal Code.⁸⁴ In contrast, New South Wales has a maximum penalty but imposes a mandatory penalty in certain cases; and Western Australia (like New Zealand) has a presumptive penalty that must be imposed except in particular circumstances. Like Queensland, life imprisonment for murder is mandatory in the Northern Territory and South Australia.

Crimes Act 1958 (Vic)

3 Punishment for murder

- (1) Notwithstanding any rule of law to the contrary, a person convicted of murder is liable to—
 - (a) level 1 imprisonment (life); or
 - (b) imprisonment for such other term as is fixed by the court—
as the court determines.
- (2) The standard sentence for murder is—
 - (a) 30 years if the court, in determining sentence, is satisfied that the prosecution has proved beyond reasonable doubt that—
 - (i) the person murdered was a custodial officer on duty or an emergency worker on duty;
and
 - (ii) at the time of carrying out the conduct the accused knew or was reckless as to whether that person was a custodial officer or an emergency worker; and
 - (b) in any other case, 25 years.

Notes

- 1 See sections 5A and 5B of the Sentencing Act 1991 as to standard sentences.
 - 2 Murder is a category 1 offence under the Sentencing Act 1991. See section 5(2G) of that Act for the requirement to impose a custodial order for this offence.
- (3) In subsection (2)(a) custodial officer on duty, custodial officer, emergency worker on duty and emergency worker have the same meanings as in section 10AA of the Sentencing Act 1991.

5 Punishment of manslaughter

Whosoever is convicted of manslaughter shall be liable to level 2 imprisonment (25 years maximum).

...

In Victoria, murder has a maximum penalty of life imprisonment and a 'standard sentence' of imprisonment for 25 years, or 30 years in some cases. Standard sentences are a feature of the sentencing framework for some serious offences in Victoria (but not in Queensland). Standard sentences generally represent the middle of the range of seriousness and are one of the factors the court must look at as a guidepost to decide the sentence.⁸⁵

Crimes Act 1900 (NSW)

19A Punishment for murder

- (1) A person who commits the crime of murder is liable to imprisonment for life.
- (2) A person sentenced to imprisonment for life for the crime of murder is to serve that sentence for the term of the person's natural life.
- (3) Nothing in this section affects the operation of section 21(1) of the Crimes (Sentencing Procedure) Act 1999 (which authorises the passing of a lesser sentence than imprisonment for life).
- (4) This section applies to murder committed before or after the commencement of this section.
- (5) However, this section does not apply where committal proceedings (or proceedings by way of ex officio indictment) for the murder were instituted against the convicted person before the commencement of this section. In such a case, section 19 as in force before that commencement continues to apply.
- (6) Nothing in this section affects the prerogative of mercy.

19B Mandatory life sentences for murder of police officers

- (1) A court is to impose a sentence of imprisonment for life for the murder of a police officer if the murder was committed—
 - (a) while the police officer was executing his or her duty, or
 - (b) as a consequence of, or in retaliation for, actions undertaken by that or any other police officer in the execution of his or her duty,and if the person convicted of the murder—
 - (c) knew or ought reasonably to have known that the person killed was a police officer, and
 - (d) intended to kill the police officer or was engaged in criminal activity that risked serious harm to police officers.
- (2) A person sentenced to imprisonment for life under this section is to serve the sentence for the term of the person's natural life.
- (3) This section does not apply to a person convicted of murder—
 - (a) if the person was under the age of 18 years at the time the murder was committed, or
 - (b) if the person had a significant cognitive impairment at that time (not being a temporary self-induced impairment).
- (4) If this section requires a person to be sentenced to imprisonment for life, nothing in section 21 (or any other provision) of the Crimes (Sentencing Procedure) Act 1999 or in any other Act or law authorises a court to impose a lesser or alternative sentence.
- (5) Nothing in this section affects the obligation of a court to impose a sentence of imprisonment for life on a person convicted of murder in accordance with section 61 of the Crimes (Sentencing Procedure) Act 1999.
- (6) Nothing in this section affects the prerogative of mercy.
- (7) This section applies to offences committed after the commencement of this section.

24 Manslaughter—punishment

Whosoever commits the crime of manslaughter shall be liable to imprisonment for 25 years ...

Crimes (Sentencing Procedure) Act 1999 (NSW)

61 Mandatory life sentences for certain offences

- (1) A court is to impose a sentence of imprisonment for life on a person who is convicted of murder if the court is satisfied that the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that sentence.

...

- (6) This section does not apply to a person who was less than 18 years of age at the date of commission of the offence.

...

Criminal Code (WA)

279 Murder

...

- (4) A person, other than a child, who is guilty of murder must be sentenced to life imprisonment unless—
- (a) that sentence would be clearly unjust given the circumstances of the offence and the person; and
 - (b) the person is unlikely to be a threat to the safety of the community when released from imprisonment,
- in which case, subject to subsection (5A), the person is liable to imprisonment for 20 years.

...

- (5A) If the offence is committed by an adult offender in the course of conduct that constitutes an aggravated home burglary, the court sentencing the offender, if it does not impose a term of life imprisonment must, notwithstanding any other written law, impose a term of imprisonment of at least 15 years.

...

- (6) A court that does not sentence a person guilty of murder to life imprisonment must give written reasons why life imprisonment was not imposed.

280 Manslaughter

- (1) If a person unlawfully kills another person under such circumstances as not to constitute murder, the person is guilty of manslaughter and is liable to imprisonment for life.

Alternative offence: s 281, 284, 290, 291 or 294 or Road Traffic Act 1974 s 59.

- (2) If the offence is committed by an adult offender in the course of conduct that constitutes an aggravated home burglary, the court sentencing the offender, if it does not impose a term of imprisonment for life must, notwithstanding any other written law, impose a term of imprisonment of at least 15 years.

...

Criminal Code (NT)

157 Punishment for murder and conspiracy to murder

(1) A person who is guilty of the offence of murder is liable to imprisonment for life.

(2) The penalty mentioned in subsection (1) is mandatory.

...

Notes for section 157

1. Under sections 53 and 53A of the Sentencing Act 1995, a sentencing court must fix a non-parole period when sentencing an offender found guilty of murder.

...

161 Punishment for manslaughter

A person who is guilty of the offence of manslaughter is liable to imprisonment for life.

In most jurisdictions a person convicted of murder and sentenced to life imprisonment can become eligible for parole or be released on licence.⁸⁶ Unlike Queensland, courts in most other jurisdictions may order that an offender is not eligible for parole or refuse to set a non-parole period (which means the offender cannot be released on parole for the duration of their life sentence).⁸⁷

Many jurisdictions also have partial defences that reduce murder to manslaughter.

Table 1: penalty for murder and manslaughter in Queensland and other jurisdictions

Act name and jurisdiction	Penalty for murder	Minimum terms or non-parole periods	Penalty for manslaughter	Available partial defences
Criminal Code (Qld) Corrective Services Act 2006 (Qld)	Mandatory life imprisonment: s 305 Criminal Code	Minimum non-parole period between 20–30 years: s 305 Criminal Code; s 181 Corrective Services Act	Maximum life imprisonment: s 310(1) Criminal Code	✓ (including provocation and killing in preservation in a domestic relationship)
Crimes Act 1900 (ACT) Crimes (Sentencing) Act 2005 (ACT) Crimes (Sentence Administration) Act 2005 (ACT)	Maximum life imprisonment: s 12(2) Crimes Act	No parole on life sentence but release on licence available after 10 years: s 65(5) Crimes (Sentencing) Act; ss 288, 290 Crimes (Sentence Administration) Act For sentences less than life imprisonment but more than one year, court must set non-parole period (unless not appropriate): s 65 Crimes (Sentencing) Act	Maximum 20 years imprisonment (or 28 years if aggravated): s 15(2)–(3) Crimes Act	✓ (including provocation)

Act name and jurisdiction	Penalty for murder	Minimum terms or non-parole periods	Penalty for manslaughter	Available partial defences
Crimes Act 1900 (NSW) Crimes (Sentencing Procedure) Act 1999 (NSW)	Maximum life imprisonment: s 19A Crimes Act Mandatory life if murder of a police officer in particular circumstances: s 19B Crimes Act Mandatory life if court is satisfied this is needed to meet the community interest because of the extreme level of culpability in the commission of the offence: s 61 Crimes (Sentencing Procedure) Act	Where life is imposed, must serve life with no parole: s 19A(2) Crimes Act Otherwise standard non-parole period of 20–25 years: s 54A table Crimes (Sentencing Procedure) Act	Maximum 25 years imprisonment: s 24 Crimes Act	✓ (including extreme provocation and excessive self-defence)
Criminal Code (NT) Sentencing Act 1995 (NT)	Mandatory life imprisonment: s 157(1)–(2) Criminal Code	Standard non-parole period of 20 years Minimum non-parole period of 25 years in certain circumstances: s 53A Sentencing Act	Maximum life imprisonment: s 161 Criminal Code	✓ (including provocation)
Criminal Law Consolidation Act 1935 (SA) Sentencing Act 2017 (SA)	Mandatory life imprisonment: s 11 Criminal Law Consolidation Act	Presumptive non-parole period of 20 years: s 47(5) Sentencing Act	Maximum life imprisonment: s 13 Criminal Law Consolidation Act	✓ (including excessive self-defence)
Criminal Code (Tas) Sentencing Act 1997 (Tas)	Maximum life imprisonment: s 158 Criminal Code	For a term less than life, non-parole period must be not less than half the sentence: ss 17–18 Sentencing Act	Maximum 21 years imprisonment: s 389 Criminal Code	✓
Crimes Act 1958 (Vic) Sentencing Act 1991 (Vic)	Maximum life imprisonment: s 3 Crimes Act Must impose custodial sentence Standard sentence (middle of the range) of 25–30 years: s 3 Crimes Act	Presumptive non-parole period of 30 years if life sentence imposed, 70% of the term if sentenced to 20 years or more, or 60% of the term if sentenced to less than 20 years: ss 11, 11A Sentencing Act	Maximum 25 years imprisonment: s 5 Crimes Act	✓

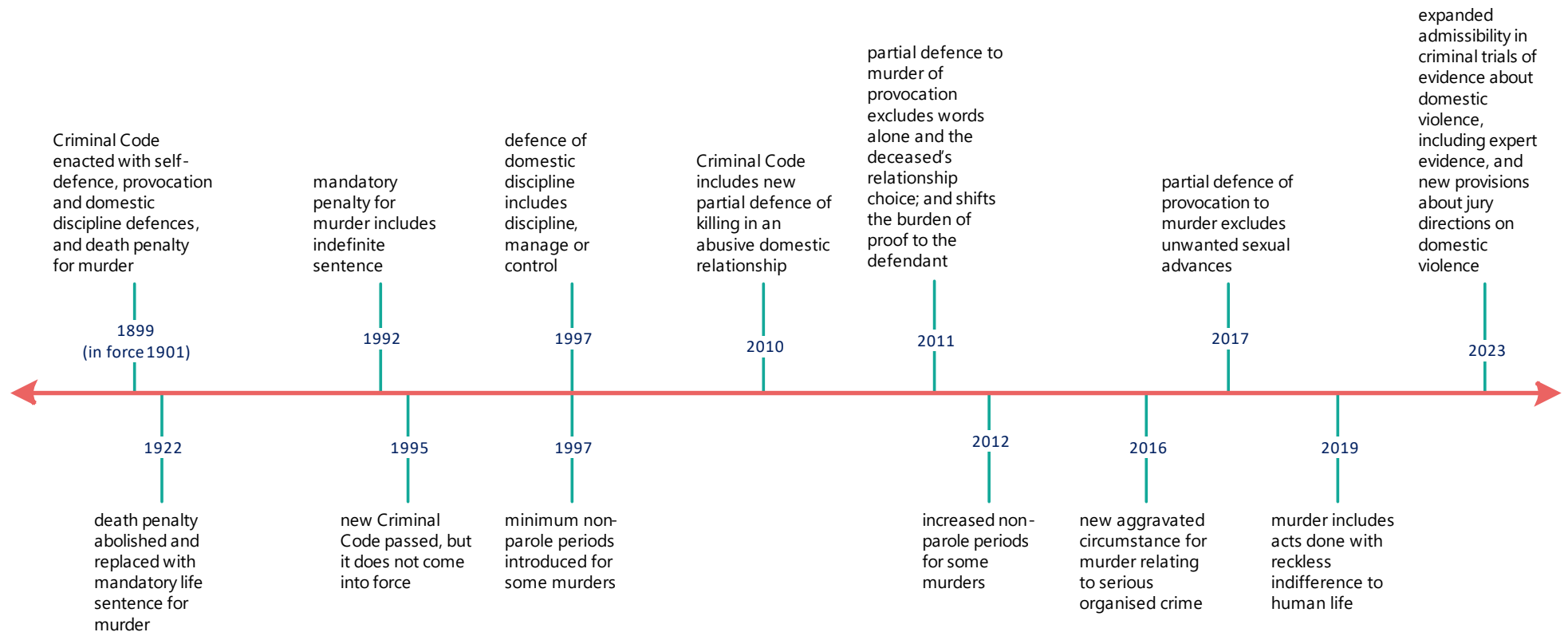
Act name and jurisdiction	Penalty for murder	Minimum terms or non-parole periods	Penalty for manslaughter	Available partial defences
Criminal Code (WA) Sentencing Act 1995 (WA)	Presumptive life imprisonment (unless it would be clearly unjust and the person is unlikely to be a threat to community safety when released): s 279(4) Criminal Code	Where a life sentence is imposed, minimum non-parole period between 10–15 years applies: s 90(1)(a)(i)–(ii) Sentencing Act	Maximum life imprisonment: s 280 Criminal Code	✓ (including excessive self-defence)
Criminal Code (Cth) Crimes Act 1914 (Cth)	Maximum life imprisonment: e.g. ss 71.2, 115.1 Criminal Code	Court may fix a non-parole period: s 19AB Crimes Act	Maximum 25 years imprisonment: e.g. ss 71.3, 115.2 Criminal Code	✗
Crimes Act 1961 (NZ) Sentencing Act 2002 (NZ)	Presumptive life imprisonment (unless it would be manifestly unjust): s 172 Crimes Act; s 102 Sentencing Act	Where a life sentence is imposed, minimum non-parole period of 10 years (or 17 years in some circumstances) applies: ss 103–104 Sentencing Act	Maximum life imprisonment: s 177 Crimes Act	✓
Murder (Abolition of Death Penalty) Act 1965 (UK) Offences Against the Person Act 1861, 24 & 25 Vict, c 100 Sentencing Act 2020 (UK) (England and Wales)	Mandatory life imprisonment: s 1(1) Murder (Abolition of the Death Penalty) Act	Minimum terms between 15 years and whole of life: ss 321–322, sch 21 Sentencing Act	Maximum life imprisonment: s 5 Offences Against the Person Act	✓ (including loss of control)
Criminal Procedure (Scotland) Act 1995 (UK) Custodial Sentences and Weapons (Scotland) Act 2007 (Scot) (Scotland)	Mandatory life imprisonment for a person 21 years or older, and maximum life detention for a person at least 18 but under 21 years old: s 205(1), (3) Criminal Procedure (Scotland) Act	Where a life sentence is imposed, court must order minimum term to be served in custody as ‘punishment part’: s 20 Custodial Sentences and Weapons (Scotland) Act	Maximum life imprisonment for culpable homicide	✓ (including provocation)

Act name and jurisdiction	Penalty for murder	Minimum terms or non-parole periods	Penalty for manslaughter	Available partial defences
Northern Ireland (Emergency Provisions) Act 1973 (UK) Life Sentences (Northern Ireland) Order 2001 (NI) The Criminal Justice (Northern Ireland) Order 2008 (NI) (Northern Ireland)	Mandatory life imprisonment: s 1(1) Northern Ireland (Emergency Provisions) Act	Where a life sentence is imposed, court may order minimum term to be served in custody as 'tariff': art 5(1) Life Sentences (Northern Ireland) Order	Maximum life imprisonment: art 13 The Criminal Justice (Northern Ireland) Order	✓ (including loss of control)
Canada Criminal Code RSC 1985 c C-46	Mandatory life imprisonment: s 235 Criminal Code	Minimum non-parole period of 25 years applies to 1st and 2nd degree murder in certain circumstances Otherwise 2nd degree murder eligible for parole between 10 and 25 years: s 745 Criminal Code	Maximum life imprisonment: s 236 Criminal Code	✓ (including provocation)



Timeline of legislative reforms and proposals in Queensland

Version November 2023



Year	Event	Self-defence	Provocation	Killing for preservation in an abusive domestic relationship	Domestic discipline	Penalty for murder
1899	Criminal Code Act 1899 (in force 1901)	Provided for self-defence against unprovoked assault (s 271), self-defence against provoked assault (s 272), and aiding in self-defence (s 273)	Provided for definition and defence of provocation to assault (ss 268–269) Provided for the partial defence of killing on provocation, leaving the definition of provocation to the common law (s 304)	–	Provided for a parent, person in place of a parent, schoolmaster or master to use reasonable force ‘by way of correction’ towards a child, pupil or apprentice (s 280)	Provided for the death penalty for wilful murder or murder (s 305), and maximum penalty of imprisonment with hard labour for life for manslaughter (s 310)
1922	Criminal Code Amendment Act 1922	–	–	–	–	Abolished the death penalty, and instead made wilful murder and murder subject to mandatory life imprisonment with hard labour
1971	The Criminal Code and the Offenders Probation and Parole Act Amendment Act 1971	–	–	–	–	Removed distinction between wilful murder and murder (repealed s 301)
1988	Corrective Services (Consequential Amendments) Act 1988	–	–	–	–	Removed references to hard labour, including for the penalty for murder (Criminal Code s 305)
1990–1992	Criminal Code Review Committee (recs not implemented)	Recommended a single provision for self-defence to replace ss 271–273	Recommended expanded complete defence of provocation to assault, e.g. to remove the requirement to act on the sudden Proposed simplified partial defence of killing on provocation	–	Recommended that parents or guardians or those in their place may apply reasonable force for discipline, management or control	Recommended there should be no mandatory sentence for any offence, fixing only the maximum sentence Proposed maximum penalty of life imprisonment for murder

Year	Event	Self-defence	Provocation	Killing for preservation in an abusive domestic relationship	Domestic discipline	Penalty for murder
			Proposed same definition of provocation for both defences, with expanded definition e.g. to apply to any offence where assault is a factual (rather than legal) element			
1992	Penalties and Sentences Act 1992	-	-	-	-	Added liability to indefinite sentence as penalty for murder (Criminal Code s 305)
1993	Juvenile Justice Regulation 1993	-	-	-	Prohibited the disciplining of children in detention centres by corporal punishment, physical contact or an act involving humiliation or physical, emotional or sustained verbal abuse (s 14; now Youth Justice Regulation 2016 s 16)	-
1995-1997	Criminal Code 1995 (Act was passed but did not come into force and was later repealed)	Provided 'a person may use reasonable force in self-defence' (s 68) and provided for defence of another (s 69)	Provided complete defence of provocation to offence containing assault as an element (s 70) Provided partial defence of killing on provocation (s 102) Provided same definitions of provocation and ordinary person for both defences (ss 84-85)	-	Provided that 'a parent, a person in the place of a parent or a teacher may use reasonable correctional force towards a child in the person's charge' (s 81)	Provided mandatory penalty of life imprisonment or indefinite sentence for murder (s 95)
1997	Criminal Law Amendment Act 1997	Provided for admissibility of relevant evidence of	Provided for admissibility of relevant evidence of	-	Added 'discipline, management or control'	-

Year	Event	Self-defence	Provocation	Killing for preservation in an abusive domestic relationship	Domestic discipline	Penalty for murder
	(also repealed the Criminal Code 1995)	history of domestic relationship for offences against chs 28-30 of the Criminal Code, including assault and homicide (s 132B Evidence Act 1977)	history of domestic relationship for offences against chs 28-30 of the Criminal Code, including assault and homicide (s 132B Evidence Act 1977)		after 'correction', and removed the reference to an apprentice (Criminal Code s 280)	
1997	Penalties and Sentences (Serious Violent Offences) Amendment Act 1997	-	-	-	-	Inserted minimum non-parole periods of 20 years for multiple murders or where previous murder history (Criminal Code s 305)
1999	Child Protection Act 1999	-	-	-	For a child in care, prohibited use of 'corporal punishment or punishment that humiliates, frightens or threatens the child in a way that is likely to cause emotional harm' (s 123, now s 122)	-
1998-2000	Taskforce on Women and the Criminal Code (recs not implemented)	Did not recommend amendments. But included a draft provision to reformulate self-defence e.g. to remove the requirement for response to a specific assault; change the test to a reasonable response to the circumstances as the person perceived them; and state that the cumulative effect of a history of personal	Recommended partial defence to murder be reviewed and possible alternative of excessive self-defence considered (rec 57) Recommended extending complete defence of provocation to apply as a defence to wounding and grievous bodily harm (rec 58)	-	-	Majority recommended keeping mandatory life imprisonment for murder (with some preferring a different option if the partial defence of provocation were removed) Presumptive life sentence favoured by others

Year	Event	Self-defence	Provocation	Killing for preservation in an abusive domestic relationship	Domestic discipline	Penalty for murder
		violence may be considered in assessing if the force was reasonable				
2008	QLRC review of the excuse of accident and the defence of provocation (recs implemented by amendments in 2011)	Noted limits of self-defence for women who kill their sleeping abuser	Recommended keeping the defences, but with changes to the partial defence to murder so that: except in 'extreme and exceptional' circumstances, provocation cannot be based on words alone, or the deceased's choice about a relationship; and the defendant has the burden of proof (recs 21, 22)	Recommended consideration be given to developing a separate defence for battered persons (rec 21)	-	Noted government's intention not to change existing penalty of mandatory life imprisonment for murder
2009	Homicide in Abusive Relationships: A Report on Defences (rec implemented by amendments in 2010)	Noted the limits of self-defence for people who kill or use violence against their abusers. But did not recommend expanding general self-defence provisions	-	Recommended separate partial defence to murder for victims of seriously abusive domestic relationships who kill their abusers, believing on reasonable grounds that their actions are necessary for self-defence; and provisions about relevant evidence	-	-
2010	Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Act 2010	-	-	Inserted s 304B as a new partial defence to murder of killing in an abusive domestic relationship, where the person believes on reasonable grounds that the conduct is necessary to preserve	-	-

Year	Event	Self-defence	Provocation	Killing for preservation in an abusive domestic relationship	Domestic discipline	Penalty for murder
				them from death or grievous bodily harm		
2011	Criminal Code and Other Legislation Amendment Act 2011	-	Amended s 304 to: exclude, except in 'extreme and exceptional' circumstances, provocation based on words alone or anything done by the deceased to end or change the relationship; allow reference to history of violence; and shift the burden of proof to the defendant	Amended the heading of s 304B to add the words 'for preservation'	-	-
2011	Education and Care Services National Law (Queensland) Act 2011	-	-	-	Made it an offence for relevant providers, supervisors, staff, volunteers and educators of education and care services to use 'corporal punishment' or 'discipline that is unreasonable in the circumstances' (s 166 of the national law in schedule to the Education and Care Services National Law Act 2010 (Vic))	-
2012	Criminal Law Amendment Act 2012	-	-	-	-	Increased the minimum non-parole period for multiple murders from 20 to 30 years, and inserted a new minimum non-parole period of 25 years

Year	Event	Self-defence	Provocation	Killing for preservation in an abusive domestic relationship	Domestic discipline	Penalty for murder
						imprisonment for murder of a police officer in certain circumstances
2012	Special Committee Report on Non-Violent Sexual Advances (rec largely implemented by amendments in 2017)	-	Recommended amending the partial defence to murder to exclude provocation 'based on an unwanted sexual advance towards the defendant or other minor touching' (other than in exceptional circumstances)	-	-	-
2016	Department of Education and Training Standard of Practice	-	-	-	Provided that 'an employee must not impose corporal punishment on a student in the course of their professional duties'	-
2016	Serious and Organised Crime Legislation Amendment Act 2016	-	-	-	-	Amended s 305 to provide that the Penalties and Sentences Act 1992 s 161Q also states a circumstance of aggravation for murder (relating to serious organised crime)
2017	Criminal Law Amendment Act 2017	-	Amended the partial defence to murder in s 304 to remove the words 'most extreme' and provide that, other than in 'exceptional' circumstances, the defence does not apply if the provocation is based on an unwanted sexual advance; and that	-	-	-

Year	Event	Self-defence	Provocation	Killing for preservation in an abusive domestic relationship	Domestic discipline	Penalty for murder
			relevant history of violence or sexual conduct may be considered for proof of exceptional circumstances			
2019	Criminal Code and Other Legislation Amendment Act 2019	-	-	-	-	Inserted s 302(1)(aa) extending the definition of murder to include death caused by an act done or omission made 'with reckless indifference to human life'
2019	Community-based Sentencing Orders, Imprisonment and Parole Options Final Report	-	-	-	-	Recommended that government initiate a review of mandatory sentencing provisions, including s 305, to clarify their operation and consider changes or repeal
2021	Womens Safety and Justice Taskforce Report One	Recommended independent review of self-defence in ss 271–272, including to consider if the defence should be clarified and simplified, or expanded to cover cases where a victim of domestic and family violence reasonably acts to protect themselves from a perpetrator (rec 71)	Recommended independent review of defences of provocation in ss 268–269, 304, including to consider if they should be repealed (rec 71)	Recommended independent review of the partial defence of killing for preservation in s 304B, including to consider if amendment or repeal is needed (rec 71)	-	Recommended independent review of defences in the Criminal Code, including to consider the impact of the mandatory penalty for murder and if it should be removed (rec 71)
2023	Domestic and Family Violence Protection	Inserted new provisions about jury directions on	Inserted new provisions about jury directions on	Inserted new provisions about jury directions on	Inserted new provisions about jury directions on	Provided for the effect of domestic violence on an

Year	Event	Self-defence	Provocation	Killing for preservation in an abusive domestic relationship	Domestic discipline	Penalty for murder
	(Combating Coercive Control) and Other Legislation Amendment Act 2023 (in force 1 August 2023)	domestic violence, including when self-defence in response to domestic violence is in issue; and expanded admissibility of domestic violence evidence, including expert evidence, in criminal proceedings (pt 6A Evidence Act 1977)	domestic violence; and expanded admissibility of domestic violence evidence, including expert evidence, in criminal proceedings (pt 6A Evidence Act 1977)	domestic violence; and expanded admissibility of domestic violence evidence, including expert evidence, in criminal proceedings (pt 6A Evidence Act 1977)	domestic violence; and expanded admissibility of domestic violence evidence, including expert evidence, in criminal proceedings (pt 6A Evidence Act 1977)	offender (and the extent to which the commission of the offence is attributable to the effect of the domestic violence) to be treated as a mitigating factor on sentence (would apply in cases of manslaughter but not murder, where penalty is mandatory) (s 9 Penalties and Sentences Act 1992)



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	✓		✓	✓		

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
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	✓					

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
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

References

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- ¹ 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].
- ² 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).
- ³ 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.
- ⁴ See *R v Dayney* [2023] QCA 62 at [39], [54], [76] (Dalton JA).
- ⁵ Queensland Courts, Queensland Supreme and District Courts Criminal Directions Benchbook, 14 September 2021, <https://www.courts.qld.gov.au/court-users/practitioners/benchbooks/supreme-and-district-courts-benchbook>. See chs 94, 94A, 95, 96 on self-defence.
- ⁶ See e.g. Crimes Act 1900 (NSW) s 418; Criminal Code (Tas) s 46; Crimes Act 1961 (NZ) s 48.
- ⁷ Model Criminal Code ch 2 pt 2.3 cl 10.4. See Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, Model Criminal Code: Chapters 1 and 2 general principles of criminal responsibility, December 1992, viewed 14 June 2023 <https://www.ag.gov.au/crime/publications/model-criminal-law-officers-committee-reports>.
- ⁸ See e.g. Crimes Act 1900 (NSW) s 421; Criminal Law Consolidation Act 1935 (SA) s 15(2); Criminal Code (WA) s 248(3).
- ⁹ See e.g. Criminal Law Consolidation Act 1935 (SA) s 15B(1); Crimes Act 1958 (Vic) s 322M(1).
- ¹⁰ See Australian Attorney-General’s Department, ‘Model Criminal Law Officers Committee Reports’, viewed 14 June 2023 <https://www.ag.gov.au/crime/publications/model-criminal-law-officers-committee-reports>.
- ¹¹ See generally Judicial Institute for Scotland, ‘Self-defence’ in Jury Manual, 15 August 2023, pp 44.1–44.6, <https://judiciary.scot/home/media-information/publications/judicial-institute-publications>.
- ¹² See Criminal Code (Qld) ss 245–246.
- ¹³ *R v Williams* [1971] Qd R 414; *Kaporonovski v The Queen* (1973) 133 CLR 209.
- ¹⁴ See Criminal Code (Qld) ss 335, 339, 340.
- ¹⁵ See Criminal Code (Qld) ss 315A, 320, 323.
- ¹⁶ See Criminal Code (Qld) ss 300–303.
- ¹⁷ See the ‘Killing on provocation information sheet’ on our website <https://www qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences>.
- ¹⁸ *Hart v The Queen* (2003) 139 A Crim R 520 at 532 [49], citing *R v Hill* [1986] 1 SCR 313 at 343.
- ¹⁹ See e.g. *McGhee v The Queen* (1995) 183 CLR 82 at 97; *R v Johnson* [1964] Qd R 1 at 4.
- ²⁰ See S Griffith, Draft Criminal Code 1897, pt 5 ch 26 cl 275, note 1 p 114; explanatory letter, p XI; Queensland Law Reform Commission, A Review of the Defence of Provocation, Report 64, September 2008, p 505.
- ²¹ 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; Queensland Law Reform Commission, A Review of the Defence of Provocation, Report 64, September 2008, pp 513–15.
- ²² Queensland Courts, Queensland Supreme and District Courts Criminal Directions Benchbook, 14 September 2021, <https://www.courts.qld.gov.au/court-users/practitioners/benchbooks/supreme-and-district-courts-benchbook> (notes omitted). See ch 91 on provocation under ss 268, 269.
- ²³ Criminal Code Act 1983 (NT) s 34(1), repealed by Criminal Reform Amendment Act (No 2) 2006 (NT) s 8. See Northern Territory, Parliamentary Debates, Legislative Assembly, 31 August 2006, 3021–24 (P Toyne, Minister for Justice and Attorney-General).
- The Model Criminal Code is not in force as legislation, but is a draft of suggested provisions developed with the aim of providing for uniform or consistent criminal laws around Australia: see Australian Attorney-General’s

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- Department, 'Model Criminal Law Officers Committee Reports', viewed 14 June 2023
<https://www.ag.gov.au/crime/publications/model-criminal-law-officers-committee-reports>.
- 24 *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.
- 25 *Johnson v The Queen* (1976) 136 CLR 619 at 656.
- 26 See the 'Penalty for murder information sheet' on our website <https://www qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences>.
- 27 See Criminal Code and Other Legislation Amendment Act 2011 (Qld) s 5; Criminal Law Amendment Act 2017 (Qld) s 10.
- 28 Explanatory Notes, Criminal Code and Other Legislation Amendment Bill 2010 (Qld) 1–3.
- 29 Explanatory Notes, Criminal Law Amendment Bill 2016 (Qld) 4. See also *R v Jansen* [2021] QSCPR 5 at [28].
- 30 See e.g. Report of the Taskforce on Women and the Criminal Code, February 2000, ch 6 pt 5; Queensland Law Reform Commission, A Review of the Excuse of Accident and the Defence of Provocation, Report 64, September 2008; *R v Sebo; Ex parte Attorney-General (Qld)* (2007) 179 A Crim R 24; *Peniamina v The Queen* (2020) 271 CLR 568. See also the 'Timeline of legislative reforms and proposals in Queensland' on our website <https://www qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences>.
- 31 See e.g. Report of the Taskforce on Women and the Criminal Code, February 2000, ch 6 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>.
- 32 Queensland Courts, Queensland Supreme and District Courts Criminal Directions Benchbook, 14 September 2021, <https://www.courts.qld.gov.au/court-users/practitioners/benchbooks/supreme-and-district-courts-benchbook>. See chs 97, 98 on killing on provocation (notes omitted; emphasis added).
- 33 See e.g. Criminal Code (WA) s 281, repealed by the Criminal Law Amendment (Homicide) Act 2008 (WA) s 12; Crimes (Provocation Repeal) Amendment Act 2009 (NZ); Model Criminal Law Officers Committee of the Standing Committee of Attorneys-General, Model Criminal Code: Chapter 5 fatal offences against the person, Discussion paper, June 1998, pp 107, 113, viewed 14 June 2023 <https://www.ag.gov.au/crime/publications/model-criminal-law-officers-committee-reports>. The Model Criminal Code is not in force as legislation, but is a draft of suggested provisions developed in the 1990s with the aim of providing for uniform or consistent criminal laws around Australia.
- 34 See Coroners and Justice Act 2009 (UK) ss 54–56.
- 35 See e.g. Criminal Code (NT) s 158(3).
- 36 See e.g. Crimes Act 1900 (NSW) s 23(2)(b), (3).
- 37 See generally Judicial Institute for Scotland, 'Provocation' in Jury Manual, 15 August 2023, pp 38.1–38.8, <https://judiciary.scot/home/media-information/publications/judicial-institute-publications>.
- 38 Queensland, Parliamentary Debates, 26 November 2009, 3669–70 (C Dick, Attorney-General and Minister for Industrial Relations).
- 39 See the 'Penalty for murder information sheet' on our website <https://www qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences>.
- 40 See Criminal Code (Qld) ss 1 (definition of 'domestic relationship'), 304B(7).
- 41 See Domestic and Family Violence Protection Act 2012 (Qld) s 13.
- 42 See Domestic and Family Violence Protection Act 2012 (Qld) s 8.
- 43 See Evidence Act 1977 (Qld) pt 6A div 1A, inserted by Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023 (Qld) pt 5; Explanatory Notes, Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 (Qld) 11–12. See also *R v Falls*, Queensland Supreme Court, Applegarth J, 26 May 2010; Explanatory Notes, Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Bill 2009 (Qld) 10.
- 44 By the Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Act 2010 (Qld) s 3.
- 45 See G Mackenzie & E Colvin, Homicide in Abusive Relationships: A report on defences, July 2009, [1.32](2), (4), (6). See also the 'Timeline of legislative reforms and proposals in Queensland' on our website <https://www qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences>.

- 46 See Explanatory Notes, Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Bill 2009 (Qld) 1–2, 9.
- 47 See Criminal Code and Other Legislation Amendment Act 2011 (Qld) ss 3, 6; Domestic and Family Violence Protection Act 2012 (Qld) ss 216, 218 (as passed).
- 48 See e.g. A Hopkins & P Eastal, '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, 322, vol 3 p 714.
- 49 See C Nash & R Dioso-Villa, 'Australia's divergent legal responses to women who kill their abusive partners', *Violence Against Women*, 16 February 2023, doi:[10.1177/10778012231156154](https://doi.org/10.1177/10778012231156154), citing *R v Sweeney*, Supreme Court of Queensland, Henry J, 3 March 2015.
- 50 See the 'Self-defence information sheet' on our website [https://www.qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences](https://www qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences).
- 51 See Crimes Act 1958 (Vic) s 322M (and s 322J).
- 52 Queensland Courts, Queensland Supreme and District Courts Criminal Directions Benchbook, 14 September 2021, <https://www.courts.qld.gov.au/court-users/practitioners/benchbooks/supreme-and-district-courts-benchbook>. See ch 99 on killing for preservation in an abusive domestic relationship (notes omitted).
- 53 See Criminal Code (Qld) ss 245 (definition of 'assault'), 246 (assaults unlawful).
- 54 See Acts Interpretation Act 1954 (Qld) s 36 sch 1 (definition of 'child').
- 55 See Criminal Law Amendment Act 1997 (Qld) s 43. The same Act repealed the Criminal Code Act 1995 (Qld): see the 'Timeline of legislative reforms and proposals in Queensland' on our website <https://www.qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences>.
- 56 See 'Chapter 16: of parent and child' in Blackstone's Commentaries on the Laws of England, 1765, Book 1, pp 434, 438, 440–41 <https://archive.org/details/lawsenglandc01blacuoft/page/n5/mode/2up>.
- 57 *Smith v O'Byrne; Ex parte O'Byrne* (1894) 5 QJL 126 at 126–7. See also *R v Hopley* [1860] 2 F&F 202 at [206].
- 58 See e.g. *Sparkes v Martin; Ex parte Martin* (1908) 2 QJPR 12; *Horan v Ferguson* [1995] 2 Qd R 490.
- 59 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.
- 60 See Child Protection Act 1999 (Qld) s 122(2); Youth Justice Regulation 2016 (Qld) s 16(4)(a); Education and Care Services National Law (Queensland) s 166.
- 61 See Queensland Department of Education and Training, 'Standard of Practice', February 2016, p 7, <https://alt-qed.qed.qld.gov.au/working-with-us/induction/department/induction-programs-and-resources/code-of-conduct>.
- 62 Queensland Courts, Queensland Supreme and District Courts Criminal Directions Benchbook, 14 September 2021, <https://www.courts.qld.gov.au/court-users/practitioners/benchbooks/supreme-and-district-courts-benchbook>. See ch 90 on domestic discipline (notes omitted).
- 63 Model Criminal Code ch 5 pt 5.1 cl 5.1.44 (previously numbered cl 5.1.41). See Model Criminal Law Officers Committee of the Standing Committee of Attorneys-General, *Model Criminal Code: Chapter 5 non-fatal offences against the person*, September 1998, viewed 14 June 2023 <https://www.ag.gov.au/crime/publications/model-criminal-law-officers-committee-reports>.
- 64 See Crimes Act 1961 (NZ) s 59; Crimes Act 1900 (NSW) s 61AA.
- 65 See End Corporal Punishment, 'Progress', viewed 27 September 2023 <https://endcorporalpunishment.org/countdown/>. See also End Corporal Punishment, 'End Corporal Punishment now hosted by the World Health Organization', 18 September 2023 <https://endcorporalpunishment.org/ecp-hosted-by-who/>.

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- 66 See Australian Attorney-General's Department, 'Model Criminal Law Officers Committee Reports', viewed 14 June 2023 <https://www.ag.gov.au/crime/publications/model-criminal-law-officers-committee-reports>.
- 67 See the 'Killing on provocation information sheet' and 'Provocation to assault information sheet' on our website <https://www qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences>.
- 68 See e.g. Criminal Code (Qld) ss 313, 314A, 328A(4), 328B, 577.
- 69 See generally Corrective Services Act 2006 (Qld) ch 5 pt 1 (parole orders), including ss 200(1)(a)(i), 205–206, 209–210.
- 70 See Corrective Services Act 2006 (Qld) s 181(1)–(2)(a)–(c); Criminal Code (Qld) s 305(2)–(4).
- 71 See *R v Appleton* [2017] QCA 290; *R v Bafico* [1996] 2 Qd R 274.
- 72 See Corrective Services Act 2006 (Qld) ss 182(1)–(2), 184.
- 73 See Penalties and Sentences Act 1992 (Qld) s 163; *R v Fraser* [2001] QCA 187 at [66] (and at [47]–[69]).
- 74 See Penalties and Sentences Act 1992 (Qld) pt 10 ss 162, 163, 171–174. See generally Queensland Sentencing Advisory Council, Queensland Sentencing Guide, March 2023, p 61.
- 75 Penalties and Sentences Act 1992 (Qld) s 9(1). See generally Queensland Sentencing Advisory Council, 'Purposes, principles and factors of sentencing', viewed 22 September 2023 <https://www.sentencingcouncil.qld.gov.au/about-sentencing/purposes-principles-and-factors-of-sentencing>.
- 76 Penalties and Sentences Act 1992 (Qld) s 9(2A)–(3).
- 77 See Criminal Code Act 1899 (Qld) sch 1 ss 19, 305, 651–652, 664–665, sch 3 (as passed). Previously see Offences Against the Person Act 1865, 29 Vic No 11, ss 1–2, repealed by Criminal Code Act 1899 (Qld) sch 3.
- 78 Queensland State Archives, 'Ernest Austin: the last man hanged in Queensland', Stories from the Archives, 20 September 2021 <https://blogs.archives.qld.gov.au/2021/09/20/ernest-austin-the-last-man-hanged-in-queensland/>.
- 79 See also the 'Timeline of legislative reforms and proposals in Queensland' on our website <https://www qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences>.
- 80 See Penalties and Sentences Act 1992 (Qld) pt 10, s 207 sch (as passed); Penalties and Sentences (Serious Violent Offences) Amendment Act 1997 (Qld) s 19; Criminal Law Amendment Act 2012 (Qld) s 3.
- 81 Explanatory Notes, Criminal Law Amendment Bill 2012 (Qld) p 2.
- 82 See e.g. *R v Appleton* [2017] QCA 290 at [42]; B Mitchell and JV Roberts, Exploring the Mandatory Life Sentence for Murder, Hart Publishing, 2012, pp 55–7; Law Reform Commission of Western Australia, Review of the Law of Homicide, Final report 97, September 2007, pp 299, 305–308; Victorian Law Reform Commission, Law of Homicide in Victoria: Sentence for murder, 1985, p 6.
- 83 See e.g. B Mitchell and JV Roberts, Exploring the Mandatory Life Sentence for Murder, Hart Publishing, 2012, pp 56–8; Law Reform Commission of Western Australia, Review of the Law of Homicide, Final report 97, September 2007, pp 299, 307–308; Victorian Law Reform Commission, Law of Homicide in Victoria: Sentence for murder, 1985, pp 6–7; K Fitz-Gibbon, 'The mandatory life sentence for murder: an argument for judicial discretion in England', Criminology and Criminal Justice, 2013, vol 13(5), pp 512–14. See generally Queensland Sentencing Advisory Council, Community-Based Sentencing Orders, Imprisonment and Parole Options, Final report, July 2019, pp 87–9.
- 84 See e.g. Criminal Code (Tas) s 158; Crimes Act 1958 (Vic) s 3.
- See Model Criminal Law Officers Committee of the Standing Committee of Attorneys-General, Model Criminal Code: Chapter 5 fatal offences against the person, Discussion paper, June 1998, ch 5 cl 5.1.9, p 65, viewed 14 June 2023 <https://www.ag.gov.au/crime/publications/model-criminal-law-officers-committee-reports>. The Model Criminal Code is not in force as legislation, but is a draft of suggested provisions developed in the 1990s with the aim of providing for uniform or consistent criminal laws around Australia.
- 85 See Crimes Act 1958 (Vic) s 3; Sentencing Act 1991 (Vic) ss 5A, 5B; *Brown v The Queen* (2019) 59 VR 462. See generally Sentencing Advisory Council (Victoria), 'Sentencing schemes', viewed 27 September 2023 <https://www.sentencingcouncil.vic.gov.au/about-sentencing/sentencing-schemes>.
- 86 Criminal Code (Qld) s 305; Corrective Services Act 2006 (Qld) s 181; Crimes (Sentencing) Act 2005 (ACT) s 65(5), Crimes (Sentence Administration) Act 2005 (ACT) ss 288, 290; Sentencing Act 1995 (NT) s 53A; Sentencing Act 2017 (SA) ss 47–8; Sentencing Act 1997 (Tas) s 18; Sentencing Act 1991 (Vic) ss 11, 11A; Sentencing Act 1995 (WA) ss 90(1)(a)(i)–(ii); Crimes Act 1914 (Cth) s 19AB. Cf Crimes Act 1900 (NSW) s 19A(2).
- 87 Sentencing Act 1995 (NT) s 53A(5); Sentencing Act 2017 (SA) s 47(5)(e); Sentencing Act 1997 (Tas) s 18; Sentencing Act 1991 (Vic) s 11; Sentencing Act 1995 (WA) s 90(1)(b); Crimes Act 1914 (Cth) s 19AB(3).