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By online submission to the Queensland Law Reform Commission

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Dear Sir/Madam,

Thank you for inviting submissions in response to the Queensland Law Reform Commission's Consultation Paper entitled, [Review of particular criminal defences](#), and dated February 2025. The following commentary relates to selected proposals and question numbers in the Consultation Paper's Appendix. For ease of reference, the proposals and questions are outlined in bold below.

Proposal 1

Repeal sections 271, 272, 273 of the Criminal Code and replace with a provision that provides that a person acts in self-defence if:

- (a) the person believes that the conduct was necessary –**
 - i. in self-defence or in defence of another or**
 - ii. to prevent or terminate the unlawful deprivation of liberty of themselves or another****and**
- (b) the conduct is a reasonable response in the circumstances as the person perceives them. The provision should also provide:**
- (c) Self-defence should only be available as a defence to murder where the person believes their conduct is necessary to defend themselves or another from death or serious injury.**
- (d) Self-defence does not apply if – i. the person is responding to lawful conduct and ii. the person knew the conduct was lawful. However, conduct is not lawful merely because the person carrying it out is not criminally responsible for it.**

The current self-defence provisions in the *Criminal Code* (Qld) are complex and could be simplified to enhance understanding. In my co-authored book, Diagram 10.1 on page 367 clarifies when to apply

Criminal Code (Qld) ss 271(1), 271(2) and 272.¹ Further, pages 369-371 provide diagrams that break down the elements of *Criminal Code* (Qld) ss 271(1), 271(2) and 272.

Q1 What are your views on proposal 1?

The proposed wording in P1(a) and (b) appear to apply to all non-fatal and fatal offences (except for maybe murder), which is covered in P1(c) and (d). Perhaps the murder limb could be presented first and then the latter limb could apply to all other offences/circumstances.

The term ‘circumstances’ in P1(b) is broad enough to take into account the context of the fight, for example, whether the accused person or other person started the fight by an assault or provoked an assault and the following interactions.

Despite its name, self-defence is technically an excuse not a defence, which means that an accused person only needs to raise some evidence of it and not prove it on the balance of probabilities, and the outcome of successfully arguing self-defence is a complete acquittal. As such, the word ‘defence’ should be removed from the proposed wording in P1(c), unless there is an intended change in the onus of proof for an accused person.

P1(c) needs to be strengthened so that it is not based solely on the accused person’s subjective beliefs, and includes an objective standard such as ‘reasonable grounds’, which is commonly used throughout the *Criminal Code* (Qld).

Q2 For the purposes of proposal 1: (a) how should ‘serious injury’ be defined?

The term ‘serious injury’ is already included in *Criminal Code* (Qld) s 242 Serious animal cruelty as:

242(3) In this section—

serious injury means—

- (a) the loss of a distinct part or an organ of the body; or
- (b) a bodily injury of such a nature that, if left untreated, would—
 - (i) endanger, or be likely to endanger, life; or
 - (ii) cause, or be likely to cause, permanent injury to health.

Currently, ‘serious injury’ has been used in the context of harm to animals and not used in relation to harm to people in the *Criminal Code* (Qld). Ideally, the term ‘serious injury’ should be construed consistently across the *Criminal Code* (Qld). Serious injury is subsumed in the definition of ‘grievous bodily harm’ in s 1, which additionally includes ‘serious disfigurement’ and specifies ‘whether or not treatment is or could have been available’. Further, ‘serious injury’ is not an element of any current non-fatal offence. And so, ‘grievous bodily harm’ is a better term to use for the self-defence of people and reflects what is used in the current self-defence provisions.

¹ Kelley Burton, Thomas Crofts and Stella Tarrant, *Principles of Criminal Law in Queensland and Western Australia* (Thomson Reuters, 3rd ed, 2020).

Q2 For the purposes of proposal 1: (b) should a non-exhaustive list of factors be included to assist in determining whether the person claiming self-defence has acted reasonably?

If a non-exhaustive list of factors is provided in the legislation to assist in determining if a person claiming self-defence has acted reasonably, it should include proportionality of the accused person's response, whether the accused person declined further conflict and retreated, the timing of the interactions between the accused person and the other person, and the force used by the accused person and other person.

Proposal 3

The new self-defence provision should provide that self-defence is not available where the person's belief that their actions were necessary and reasonable was substantially affected by self-induced intoxication.

Q4 What are your views on proposal 3?

The new self-defence provision in the *Criminal Code* (Qld) should clarify that self-defence is unavailable to an accused person who is intoxicated, whether intentional or unintentional, or complete or partial, and then refer to the defence in s 28.

Proposal 5

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

Q8 What are your views on proposal 5?

Provocation should be removed as a defence in *Criminal Code* (Qld) s 304, as well as s 269, because there should not be a concession where a person has reacted inappropriately and snapped, especially not to the extent of killing another person. Provocation should not reduce an accused person's criminal liability to a complete acquittal (s 269) or from murder to manslaughter (s 304). Going against the case law, 'extreme words' should not be sufficient to justify killing another person. Provocation should be a relevant sentencing consideration.

Currently, 'provocation' is defined in *Criminal Code* (Qld) s 268, but only applies to provocation where assault is an element of the offence, that is, s 269, and not s 304 where a person is killed. Terms should have the same meaning throughout the *Criminal Code* (Qld). If provocation in *Criminal Code* (Qld) s304 is retained, the definition of 'provocation' in s 268 should apply and if necessary be amended so that the same definition can apply to both types of provocation.

Q11 Should the mandatory life sentence for murder be:

- (a) retained for all murders**
- (b) retained but only for particular cases**
- (c) replaced with a presumptive life sentence or**
- (d) replaced with a maximum life sentence?**

Mandatory life imprisonment should be changed to a maximum of life imprisonment for murder, enabling sentencers to take into account the relevant sentencing considerations in each case and perhaps reducing the need for an accused person to have access to so many defences.

The Diminished Responsibility defence in *Criminal Code* (Qld) s 304A, reducing murder to manslaughter, should be removed as Queensland is the only jurisdiction in Australia with this defence and it duplicates the defence of insanity in *Criminal Code* (Qld) s 27.

Thank you for taking the time to read and consider this submission.

If you have any questions or would like to discuss further, please let know via email:

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Yours faithfully,

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