

## **A REVIEW OF THE EXCUSE OF ACCIDENT AND THE DEFENCES OF PROVOCATION UNDER THE CRIMINAL CODE**

I, Kerry Shine, Attorney-General and Minister for Justice and Attorney-General and Minister Assisting the Premier in Western Queensland, having regard to:

- the need for the Criminal Code to reflect contemporary community standards;
- the need for the Criminal Code to provide coherent and clear offences which protect individuals and society;
- the need for concepts of criminal responsibility to be readily understood by the community;
- the need for the criminal law to provide appropriate offences and penalties for violent conduct;
- the need for the criminal law to provide appropriate and fair excuses and defences for all types of assault offences as well as for murder and manslaughter; and
- the existence of a mandatory life sentence for murder and the Government's intention not to change law in this regard;

refer to the Queensland Law Reform Commission (the Commission) pursuant to section 10 of the *Law Reform Commission Act 1968* (Qld), a review of the excuse of accident (section 23(1)(b) of the *Criminal Code*) and the defences of provocation (sections 268, 269 and 304 of the *Criminal Code*).

In undertaking this reference, the Commission is to have particular regard to:

- (a) the results of the Attorney-General's audit of homicide trials on the nature and frequency of use of the excuse of accident and the partial defence to murder of provocation;
- (b) whether the current excuse of accident (including current case law) reflects community expectations;
- (c) whether the partial defence of provocation (section 304 of the *Criminal Code*) should be abolished, or recast to reflect community expectations;
- (d) whether the complete defence of provocation (sections 268 and 269 of the *Criminal Code*) should be abolished, or recast to reflect community expectations;
- (e) the use of alternative counts to charges of manslaughter (for example, assault or grievous bodily harm), including whether section 576 of the Code should be redrafted;
- (f) whether current provisions are readily understood by a jury and the community;
- (g) whether there is a need for new offences, for example assault occasioning grievous bodily harm or assault causing death (to apply where accident would otherwise be a complete defence to a murder or manslaughter charge); and

(h) recent developments and research in other Australian and overseas jurisdictions, including reviews of the law of accident and provocation undertaken in other jurisdictions.

In undertaking this reference, the Commission is to, where possible and appropriate, consult stakeholders.

The Commission is to provide a report to the Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland on the results of the review by 25 September 2008.