

4 May 2025

Queensland Law Reform Commission
PO Box 13312
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Submitted via web-portal

Dear Colleagues

Review of particular criminal defences ('the Review')

Thank you for the opportunity to provide feedback in relation to the above.

About QCOSS

Queensland Council of Social Service (QCOSS) is Queensland's peak body for the social service sector. We are also the interim peak body for the Domestic and Family Violence (DFV) sector. Our vision is to achieve equality, opportunity, and wellbeing for all Queenslanders.

QCOSS' position

QCOSS welcomes the opportunity to provide feedback on the Review. We agree with the QLRC's preliminary assessment that significant reforms are needed.

Current criminal defences are inadequate in dealing with DFV and have the potential to criminalise DFV victims. The Review presents a unique opportunity to address current systemic legal bias against women, particularly women from a First Nations background who are over-represented in the criminal justice system, and to better protect victims-survivors of DFV.

In 2021, the Women's Safety and Justice Taskforce ('WSJT') reported that many DFV victims felt they had been let down by the justice system.¹ Feedback from DFV services indicates this continues to be an ongoing concern, with regular reports of systemic bias against women and Aboriginal and Torres Strait Islander Peoples.

QCOSS supports any change that will improve the safety and wellbeing of DFV victims, including access to new streamlined self-defence provisions, potential defences that include better instructing juries about coercive control and the long-term effects of domestic violence, and community education about any changes, including the role that coercive control plays in DFV.

This submission draws on consultation with representatives from Queensland's Interim DFV Peak Advisory Group, community and legal services, and from numerous reports including the WSJT *Hear Her Voice* reports.

¹ Women's Safety and Justice Taskforce. *Hear Her Voice: report one, volume one*. 2 December 2021. Accessed April 2025. [Women's Safety and Justice Taskforce - Hear her voice - Report 1 - Volume 1](#). ix.



Proposals One and Two: improving self-defence provisions

QCOSS supports the introduction of a new legislative test for self-defence to better protect victim-survivors of DFV. The current required element of assault fails to consider many non-physical types of coercive control.

DFV services agree with the QLRC that coercive control can lead to women becoming 'enmeshed' in their partner's crimes,² taking on blame for offences they did not commit.

As noted by the QLRC and DFV services across the state, 'a woman may resort to the use of force to protect herself or her children' against coercive control.³ When women murder an intimate partner, it is 'most often out of fear and self-preservation in response to prolonged domestic abuse.'⁴ A woman who does 'resort to the use of force to protect herself or her children' is unlikely able to use the current law of self-defence against non-physical DFV behaviours that are not imminent. Proposals one and two corrects this.

QCOSS also supports requiring a jury to consider the 'circumstances as the person perceives them,' to ensure the defendant's personal circumstances are appropriately considered. Without this direction, the current weight afforded to proportionality potentially criminalises women who may be defending themselves against coercive control, particularly if a weapon is used.

Proposal Three: 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

Concerns have been raised with QCOSS about the wording of this proposal and the potential for victim-survivors to have no avenue of self-defence if they were intoxicated. This has been raised as a particular issue for victim-survivors from First Nations communities, as DFV services and research indicate these communities continue to experience bias in the courts related to alcohol use.⁵

QCOSS understands that the intent of this proposal is that self-defence could still be utilised by a DFV victim if they were intoxicated and 'the person's belief that their actions were necessary and reasonable' were the same if they were sober. This would need to be made clear in any final wording.

Proposal Four: The partial defence of killing for preservation in an abusive domestic relationship should be repealed.

Given the above three proposed changes to self-defence would negate the need for this defence,⁶ QCOSS supports this being repealed. This support is dependent on proposals one and two going ahead.

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

Murdering a woman in a jealous rage should not be supported or excused by law. DFV services remain concerned that this defence can be used by people who use violence against DFV victims, similar to the case of *R v Peniamena*.⁷

² Women's Safety and Justice Taskforce. *Her Her Voice: report one, volume one*. 2 December 2021. Accessed April 2025. [Women's Safety and Justice Taskforce - Hear her voice - Report 1 - Volume 1](#). P15.

³ QLRC. Review of particular criminal defences: Equality and integrity, Reforming criminal defences in Queensland. [20250219-qlrc-cdr-cp-final.pdf](#). p14.

⁴ Caitlan Nash and Rachel Dioso-Villa. 'Australia's Divergent Legal Responses to Women who kill their abusive partners'. (2023). 30(9). Sage Journals. 2275-2301 [Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners - Caitlin Nash, Rachel Dioso-Villa, 2024](#).

⁵ Marisela Velazquez, Theresa L Petray and Debra Miles. (2022). The Impacts of Drug and Alcohol use on Sentencing for First Nations and Non-Indigenous Defendants. (2022). 14(2). *Race and Justice*. 124-145. <https://doi.org/10.1177/21533687221078967>.

⁶ Queensland Law Reform Commission. Review of particular criminal defences: Equality and integrity, Reforming criminal defences in Queensland. February 2025. [20250219-qlrc-cdr-cp-final.pdf](#). p38.

⁷ *R v Peniamena* (2021) 9 QR 124.

QCOSS supports further investigation of the proposed bespoke trauma-based partial defence, which is victim-focused.

Proposals Six and Seven: Provocation to Assault

Similar to Proposal Five, assaulting a person due to jealous rage should not be supported or excused by law.

QCOSS cannot support the introduction of any amendments that 'would improperly increase the criminalisation of Aboriginal peoples and Torres Strait Islander peoples', as the QLRC has noted regarding these proposals,⁸ and questions whether limiting the application of provocation to assault would be enough to stop this from occurring.

Aboriginal and Torres Strait Islander legal services, including the Aboriginal and Torres Strait Islander Legal Service and the Queensland Indigenous Family Violence Legal Service, should be directly consulted as experts when deciding whether to revoke or limit this application.

If the QLRC can ensure that proposals six and seven would not improperly increase the criminalisation of Aboriginal and Torres Strait Islander Peoples, QCOSS would support these proposals, in line with community expectation and support of these amendments by services.

QCOSS notes the complexity of assessing these amendments to best protect all DFV victims. We encourage the QLRC to consult further on these two proposals to ensure that whatever proposals it goes ahead with protects all victim-survivors of DFV and does not have unfair unintended consequences for some.

Other proposed partial defences

QCOSS would support any partial defence that would better protect victim-survivors, especially:

1. Improving access to defences for DFV victim-survivors

DFV services have raised concern that DFV victims, particularly those from Aboriginal and Torres Strait Islander backgrounds, are not being given access to self-defences that should be available, due to systemic bias or a lack of court time.

2. Early identification of self-defence, early resolution and legal certainty

Requiring lawyers to do this would be a safeguard to available self-defences not being provided. Research has pointed to a need for prosecutorial guidelines to address the practice of prosecutors 'over-charging' women with murder, despite clear evidence of self-defence.⁹

3. Evidence of the nature and impact of DFV being provided to a jury

Legislation criminalising coercive control will come into force this year. While current community awareness of coercive control has increased, awareness raising activities and community education needs to continue. The QLRC's identification of persistent myths, including assumptions that a woman can leave a DFV relationship if they want to,¹⁰ is further proof of the need for increased community education. To properly deliberate as part of a jury, evidence of the impact and nature of DFV, including coercive control, should be provided.

Domestic Discipline

Queensland's Human Rights Act provides every child with the right to protection needed by them and for their best interests.¹¹ Australia has also ratified the United Nations Convention on the Rights

⁸ Queensland Law Reform Commission. Review of particular criminal defences: Equality and integrity, Reforming criminal defences in Queensland. February 2025. [20250219-qlrc-cdr-cp-final.pdf](#). p38.

⁹ Caitlan Nash and Rachel Dioso-Villa. 'Australia's Divergent Legal Responses to Women who kill their abusive partners'. (2023). 30(9). Sage Journals. 2275-2301 [Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners - Caitlin Nash, Rachel Dioso-Villa, 2024](#)

¹⁰ Queensland Law Reform Commission. *Review of Particular Criminal Defences: Community attitudes to defences and sentences in cases of homicide and assault in Queensland*. November 2024. Research Report 1. [Community-Attitudes-Survey-Research-Report.pdf](#).

¹¹ *Human Rights Act 2019* (Qld) s 26(2).

of the Child, which includes protecting children from all forms of physical violence, injury or abuse, including from parents, legal guardians and carers.¹² DFV community and legal services have raised concern about unreasonable and excessive force being used by adults against children that are for non-disciplinary purposes.

Based on our consultation, QCOSS supports Option 1 with one crucial caveat.

Concerns have been raised with QCOSS about the withdrawal of Domestic Discipline legislation having potential negative, unintended impact on First Nations communities. There is immense and understandable fear amongst First Nations women, who continue to experience the intergenerational trauma of their children being taken away as part of the Stolen Generations,¹³ that this law could result in more children being taken from them. Historically, legislation that underpinned the Stolen Generations 'removed the right to parent freely' from Aboriginal and Torres Strait Islander parents.¹⁴ Therefore, any legislation or policy interfering in parenting matters is the source of great anxiety and fear for many Aboriginal and Torres Strait Islander People.

For Aboriginal and Torres Strait Islander communities, it will be crucial that community-led, place-based education is rolled out if this proposal goes ahead, taking into account this fear and apprehension that remains because of the Stolen Generations and colonisation.¹⁵ Each community has its own unique cultural protocols and knowledge that must be taken into account and respected through the delivery of education in their communities. It is important that this legislation does not lead to any unintended consequences for Aboriginal and Torres Strait Islander Peoples, and a review should be undertaken to ensure that this isn't the case.

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) has developed a framework to 'address the impacts of domestic and family violence' for children and young people.¹⁶ The framework includes principles that uphold the recognition of unique cultural protocols and knowledge of each community, which can be referred to if this proposal is introduced.

Concerns have also been raised about the potential of criminalisation of other Australians from different cultural backgrounds who may use domestic discipline. Similarly, each culturally diverse community across the state should be provided with culturally appropriate education about the changes.

Mandatory sentencing for murder

Time spent waiting for a trial, a lack of support in the criminal justice system, coercive control and family responsibilities are some of the reasons services say that women plead guilty to criminal offences they did not commit. In particular, the immense threat posed by the mandatory sentencing framework for murder is understood to be why some women have pleaded guilty to lesser offences, such as manslaughter rather than defend charges of murder.¹⁷

Additionally, recent legislative changes mean that the mandatory sentencing framework for murder in the Criminal Code now applies to children as young as just ten years old.¹⁸ This change in the law

¹² United Nations. 'Convention on the Rights of the Child, Article 19'. 20 November 1989. Accessed 11 April 2025. [Convention on the Rights of the Child | OHCHR](#); United Nations Human Rights Office of the High Commissioner. 'Status of Ratification Interactive Dashboard'. Accessed 11 April 2025. - [OHCHR Dashboard](#).

¹³ Aboriginal and Torres Strait Islander Healing Foundation. *Bringing Them Home 20 Years On: An Action Plan for Healing*. 2017. [Bringing-Them-Home-20-years-on-FINAL-SCREEN-1.pdf](#). 21.

¹⁴ Ibid.

¹⁵ Women's Safety and Justice Taskforce. *Her Her Voice: report one, volume one*. 2 December 2021. Accessed April 2025. [Women's Safety and Justice Taskforce - Hear her voice - Report 1 - Volume 1](#). P(ix).

¹⁶ Queensland Aboriginal and Torres Strait Islander Child Protection Peak. *Healing our children and young A framework to address the impacts of domestic and family violence*. (2023). [COE Practice-Framework Healing-our-Children-and-YP.pdf](#).

¹⁷ Nash C. Dioso-Villa R. (2023). *Australia's Divergent Legal Responses to Women Who Kill their Abusive Partners. Violence Against Women*, 30(9), 2275-2301. <https://doi.org/10.1177/10778012231156154>

¹⁸ *Making Queensland Safer Act 2024* (Qld).

was acknowledged to be incompatible with the human rights of children.¹⁹ QCOSS maintains our position that children should not be sentenced under an adult sentencing framework, and should be treated differently to adults within the criminal justice system. This position is explored in greater detail in the QCOSS submission responding to the Inquiry into the Making Queensland Safer Bill 2024 (Qld).²⁰ In the context of this review, we encourage the QLRC to factor this major legislative development into their final recommendations on whether the mandatory sentencing framework for the offence of murder should be removed or amended.

QCOSS acknowledges the complex factors that must be assessed when considering amendments to the sentencing framework for the offence of murder. However, the current framework can result in unintended negative consequences and can limit the ability to prevent unjust outcomes in a range of situations. Removing or amending the current mandatory sentencing framework for the offence of murder should enable sufficient judicial discretion to ensure sentencing outcomes are reasonable and proportionate to the circumstances. This could also help to address situations where women currently plead guilty to lesser offences such as manslaughter, partially driven by a fear of the rigid and significant consequences that can flow from a murder trial.

Access to justice for Aboriginal People and Torres Strait Islander People

The ongoing effects of colonisation, including systemic bias against Aboriginal and Torres Strait Islander Peoples in the criminal justice system, has led to the overcriminalisation of First Nations Australians. Therefore, continued efforts must be made to continuously improve our current systems. This includes for DFV victims.

QCOSS supports any initiatives intended to overcome the current systemic disadvantage experienced by Aboriginal and Torres Strait Islander Peoples in the legal system, including:

- the inclusion of providing an exception to the hearsay and opinion rules in legislation for evidence of traditional laws and customs
- increasing cultural capability training for police, court officers, judicial officers and prosecutors in regional and remote areas
- increasing accessibility of cultural reports for Aboriginal defendants and Torres Strait Islander defendants.

Police identification of the person most in need of protection at DFV incidents continues to be reported by DFV services as an issue for victim-survivors. Services report this problem disproportionately impacts Aboriginal and Torres Strait Islander women. It is crucial that intensive cultural training is provided to police in the context of DFV to decrease the scale of this issue.

Training and education

Services continue to raise instances of Aboriginal and Torres Strait Islander Peoples being discriminated against, including not being offered defences that should be made available to them, because of systemic bias and racism. Training and education are needed not just around any legislated amendment changes and the improved understanding of DFV, but also for practitioners within the criminal justice system who work with people from Aboriginal and Torres Strait Islander backgrounds. This includes police, lawyers and court staff.

As with Domestic Discipline, training and education involving Aboriginal and Torres Strait Islander People should be designed in consultation with Aboriginal and Torres Strait Islander legal services and communities. That training should be place-based and led by communities.

¹⁹ State of Queensland. (2024). *Statement of Compatibility, Making Queensland Safer Bill 2024 (Qld)*. The Hon Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity.

²⁰ <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5824t0205/5824t205.pdf>
Queensland Council of Social Service. (2024). Submission No 77 to Justice, Integrity and Community Safety Committee, Parliament of Queensland, *Inquiry into Making Queensland Safer Bill 2024*.
<https://documents.parliament.qld.gov.au/com/JICSC-CD82/IMQSB2024-B002/submissions/00000077.pdf>

Similarly, any training, education and resourcing needed to appropriately support victim-survivors for people with disability, the LGBTQIA+ community and culturally and linguistically diverse backgrounds should also stem from consultation with those communities and be co-designed with them.

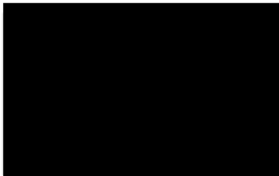
Conclusion

Current criminal defences are inadequate in dealing with DFV and have the potential to criminalise victims, while aiding the people who use violence against them. This needs to change. QCOSS welcomes the opportunity to reform current legislation to better support DFV victim-survivors. We support any legislative reform that will improve the wellbeing and safety of DFV victims, including new, streamlined self-defence provisions and potential partial defences that are victim-centred.

Community education, particularly place-based and culturally appropriate education, will be crucial to the implementation of any of the proposed reforms. The QLRC should consult intensively with community services across Queensland, particularly legal services and DFV services, to ensure that community education is appropriately designed and rolled out, and that proper support is provided right across the state, in all communities, for any programs associated with the changes, including diversionary programs for domestic discipline changes.

Thank you again for the opportunity to provide our submission.

Yours sincerely



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