

16 May 2025

Queensland Law Reform Commission
Submitted electronically

Dear Colleagues,

Thank you for the opportunity to provide a submission in relation to the review of particular criminal defences.

Context

Women's Legal Service Queensland ('WLSQ') provides Queensland wide, specialist, free legal information, advice and representation to women in matters involving domestic violence, family law, child protection, financial abuse prevention and some sexual violence matters including sexual assault counselling privilege.

Global observations

We have had the benefit of reviewing the Consultation Paper, Equality and integrity: Reforming criminal defences in Queensland and welcome the depth of consultation and analysis that has informed the recommendations of the QLRC.

We note the specific terms of reference provided in November 2023 but take the opportunity to emphasise the impact of the broader context of the criminal law. As observed by the Honourable Margaret McMurdo AC :

"because the justice and corrections systems were principally designed, and until comparatively recently, administered, by men and with a male perspective, they do not focus on the needs of women victims or women offenders."¹

In this context, while we appreciate the parameters of the review, our position is that any review of the law ought to be holistic; to be approached with a view as to what might be achieved through reforming the law rather than with a pre-disposition to merely amend or alter existing structures. As expressed by Samak "To do otherwise—to start with existing categories of law, rather than with women's lives— would do no more than add a wrinkle, or worse, a distortion, to the current law, rather than the necessary transformation"².

Specific feedback

Self-defence provisions

WLSQ supports proposals 1 and 2, with a particular emphasis on the importance of proposal 2. As noted in the consultation paper, there have been limited cases in which judicial officers have provided the guidance as set out in proposal 2, however, for the protection of victims and consistency in the justice system, it is essential that this is enshrined in legislation.

¹ Women's Safety and Justice Taskforce REPORT TWO | VOLUME ONE Women and girls' experiences across the criminal justice system, Foreword, vi

² Samak, R.A. 1977. A Case for Social Law Reform. Canadian Bar Review 55 (3): 409–435 as referenced in Ailwood, S., Loney-Howes, R., Seuffert, N. *et al.* Beyond Women's Voices: Towards a Victim-Survivor-Centred Theory of Listening in Law Reform on Violence Against Women. *Fem Leg Stud* 31, 217–241 (2023)

We acknowledge the complexity associated with proposal 3 and are concerned about the potential impacts on victim-survivors of DFV. The current proposal uses the words “substantially affected”, our understanding of the intent of the provision is to capture those cases where the intoxication plays a role in the decision-making process. In this context, the use of the word “affected” may not be sufficient. Given the biological impacts of intoxication, it is conceivable that every belief could/would be affected by it, for example, the speed of decision making, how it is expressed etc. In this context, it may be preferable to rely on established concepts of law such as those used in the laws of negligence. Given that the intent is to exclude the defence where the intoxication brings about the belief in some way, it may be preferable to use language such as “materially contributed”.³

Section 304B/304

WLSQ supports the removal of s304B in the context of proposals 1 and 2 being implemented and agrees, in this context, that it would not provide any additional protection.

WLSQ is also supportive of the removal of s304 but notes the connectedness to the other recommendations in relation to mandatory sentencing and other partial defences.

While WLSQ is supportive of ensuring that victim-survivors of domestic violence who kill their abuser have appropriate defences available, there are significant challenges associated with bespoke defences. Much of the appeal of the recommendations in the consultation paper relates to the simplification and consistency proposed. While the experiences of victim-survivors may have some commonality, creating separate partial or complete defences for circumstances involving DFV may create further complexity for both victims and the administration of justice.

Mandatory penalty for murder

WLSQ is conceptually supportive of changing the current penalty regime for murder. As noted in the consultation process, the current structure has a potentially negative impact for families, friends and witnesses, as well as the effective administration of justice. WLSQ supports the use of presumptive life imprisonment, which recognises the severity of the crime while also allowing for discretion in exceptional cases and creating more opportunities for the efficient disposition of criminal matters.

Proposals 6 and 7 – provocation

WLSQ is supportive of proposal 6 to limit the application of s269 in relation to domestic violence offences. The use of violence by a primary perpetrator of DFV ought not to be protected by law.

Similarly, the application of 270 to domestic violence offences is not appropriate. As flagged in the global observations, the genesis of this defence is a situation dissimilar to a relationship characterised by a power imbalance and a use of violence to maintain it.

Practice and Procedure

WLSQ is broadly supportive of the recommendations to improve practice and procedure, especially those relating to special protections in police interviews, for witnesses, and in access to bail. While we are supportive of the concept of specialist practitioners, we note that

³ This language is discussed in Foster, Neil --- "Material Contribution' Should Be Seen as an Example of the 'but for' Test" [2023] Precedent AULA 15; (2023) 175 Precedent 8

there is significant benefit in investing in broader education to ensure there is a capability uplift across the profession. Given the geographic and resourcing challenges across the large state of Queensland, it is essential that investment occurs broadly to avoid in inequality and inconsistent experiences across the jurisdiction.

Evidence and the nature and impact of DFV

WLSQ supports all the changes contemplated in the consultation paper. Consistency is an important principle to ensure the administration of justice, and, given the potential benefit for juries and limited potential harm, it seems appropriate to make jury directions mandatory.

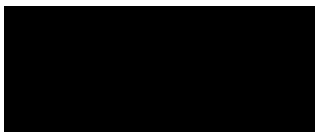
Expert evidence in relation to DFV, and the limiting of victim-blaming evidence is crucial to avoid prejudice and ensure that the law operates as intended. While we note the observation that most community members don't blame victim-survivors for their abuse or have attitudes which minimise DFV, this does not necessarily mean that they are able to adequately conceptualise the subjective experiences of victim-survivors or appreciate the complex responses to trauma. Ensuring the relevant expert evidence is available, and unnecessary prejudicial material is not permitted, are important steps in ensuring the fair conduct of criminal trials.

Summary

WLSQ is supportive of reform which improves the safety of women and increases the efficiency and fairness of the justice system. Through our experience, we know that there are still significant improvements needed in relation to women's experiences of the criminal justice system. The general experience of women is as described by the Honourable Margaret McMurdo AC when reviewing the criminal justice response to sexual violence, they "find their experiences, from police to jury trial and verdict, traumatising, confusing, disempowering and slow". WLSQ is encouraged by the work of the QLRC and the recommendations which appear well adapted to contributing to some improvement in this space.

Thank you again for the opportunity to contribute to the work of the Commission.

Yours sincerely,



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