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13 May 2025

Mr Matthew Corrigan
Executive Director
Criminal Defences Review
Queensland Law Reform Commission
By email: glrc.criminaldefence@justice.qld.gov.au
And to: LawReform.Commission@justice.qld.gov.au

Dear Mr Corrigan,

RE: **RESPONSE TO QLRC CONSULTATION PROPOSALS RE CRIMINAL DEFEENCES**

Introduction

Thank you for the opportunity to make a submission in relation to the above.

The QLRC is to be commended for the helpful approach it has adopted in producing the relevant Background Papers and Research Reports that are the precursor to the Consultation Paper published in February 2025.

It is clear from the Background Papers and the Research Reports, as well as the Commission's helpful contribution to the 14 April 2025 consultation event that considerable thought and effort has gone into the current Reference by the Commission.

The current project by the Commission 'ticks all the boxes' in relation to the primary principles guiding Law Reform Commissions namely independence, transparency, accessibility and coherence.

The requirements for successful law reform were outlined by The Honourable Michael Kirby AC CMG as being the following[1]:

1. Be aware of Fundamentals.
2. Be Consultative.
3. Be Empirical.

[1] "10 Requirements for successful law reform" Flinders Journal of Law Reform (2009) 11FJR77

4. Be International.
5. Be Realistic and Flexible.
6. Be Independent.
7. Be Useful.
8. Be Patient.
9. Be Lucky. Kirby is referring here to the uncertain fortunes of law reform recommendations being implemented by the government of the day. He makes the observation "I have known Attorneys-General with a strong commitment to law reform and those who are much less interested. A similar comment can be made about the attitudes of Departmental officials. Institutional arrangements in a democratic nation should not depend on such chance factors". [2]

Each of the above principles of law reform come from one of Australia's outstanding jurists who headed up the first report of the Australian Law Reform Commission when it was established namely "Criminal Investigations" where that report was produced in 1975.

Question 1 - Views on proposal 1 – Self-defence

It is agreed that the current law of self-defence in Queensland is complex and there is some attraction to the proposition as outlined by the High Court in *Zecevic v Director of Public Prosecutions (Victoria)* where the High Court said:

> *"The question to be asked in the end is quite simple. It is whether the accused believed upon reasonable grounds that it was necessary in self-defence to do what he did."*[3]

Further, there is agreement with the Commission's observations that "Queensland self-defence laws are complex. A single case may require consideration with more than one of the self-defence propositions…this can be difficult for both lawyers and ordinary people to understand and detract from the true defence".[4]

While the Council would be interested to study the submissions of others in respect of proposal one our current view is that the simplification proposed, based as it appears to be on *Zecevic*, is an appropriate response.

Question 2 – For the purpose of proposal 1 (Simplifying self-defence) How should 'serious injury' be defined?

The Commission observes that "under the Criminal Code provisions, before a person can use potentially lethal force in self-defence, they must fear death or GBH. This approach can limit the use of the defence in some cases by those involving actual or threatened sexual assault or rape, which do not fall within the definition of GBH".[5]

It is noted from the Consultation Paper that "Victoria has expressly recognised that a person should be able to raise self-defence to murder where they feared death or really serious injury (where) 'really serious injury' is defined to include 'serious sexual assault'.[6]

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[2] Ibid page 92.
[3] See Consultation Paper paragraph 90/page 20.
[4] See Consultation Paper paragraph 96/page 22.
[5] See Consultation Paper paragraph 118/page 26.
[6] See Consultation Paper paragraph 119/page 26.

It is also noted that the Commission's community attitude survey suggests there are mixed views about whether it is appropriate to respond to threatened sexual violence with lethal force.[7]

It is noted that the Commission's proposal 1 would extend the availability of self-defence for the use of lethal violence where a person believes it is necessary to prevent death or serious injury.

The Council notes that the Victorian "approach explicitly recognises the use of lethal force and self-defence may be appropriate in response to sexual violence. It recognises that sexual violence causes significant and ongoing physical, psychological and emotional harm and ensures those who are defending against serious sexual violence have full access to self-defence provisions. It may be appropriate for Queensland law to expressly recognise the right to use force in response to sexual violence".[8]

It is submitted that more research should be undertaken by the Commission as to how the Victorian provision is working in practice. As well, research should be conducted on similar jurisdictions such as the UK or Canada to ascertain whether the concept of 'serious injury' has been adopted in this context in those countries.

Without in anyway diminishing the effect of a sexual assault on a complainant the term 'serious injury' would have to be strictly and closely defined to include sexual assaults of the most serious type.

Currently the Criminal Code provides that before a person can use potentially lethal force and self-defence they must fear death or GBH.[9] The factual parameters between GBH and "really serious injury"[10] need to be closely considered.

The Council would be interested to see the views expressed by other submitters on this point and to take up the opportunity of making a supplementary submission to the Commission once the views of other submitters are published.

Question 2(b) Non exhaustive list of factors to determine reasonableness in a person claiming self-defence

The Commission's observation is that no Australian jurisdiction currently has a provision as to whether a non-exhaustive list of factors relevant to the assessment of reasonableness should be included in any new self-defence provision.[11]

It is noted that the Canadian Criminal Code provides a non-exhaustive list of factors that may be relevant to the assessment of reasonableness and that other jurisdictions such as the United Kingdom provide limited additional guidance in legislation.[12]

Further, it is submitted that case law and relevant academic and other commentary as to how the Canadian Criminal Code provisions have worked out in practice would be a helpful further exercise the Commission could undertake with that research being published prior to the Commission producing its Final Report.

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[7] See Consultation Paper paragraph 120/page 26.
[8] See Consultation Paper paragraph 119/page 26.
[9] See Consultation Paper paragraph 118/page 26.
[10] See Consultation Paper paragraph 119/page 26.
[11] See Consultation Paper paragraph 123/page 26.
[12] See Consultation Paper paragraph 124/page 26.

Proposal 2

This proposal is that the new self-defence provision should provide that evidence that the defendant experienced domestic violence is relevant to an assessment of self-defence.

The Consultation Paper notes that proposal 2 seeks to address common barriers to accessing the complete defence of self-defence in cases where a DFV victim kills their abuser for self-preservation. Proposal 2 is designed to support proposal 1 by providing additional safeguards for persons who are the primary victim of DFV.[13]

This proposal is explored in considerable detail in the QLRC Background Paper 3 "Understanding domestic and family violence and its relevant criminal defences". This is an informative document.

This Background Paper notes:

- A person can be at risk of death and respond reasonably to that threat even if they have never been physically assaulted. Other common lethality risk indicators include the perpetrator's attempt to isolate the victim, history of violence outside the family, failure to comply with authority and prior threats to kill the victim. It is essential that this broader understanding be applied when considering the availability of defences in cases involving a history of DFV.[14]

The Background Paper notes:

- "What needs to be documented by all those involved in the case is how the predominant aggressor has hurt, intimidated and frightened the primary victim and her children, isolated her from potential support, undermined her relationships with those around her, punished her acts of resistance, undermined her stability and independence and fostered a dependence on him.[15]

While Proposal 2 is supported, it is clear that the amount of resources available to legally aided accused in order to undertake the "documentation" referred to above is going to be considerable.

Proposal 3

It is proposed that 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 were substantially affected by self-induced intoxication.

The Consultation Paper notes:

- "Under Queensland's existing self-defence provisions, evidence of intoxication is relevant when considering whether the Defendant subjectively believed they needed to use defensive force and whether there were reasonable grounds for their belief. However, it is not relevant when considering whether the response was reasonable. This is assessed from the point of view of a sober person".[16]

[13] See Consultant Paper paragraph 144/page 31.
[14] See Background Paper paragraph 128/page 28.
[15] See Background Paper paragraph 121/page 25.
[16] See Consultation Paper paragraph 148/page 31.

The Consultation Paper further notes that roughly half of all homicides in Australia between 2000 and 2006 involved alcohol consumption.[17]

The Consultation Paper acknowledges that the intersection between intoxication, drug and alcohol abuse, trauma and violence is complex and it further notes that "proposal 3 may have the unintended consequence of making self-defence more difficult to prove where a victim kills their abuser."[18]

It is submitted that much more detailed consideration needs to be given by the Commission to Proposal 3 to the extent it changes the existing Queensland Law in relation to intoxication.

It is submitted that there should be no change to the law on intoxication in homicide offences unless and until the Commission is able to undertake further research as to the following:

- The intersection between intoxication, drug and alcohol abuse, trauma and violence; and
- The unintended consequences of making self-defence more difficult to prove where a victim kills their abuser.

The fact that half of all homicides in Australia involve alcohol consumption would indicate that any attempts to limit the ability to rely on self-induced intoxication need to be carefully thought through.

At this stage of the Commission's deliberation, Proposal 3 is opposed.

Proposal 5

This proposal is that the partial defence of killing on provocation should be repealed.

The observations made in the Consultation Paper at paragraph 199 need addressing.

It is asserted that developments in human psychology suggests that the concept of 'loss of control' as a response by an ordinary person, lacks a proper basis in medicine in psychology. The authority for this proposition in footnote 172 is the Law Commission of England and Wales "Partial Defences to Murder 2004".

While the Law Commission may have made that observation it is submitted that the QLRC should lay out a thorough and comprehensive outline of any literature or credible expert evidence that can be called in aid to support the assertion that the concept of 'loss of control' lacks a proper basis in medicine and psychology.

It is respectfully submitted that insufficient justification has been outlined in the Consultation Paper for repealing the partial defence of killing on provocation. Particularly is this so where the Consultation Paper acknowledges that "there may be a small number of meritorious cases where the partial defence of provocation operates appropriately and in line with community standards to reduce a person's culpability".[19]

It is submitted that the Consultation Paper and related documents produced by the QLRC does not justify the repealing of the partial defence of killing on provocation.

[17] See Consultation Paper paragraph 147/page 31.
[18] See Consultation Paper paragraph 150&153/page 32.
[19] See Consultation Paper paragraph 206.

Question 9 – Should the Criminal Code be amended to add a new trauma-based partial defence to murder that applies when a victim-survivor of domestic violence kills their abuser?

This submission has carefully considered the paragraphs in the Consultation Paper under the heading "a bespoke trauma-based partial defence".

The Council's current position is that a new trauma based partial defence to murder should be introduced and in that regard close attention has been paid to paragraphs 223, 224 and 225 of the Consultation Paper.

The Council reserves its position in respect of the observation made at paragraph 226 of the consultation paper that the Defence should be crafted to ensure it is not available to primary perpetrators of DFV.

We would like to closely consider the positions outlined by other submitters in this regard, particularly the Queensland Office of the Director of Public Prosecutions, the Queensland Bar Association and the Queensland Law Society.

It may be that the Council would wish to make a supplementary submission on question 9 once the views of other submitters have been considered.

Question 10 – Should the Criminal Code be amended to add a new partial defence of excessive self-defence?

Paragraphs 240 to 249 of the Consultation Paper outline the issue in relation to this question.

The Council supports a new partial defence to murder that applies where the Defendant has acted excessively in self-defence and, further, the Council's position is that such a new partial defence should apply generally and should not be restricted to the context of DFV where the person in most need of protection kills their abuser.

Question 11 – Mandatory life sentence for murder

It is the Council's view that option 11(b) should be adopted namely a maximum of life imprisonment. The Council supports the observation in paragraph 266 of the Consultation Paper namely:

> *"This approach (a maximum of life imprisonment) would allow a court to use its discretion to order a sentence up to and including life imprisonment for murder. This is the approach in most Australian jurisdictions, including Victoria, the ACT, Tasmania and New South Wales."*[20]

This model which allows a court to sentence to a 'fixed term' is highly preferable given the unfairness and problems associated with mandatory life imprisonment.

An observation is sought to be made in relation to the comments in paragraph 269 of the Consultation Paper, namely:

> "*However, the community may raise concerns about judicial discretion leading to lenient sentences. Given this, an option may be including a standard sentence in legislation as a factor the court must take into account when sentencing."*[21]

[20] See Consultation Paper paragraph 266.
[21] See paragraph 269/page 53 of Consultation Paper.

The Council's submission on this point is that the concept of community concern about lenient sentences is a chimera. Time and again media outlets purport to report community dissatisfaction with a particular sentence where, on a close analysis, the so-called community outrage about a sentence is an outrage generated by a particular media outlet where a media "outrage article" is complemented by an interview with surviving family members of the murder victim.

It is therefore submitted that the "community concerns" issue raised in paragraph 269 of the Consultation Paper is a non-issue.

As with all sentences the prosecution would have the right to appeal any "fixed term" sentence and this addresses any legitimate, as opposed to media confected, concerns about inadequate sentences for murder in a fixed term regime.

Question 12 – Non-Parole period options

Paragraph 271 of the Consultation Paper sets out four options for the approach to settling the non-parole period head sentence:

- Retain the current minimum non-parole period;
- Amend to allow a discount for a guilty plea or cooperation with law enforcement authorities, or both; and
- Replace with a presumptive non-parole period.

The Council's submission in this regard, having considered particularly paragraphs 271 to 282 of the Consultation Paper, is that the option that should be adopted is to allow a discount for a guilty plea and cooperation with law enforcement authorities or both.

Paragraph 277 of the Consultation Paper considers the issue of whether it may be appropriate to legislatively limit the available discount and it also raises the issue as to whether any discount for the guilty plea should be cumulative upon any discount for cooperation.

Paragraph 277 of the Consultation Paper refers to the 5-25% discount range as applicable in South Australia. It would be useful if the Commission was able to provide an illustration of how that regime works in South Australia compared with the other fixed term sentencing regimes in the larger states of New South Wales and Victoria.

It is this Council's submission that any discount for the guilty plea should be cumulative upon any discount for cooperation.

Question 14 – Proposal 6

Provocation

Proposal 6 is stated as "the defence of provocation in Section 269 of the Criminal Code should be amended so that the Defence does not apply to domestic violence offences as defined in Section 1 of the Criminal Code.

The following paragraphs in the Consultation Paper are noted, namely:

- Paragraph 303 – "There are significant concerns that repealing provocation to assault may disproportionately impact Aboriginal and Torres Strait Islander peoples and increase their criminalisation".

- Paragraph 305 – "We are concerned that repealing the defence of provocation to assault would improperly increase the criminalisation of Aboriginal and Torres Strait Island peoples in circumstances where they should have access to a defence and where they are significantly overrepresented in our criminal justice system".

- Paragraph 306 – "The context of racially driven abuse is also a relevant consideration. We therefore propose to limit the application of provocation to assault, not abolish it".

The Council's submission is that in relation to proposal 6, the defence of provocation should apply to domestic violence offences. To be clear the Council opposes the proposal that provocation not apply to domestic violence offences. This is because there are often scenarios that develop in the intensity of a domestic violence situation where it is unfair and unrealistic having regard to particular fact situations to deprive a person of the defence of provocation.

Further, the Consultation Paper "raises the question of whether Section 269 should be legislatively restricted to offences of which assault is an element".[22]

Further, at paragraph 310 of the Consultation Paper the observation is made "…it is also worthwhile considering whether Section 269 should be explicitly restricted to offences of which assault is an element". The Council's submission is that Section 269 should not be so restricted.

Question 15 – Proposal 7 - Prevention of repetition of insult

Proposal 7 is that the defence of prevention of repetition of insult should be amended so that "the defence only applies to offences of which assault is an element and does not apply to domestic violence offences".

It is submitted that the defence of prevention of repetition of insult should not only apply to offences of which assault is an element. Further the proposal that the defence not apply to domestic violence offences is opposed.

Question 16 – What reforms are needed to criminal law practice and procedure to improve access to appropriate defences by DFV victim-survivors who offend?

Question 16 is based on the observation in paragraph 318 namely "below we set out five potential reforms that could improve access to defences for victim survivors". Each of these proposed reforms will be considered separately.

Introduce special protections for DFV victim-survivors during police interviews

Paragraph 319 observes that "providing DFV victim-survivors with special protections during police interviews may help alleviate the risk of misidentification and improve access to defences.

The Council's position is that any reasonable steps that can minimise the risk of misidentification should be supported.

The protections currently available in the PPRA are said to be the presence of a support person or notification of opportunities to access Legal Aid during police interviews for vulnerable persons.

[22] See 'Box' between paragraphs 288 and 289 of the Consultation Paper.

The Council submits that these two protections in practice often exist in name only particularly the availability of a lawyer whether legally aided or not to assist a potential accused during a police Record of Interview.

Police are supposed to maintain a roster of lawyers at every police station where lawyers have indicated their preparedness to attend at interviews including afterhours but experience shows that this requirement is poorly observed.

In the UK under the Police & Criminal Evidence Act (PACE) which has existed since 1984 police are effectively obliged to make an on-call duty lawyer available for an interview at a police station. This service is publicly funded although at non-commercial rates. A similar scheme should be considered to assist victim-survivors during police interviews.

Further, the Council submits that recommendation 8 of the Moynihan reforms which was made in December 2008 be implemented.[23]

Recommendation 8 in full is:

> *"The Queensland Police Service consider extending the use of technology for electronically recording the evidence of all witnesses. In particular, eye witness statements should be recorded at the earliest opportunity."*

In the 17 years since the Moynihan Report was delivered to the Queensland Government there has been no attempt by the QPS to implement this recommendation.

While the introduction of body worn cameras is a welcome and relatively recent change to police practices designed to capture video and audio of certain interactions between police and citizens, there is no regulation of the extent of contact between a Complainant and the investigating police in any offences including sexual offences from the time police first speak to a complaint to when a Complainant signs their witness statement.

It is the experience of many defence lawyers that there is often significant contact between police and the Complainant prior to the Complainant signing their police statement. It is the Council's submission that all contact should be tape recorded particularly having regard to the significant advances in technology over the last 17 years that allows electronic recording to be easily undertaken and the recordings easily stored.

Under current police practice and procedure police often have significant communications with complainants that are not recorded even in a notebook or otherwise in hard copy. This is productive of miscarriages of justice in that any contradictory statements made by a Complainant prior to signing their formal statement are not able to be identified by the Defence in later court proceedings.

Further, the manner in which a police statement is taken from a complainant is also poorly regulated. In sexual assault and DFV cases the taking of a complainant's statement can occur over a period of hours and in some cases days and weeks and even months.

It is therefore appropriate that the long neglected recommendation in the Moynihan Report in respect of tape recording of all contact by police with witnesses including complainants should be implemented.

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[23] See Review of the Civil & Criminal Justice System in Queensland. Hon. Martin Moynihan AO QC December 2008 at page 83.

Under the current regime a police officer taking a statement from a complainant can leave out a comment by the complainant which the police officer may consider to be unhelpful to the prosecution if it is included in the written statement. The police officer can also engage in questioning which suggests the answers that the police officer is seeking from a complainant.

Under the current scheme of police contact with complainants from point of first contact to the signing of a complainant's statement, this whole area is totally unregulated and is an area conducive to police misbehaviour in 'fashioning' or 'influencing' the ultimate format of a complainant's statement.

Expressly recognised DFV victim-survivors who offend and Aboriginal peoples and Torres Strait Islander peoples as special witnesses

The Council submits having regard to paragraphs 321 to 323 of the Consultation Paper that this proposal should be implemented.

Require pre-charge consideration of victimisation and abuse history of the Defendant

This proposal is elaborated upon at paragraphs 324 to 327 of the Consultation Paper.

The Council submits that this proposal should be effected.

Improve access to bail for DFV victim-survivors

The proposal to improve access to bail is outlined at paragraphs 328 to 332 of the Consultation Paper.

The specific proposals for change as outlined in paragraph 331 particularly amending the 'show cause' provisions are accepted.

The Council submits that the *Bail Act* reforms should be implemented.

Introduce specialist prosecutors and defence lawyers for women who kill

The Council submits that the proposal outlined in paragraph 334 should be implemented namely the QLS and ODPP should develop new practitioner specialisations and provide additional training on DFV to practitioners.

Paragraph 337 of the Consultation Paper refers to six potential reforms that could promote the early resolution of matters, namely:

- ODPP take carriage of homicide cases pre-committal and introduce measures to facilitate earlier pleas of guilty.
- Requiring the Defence to give notice of reliance on particular defences;
- Introduce pretrial hearings to determine the availability of defences;
- Introduce interlocutory appeals;
- Clarify when a Trial Judge must leave a defence that was not expressly relied upon;
- Amend police and prosecution policies to facilitate the charging of Manslaughter where a DFV victim-survivor kills their abusers.

Each of these proposals will be addressed separately.

ODPP take carriage of homicide cases pre-committal and introduce measures to facilitate early pleas of guilty

The Council submits that this proposal should be implemented but notes that this will require the allocation of a prosecutor at a much earlier stage than is currently the case.

The current position at committal hearings even when the DPP is prosecuting is that Legal Officers as opposed to Prosecutors are allocated to run the case at committal and Legal Officers have no authority and often lack the experience to be able to carry out the measures required by this proposal.

This proposal, to be effective, will require the allocation of a Crown Prosecutor to the matter effectively from the outset and that prosecutor will have to remain as the prosecutor in the matter as changes of prosecutor almost always brings changes of prosecution approach and emphasis to cases.

Requiring the defence to give notice of reliance on particular defences

Paragraphs 342 to 345 of the Consultation Paper outlines the detail of this proposal.

Section 143 of the *NSW Criminal Procedure Act 1986* provides that the Defence response is to include:

- The nature of the accused person's defence, including particular defences to be relied upon.
- The facts, matters or circumstances on which the prosecution intend to rely to prove guilt and with which the accused person intends to take issue.
- Points of law the accused person intends to raise.
- Notice of any consent that the accused person proposes to give at the trial in relation to the statement of a witness that the prosecutor proposes to adduce at the trial and a summary of evidence that the prosecutor proposes to adduce at the trial.
- A statement as to whether the accused person intends to adduce evidence of substantial mental impairment.
- If any expert witnesses propose to be called at the trial by the accused person, a copy of each report by that witness that is relevant to the case and on which the accused person intends to rely.

The situation in Queensland is that the defence is required to give notice of alibi and provide a copy of any expert witness report intended to be relied upon by the Defence ahead of the trial itself.

The *New South Wales Criminal Procedure Act* has additional factors which the Defence have to advise in advance namely:

- The nature of the accused person's defence, including particular defences to be relied upon;
- Points of law which the accused person intends to raise;
- Notice of Intention to adduce evidence of substantial mental impairment.

Paragraph 345 of the Consultation Paper notes that "critics of this approach may consider it an inappropriate limit on the Defendants rights in criminal proceedings, including the right to silence".

The Council submits that the current Queensland requirements of disclosure by the Defence should not be extended let alone should not be extended to the extent that such defence disclosure requirements exist in New South Wales.

It is submitted that the Commission should provide details of (including any reviews) of how Section 143 of the *Criminal Procedure Act* in New South Wales has worked over a period of time prior to this proposal being given any further consideration by the Commission.

Introduce pre-trial hearings to determine the availability of defences

The Consultation Paper at paragraph 348 notes that "pre-trial hearings to determine the availability of a defence (following defence notice outlining reliance on particular defences) have been used in New South Wales. For example in *R v Songcuan*, a pre-trial decision held that the partial defence of extreme provocation should be available".

The Council submits that before this proposal is decided upon by the Commission there should be a review as to how the New South Wales pre-trial hearings to determine the availability of defences have worked in practice including any reviews that have been conducted in that regard.

Introduce interlocutory appeals

This is considered at paragraphs 350-353 of the Consultation Paper.

Paragraph 352 notes that New South Wales and Victoria both allow interlocutory appeals against pre-trial rulings. Paragraph 350 of the Consultation Paper notes that under the Queensland Criminal Code there is limited scope for interlocutory appeals against pre-trial rulings.

The apparent justification that the Commission is putting forward for widening the scope of interlocutory appeals is:

> *"Interlocutory appeals would support legal clarity if there were changes to defences. They may also promote legal certainty in relation to the significant recent and ongoing legislative changes in response to Taskforce recommendations including changes to propensity evidence and expert evidence, jury directions and the new offence of coercive control".*

Interlocutory appeals appear to be envisaged by the QLRC to be available only to the prosecution.

The Council submits that much more work needs to be done by the Commission before submitters can properly respond to the proposal as outlined at paragraphs 350 to 353 to, in effect, significantly widen interlocutory appeals.

At the very least the Commission should undertake research as to how the interlocutory appeals referred to in New South Wales and Victoria against pretrial rulings are working in practice before this proposal is taken any further.

Until this further work is done by the QLRC the Council submits that there should be no change to the current law in relation to interlocutory appeals by the prosecution during a trial as such appeals have the following problems and disadvantages:

- They fragment the trial process;
- They would effectively require the cessation of the trial while the interlocutory appeal was being considered and that would necessitate the abandonment of the trial and the discharge of the jury. If such interlocutory appeals were to be allowed there should be an indemnity costs regime that accompanies such a move whether to be recovered from the Appeal Costs Fund or from the DPP in order to ensure that an accused person does not suffer significant financial disadvantage from the prosecution launching an interlocutory appeal.

Therefore at this stage of the matter and in view of the very superficial consideration of this issue in the Consultation Paper and the Council's submission that the QLRC conduct much further research on the matter the Council submits that this proposal should not go ahead at this stage.

A related suggestion is that the transcripts of all legal argument whether on Section 590AA Applications or during trial should be collated on a case by the case basis by the DPP and be available for ready access by all defence practitioners. That would achieve the outcome as outlined at paragraph 351 of the Consultation Paper namely "they may also promote legal certainty in relation to the significant recent and ongoing legislative changes in relation to Taskforce recommendations, including changes to propensity evidence and expert evidence, jury directions and the new offence of coercive control. This proposal would not carry any resource implications as it would simply require the prosecution to extract 590AA and related rulings and make them available on the DPP website for defence practitioners.

Clarify when a Trial Judge must leave a defence that was not explicitly relied upon

The proposed change in this regard is outlined at paragraph 347 of the Consultation Paper namely "(there should be) amendments to the Criminal Code, modelled on the provisions in the *Jury Directions Act 2015 (Vic)* in relation to limiting the availability of defences contrary to the Defendant's case".

The Council submits that the QLRC should provide materials and a further Research Paper or Background Paper as to how the Victorian Jury Directions Act is working in this regard including any reviews of the Act and that this should be prepared by the QLRC prior to this matter being further considered.

Establishing a DFV expert evidence panel

It is proposed that a DFV expert evidence panel, modelled on the sexual violence expert panel, could address issues impacting defence access to qualified, appropriate experts who can provide expert evidence of the nature and impact of DFV. The proposed panel is said to consist of suitably qualified experts, including social workers, academics, psychiatrists, psychologists and others with necessary expertise about social entrapment and DFV. These experts could provide reports and give evidence in court to support access to defences in appropriate cases.[24]

The sexual violence expert panel has only recently been established and, accordingly, there is insufficient experience gained by that panel for it to be used as a relevant model for the proposed DFV expert evidence panel.

The Council submits that people appointed to this panel should have recognised expertise in this area including relevant forensic and court experience. If this is not done there is a risk that the people appointed to the panel will be rejected by the court as experts. Further, if the quality of those appointments are not of a high order the amount of weight that a jury may attach to their evidence will be minimised.

The Council submits that the experts appointed to the panel should be remunerated to the same extent as the small group of psychiatrists who are regularly briefed by Crown Law to appear in Mental Health Court or DPSOA matters.

[24] See paragraphs 364 and 365 of Consultation Paper.

Making certain DFV jury directions mandatory

Paragraph 367 of the Consultation Paper notes that a proposal to amend the *Evidence Act* to make certain directions mandatory.

The Council submits that the QLRC should list the precise nature of the directions that are proposed to be mandatory so there can be an opportunity on behalf of submitters to make further observations on this topic.

Limiting admissibility of victim-blaming evidence in homicide trials

It is submitted that the option outlined by the QLRC in paragraph 371 is appropriate in this regard namely amending Section 21 of the *Evidence Act* to provide that a question about a deceased person in improper where, if they were alive and giving evidence in court, the question would be offensive, humiliating or demeaning.

Evidence of traditional laws and customs of Aboriginal and Torres Strait Islander people

It is submitted by the Council that the proposal outlined in paragraph 374 of the Consultation Paper is appropriate based on the Uniform Evidence Law and provisions enacted in Victoria, New South Wales, Tasmania, ACT, Western Australia and South Australia.

Increasing cultural capability training for police, court officers, judicial officers and prosecutors in regional and remote areas

It is submitted that this proposal should be implemented but should be extended to defence lawyers as well.

Increasing accessibility of cultural reports for Aboriginal defendants and Torres Strait Islander defendants

The Council submits that the recommendation outlined in paragraph 378 of the Consultation Paper should be implemented namely "cultural reports prepared by Community Justice groups can aid court decision-making at sentence (and support Bail Applications) by explaining cultural considerations relevant to the Defendant, including the impact of systemic disadvantage and intergenerational trauma".

Majority verdicts in murder and manslaughter cases

It is submitted that the appropriate course of action to adopt is to reinstate the rule in *Stanton v The Queen*. It is submitted as outlined in paragraph 389 of the Consultation Paper that the *Jury Act* should be amended so that a unanimous verdict of not guilty to murder is required before the charge of manslaughter can be considered.

Domestic discipline

It is submitted that the proposal as outlined in paragraph 421 of the Consultation Paper should be implemented.

Conclusion

The Council compliments the QLRC on the extremely thorough and wide ranging work done in relation to the Background Papers, the Research Papers and the Consultation Paper.

Any criticisms of the QLRC approach in relation to issues raised in the Consultation Paper are meant to be constructive and are made in light of the acknowledgement that a very substantial amount of important work has been done by the QLRC with the result that the Background and Research Papers are very useful reference documents for consideration of some of the difficult issues that the QLRC has to consider in this reference.

The QLRC views as to whether a supplementary submission is able to be made once all of the submissions are publicised would be appreciated.

Yours faithfully
QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

TERRY O'GORMAN
VICE-PRESIDENT