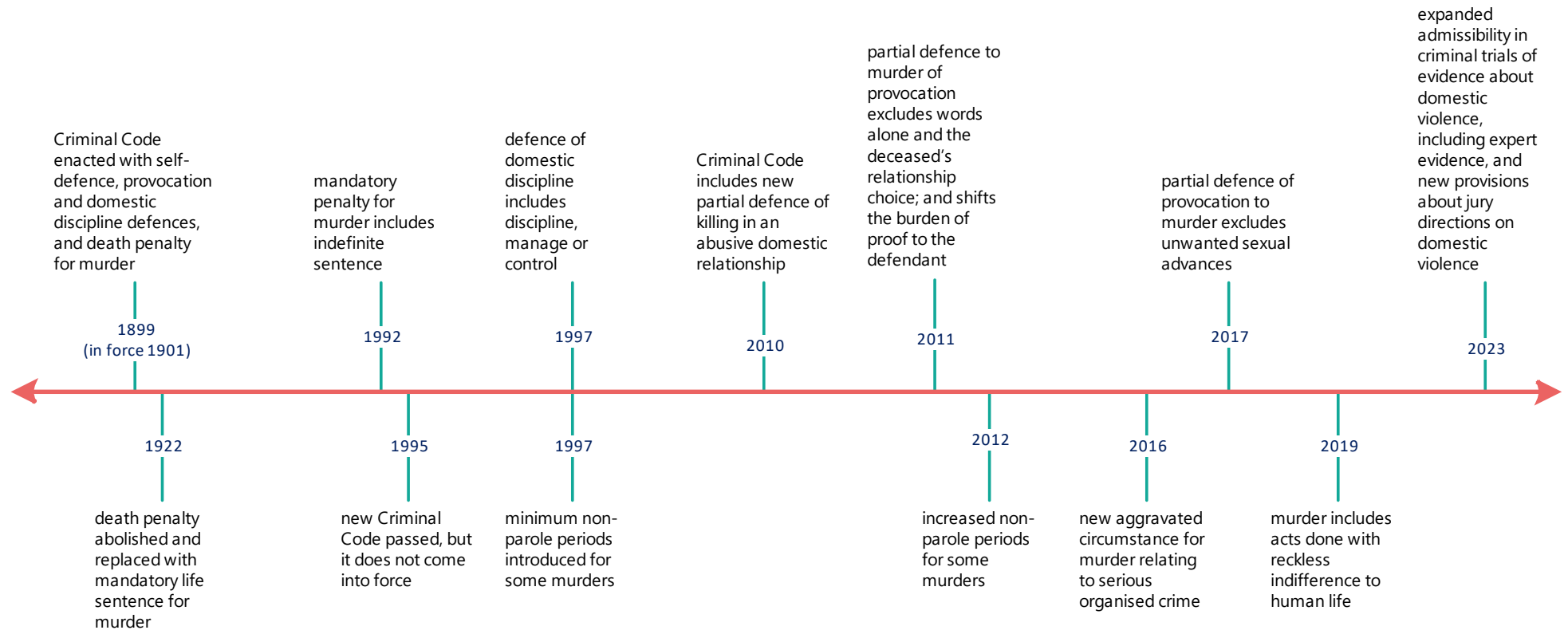




# Review of particular criminal defences

## 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	<a href="#">Criminal Code Act 1899</a> (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	<a href="#">Criminal Code Amendment Act 1922</a>	–	–	–	–	Abolished the death penalty, and instead made wilful murder and murder subject to mandatory life imprisonment with hard labour
1971	<a href="#">The Criminal Code and the Offenders Probation and Parole Act Amendment Act 1971</a>	–	–	–	–	Removed distinction between wilful murder and murder (repealed s 301)
1988	<a href="#">Corrective Services (Consequential Amendments) Act 1988</a>	–	–	–	–	Removed references to hard labour, including for the penalty for murder (Criminal Code s 305)
1990–1992	<a href="#">Criminal Code Review Committee</a> (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

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			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	<a href="#">Penalties and Sentences Act 1992</a>	-	-	-	-	Added liability to indefinite sentence as penalty for murder (Criminal Code s 305)
1993	<a href="#">Juvenile Justice Regulation 1993</a>	-	-	-	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	<a href="#">Criminal Code 1995</a> (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)

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1997	<a href="#">Criminal Law Amendment Act 1997</a> (also repealed the Criminal Code 1995)	Provided for admissibility of relevant evidence of history of domestic relationship for offences against chs 28–30 of the Criminal Code, including assault and homicide (s 132B Evidence Act 1977)	Provided for admissibility of relevant evidence of history of domestic relationship for offences against chs 28–30 of the Criminal Code, including assault and homicide (s 132B Evidence Act 1977)	-	Added 'discipline, management or control' after 'correction', and removed the reference to an apprentice (Criminal Code s 280)	-
1997	<a href="#">Penalties and Sentences (Serious Violent Offences) Amendment Act 1997</a>	-	-	-	-	Inserted minimum non-parole periods of 20 years for multiple murders or where previous murder history (Criminal Code s 305)
1999	<a href="#">Child Protection Act 1999</a>	-	-	-	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	<a href="#">Taskforce on Women and the Criminal Code</a> (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	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	-	-	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

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		them; and state that the cumulative effect of a history of personal violence may be considered in assessing if the force was reasonable	grievous bodily harm (rec 58)			
2008	<a href="#">QLRC review of the excuse of accident and the defence of provocation</a> (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	<a href="#">Homicide in Abusive Relationships: A Report on Defences</a> (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	<a href="#">Criminal Code (Abusive Domestic Relationship Defence and Another</a>	-	-	Inserted s 304B as a new partial defence to murder of killing in an abusive domestic relationship,	-	-

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	<a href="#">Matter) Amendment Act 2010</a>			where the person believes on reasonable grounds that the conduct is necessary to preserve them from death or grievous bodily harm		
2011	<a href="#">Criminal Code and Other Legislation Amendment Act 2011</a>	-	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	<a href="#">Education and Care Services National Law (Queensland) Act 2011</a>	-	-	-	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 <a href="#">Education and Care Services National Law Act 2010 (Vic)</a> )	-

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2012	<a href="#">Criminal Law Amendment Act 2012</a>	-	-	-	-	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 imprisonment for murder of a police officer in certain circumstances
2012	<a href="#">Special Committee Report on Non-Violent Sexual Advances</a> (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	<a href="#">Department of Education and Training Standard of Practice</a>	-	-	-	Provided that 'an employee must not impose corporal punishment on a student in the course of their professional duties'	-
2016	<a href="#">Serious and Organised Crime Legislation Amendment Act 2016</a>	-	-	-	-	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	<a href="#">Criminal Law Amendment Act 2017</a>	-	Amended the partial defence to murder in s 304 to remove the words 'most extreme'	-	-	-

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			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 relevant history of violence or sexual conduct may be considered for proof of exceptional circumstances			
2019	<a href="#">Criminal Code and Other Legislation Amendment Act 2019</a>	-	-	-	-	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	<a href="#">Community-based Sentencing Orders, Imprisonment and Parole Options Final Report</a>	-	-	-	-	Recommended that government initiate a review of mandatory sentencing provisions, including s 305, to clarify their operation and consider changes or repeal
2021	<a href="#">Womens Safety and Justice Taskforce Report One</a>	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	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



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		where a victim of domestic and family violence reasonably acts to protect themselves from a perpetrator (rec 71)				murder and if it should be removed (rec 71)
<b>2023</b>	<a href="#">Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023</a> (in force 1 August 2023)	Inserted new provisions about jury directions on 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)	Inserted new provisions about jury directions on domestic violence; and expanded admissibility of domestic violence evidence, including expert evidence, in criminal proceedings (pt 6A Evidence Act 1977)	Inserted new provisions about jury directions on domestic violence; and expanded admissibility of domestic violence evidence, including expert evidence, in criminal proceedings (pt 6A Evidence Act 1977)	Inserted new provisions about jury directions on domestic violence; and expanded admissibility of domestic violence evidence, including expert evidence, in criminal proceedings (pt 6A Evidence Act 1977)	Provided for the effect of domestic violence on an 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)