Submission to the Queensland Law Reform Commission

Review of Particular Criminal Defences

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Introduction

This submission is made jointly by Dr Rachel Dioso-Villa, Senior Lecturer at the School of Criminology and Criminal Justice, Griffith Criminology Institute, Griffith University, and from Dr Caitlin Nash, Adjunct Research Fellow, Griffith Criminology Institute, Griffith University. Our research focuses on wrongful convictions and miscarriages of justice in Australia, with a particular emphasis on the legal treatment of women who kill their abusive male partners. We approach this submission from the standpoint that many of these cases represent systemic failures—where the law, in both its design and application, has failed to deliver just outcomes.

Our recent empirical studies have examined over 70 Australian cases involving women prosecuted for killing an abusive partner. These studies reveal troubling patterns of overcharging, pressured guilty pleas, and the routine exclusion of self-defence in circumstances where it should have applied. We argue that these outcomes are not isolated errors but structural injustices—miscarriages of justice that demand urgent reform.

We welcome the Queensland Law Reform Commission's (QLRC) review of particular criminal defences and related procedural issues. This is a timely and necessary opportunity to address the legal and systemic barriers that continue to disadvantage women who act in self-preservation after enduring prolonged domestic and family violence (DFV).

Our Research and the Context of Wrongful Convictions

Our research situates these cases within the broader framework of wrongful convictions. While public discourse around miscarriages of justice often focuses on factual innocence, we highlight a different but equally critical dimension: legal innocence. Many women who plead guilty to manslaughter or are convicted of homicide in the context of DFV may, in fact, have had a valid claim to self-defence—had the law been properly applied or understood.

In our 2024 study, *Identifying Evidentiary Checkpoints and Strategies to Support Successful Acquittals for Women who Kill an Abusive Partner*,[1] we tracked 32 Australian cases involving women who killed during or immediately following a violent confrontation. Despite meeting the traditional criteria for self-defence, most of these women were charged with murder and ultimately convicted of manslaughter—most often through plea deals. A minority proceeded to trial, and of those who did, most were acquitted.

These findings are consistent with our broader analysis of 69 cases across all Australian jurisdictions (2010–2020), in our 2023 study, *Australia's Divergent Legal Responses to Women*

[1] Dioso-Villa, R. & Nash, C. (2024). Identifying Evidentiary Checkpoints and Strategies to Support Successful Acquittals for Women Who Kill Abusive Partners During a Violent Confrontation, *International Journal of Crime, Justice and Social Democracy,* 13(4), 44-59.

Who Kill Their Abusive Partners,[2] which revealed that:
- 90% of women were initially charged with murder
- Fewer than 1 in 5 were acquitted
- Pleading guilty to manslaughter was the most common outcome (48%), with most pleas entered as part of deals to have murder charges withdrawn
- Indigenous women were convicted 100% of the time, often without the opportunity to raise self-defence at trial, as they were more likely to enter guilty pleas.

These outcomes align with prior domestic and international research showing that women who kill an abusive partner often face significant pressure to plead guilty rather than argue self-defence at trial. These pressures include the risk of a murder conviction and life sentence, the appeal of a plea deal, the trauma of testifying, and a lack of strong legal support. Practical concerns—such as being held on remand, wanting a shorter sentence, or reuniting with children—further compound these challenges. While pleading guilty may seem like the only viable option for these women, the legal system treats it as a free choice, ignoring the structural pressures that shape it.

These patterns point not only to the limitations of current legal defences but also the systemic pressures that discourage women from asserting their right to a fair trial. Prosecutorial overcharging, the threat of mandatory life sentences, and the lack of access to culturally competent legal representation all contribute to a justice system that too often fails those it should protect.

This submission draws on these findings to offer evidence-based recommendations for reforming self-defence, partial defences, prosecutorial practices, and sentencing laws in Queensland.

Case for Reform

The current legal framework governing self-defence and partial defences in Queensland does not adequately protect women who kill in the context of DFV. Our research demonstrates that these women are routinely denied access to a full defence, pressured into pleading guilty to lesser charges, and subjected to legal processes that fail to account for the realities of coercive control, cumulative harm, and social entrapment.

1. Self-Defence Is Theoretically Available, But Rarely Successful

Although self-defence is a complete defence to murder in Queensland, it is rarely successful in practice for women who kill their abusive partners. The traditional legal requirements—such as imminence, proportionality, and reasonableness—have been developed around male-centric

[2] Nash, C. & Dioso-Villa, R. (2023). Australia's Divergent Legal Responses to Women Who Kill Their Abusive Partners. *Violence Against Women,* 30(9), 2275-1301.

models of violence and do not reflect the lived experiences of DFV survivors. Queensland remains the only Australian jurisdiction that still requires defensive force to respond to a specific assault, limiting the ability of women to claim self-defence in cases where the threat is not immediate. Women often kill in non-confrontational circumstances—due to physical disparities or prolonged abuse—and may rely on weapons to defend themselves against stronger partners. Yet these actions are frequently deemed unreasonable, even when their actions are a direct response to years of abuse and ongoing danger.

In our 2023 study examining 69 cases where women killed their abusive male partners, 11 occurred in Queensland. Five of these were resolved by guilty pleas to manslaughter. Of the six that proceeded to trial, one resulted in a manslaughter conviction, one in a murder conviction, and four women were acquitted. Self-defence was successfully raised in three cases, including *R v Falls* (2010), which involved a non-traditional scenario where the threat was not immediate. This outcome was enabled by the progressive use of expert testimony and a broad judicial interpretation of self-defence. However, it depended heavily on the discretion of the judge and the skill of the defence team, rather than consistently applied legal principles.

These findings suggests that when women are given the opportunity to present the full context of abuse —including the long-term impact of coercive control and violence—they are more likely to be found not guilty. However, systemic pressures—including the threat of a mandatory life sentence—discourage women from asserting their right to trial, even where self-defence may be legally justified.

This highlights the urgent need for legislative reform to broaden the legal definition of self-defence to reflect the realities of women who kill in response to prolonged abuse—without leaving fair outcomes to the discretion of individual judges or defence lawyers. Reform must also include changes to evidence laws that formally recognise the importance of social context, and mandatory jury directions that challenge harmful stereotypes and misconceptions about DFV. Comprehensive training for legal professionals is essential to ensure the law is applied fairly and consistently. Without these systemic changes, the justice system will continue to fail the very women it is meant to protect.

2. Partial Defences Serve as a Necessary Safety Net

Our findings suggest that partial defences can serve as a critical "safety net," encouraging women to raise self-defence at trial by reducing the perceived risk of a murder conviction. Jurisdictions that retain a range of partial defences, such as Queensland and New South Wales, had higher rates of trial participation and acquittals. In contrast, Victoria—which abolished all partial defences and focused on expanding self-defence laws—has seen the opposite effect: self-defence is rarely raised, and nearly all plead guilty to manslaughter. Despite the intent to make self-defence more accessible, the absence of a fallback option has made going to trial a high-risk, all-or-nothing strategy. While partial defences may occasionally dilute full self-defence claims, they remain vital for capturing the complex realities of abuse and encouraging fairer trial outcomes. However, Queensland's unique partial defence of "killing for preservation in an abusive domestic

relationship," has not improved outcomes. Instead, it has functioned as a mechanism to secure manslaughter convictions in cases where self-defence may have been more appropriate. This defence, while well-intentioned, effectively precludes acquittal and reinforces the notion that women who kill in the context of DFV are always partially, but never fully, justified.

Alternatives like excessive self-defence may strike a better balance. Ultimately, partial defences remain necessary to support fairer outcomes for women who kill in response to prolonged abuse. But they must be applied with care—to support, not undermine, legitimate claims—and be continuously monitored to ensure they are used appropriately.

3. Mandatory Sentencing Undermines Justice

The mandatory life sentence for murder in Queensland exerts a powerful coercive effect on plea negotiations. Women may feel pressured or are often advised to plead guilty to manslaughter—even when they have a viable self-defence claim—because the risk of a murder conviction is too great. This dynamic contributes to wrongful convictions and undermines the integrity of the justice system.

Our research found that:
- 60% of convictions stemmed from guilty pleas to manslaughter[3]
- Many of these women had strong defensive elements in their cases
- Indigenous women were disproportionately affected, with no acquittals recorded in either study

Removing the mandatory life sentence would reduce the pressure to plead guilty and allow courts to consider the full context of each case.

4. Structural Inequities Compound Legal Failures

Indigenous women face compounded disadvantage at every stage of the legal process. In our sample, Indigenous women were more likely to plead guilty, less likely to proceed to trial, and more likely to be convicted. None were acquitted. These outcomes reflect not only legal barriers but also systemic racism, cultural misunderstandings, and a lack of access to culturally safe legal support.

Without targeted reforms, including culturally safe legal support and judicial education on the intersection of race, gender, and trauma, these inequities will persist.

Recommendations

Drawing on our empirical research and legal analysis, we offer the following recommendations to the Queensland Law Reform Commission:

[3] Nash & Dioso-Villa, *supra* note 2, Table 4, at 2286.

1. Simplify and Modernise the Test for Self-Defence

We support the proposed simplification of the self-defence test. Queensland remains the only Australian jurisdiction that still requires an assault for self-defence to apply[4]—this reform is long overdue. Removing this requirement will bring Queensland in line with other jurisdictions and better reflect the realities of domestic and family violence (DFV).

However, legislative reform alone is insufficient. Our research shows that even in jurisdictions with progressive self-defence laws that expressly do not legally require imminence to apply and have legislated social context evidence, such as Victoria, outcomes for women remain poor. Victoria had the lowest acquittal rate for women raising self-defence, underscoring the need for:

- Judicial education on the dynamics of DFV
- Proper admission of social context evidence
- Clear jury directions on DFV and its relevance to self-defence

We also urge the Commission to consider whether the proposed reforms go far enough to ensure that self-defence is not only theoretically available, but practically accessible in murder cases involving DFV. This includes clarifying the relationship between self-defence and the excuses of compulsion and duress, which may overlap in cases involving coercive control or social entrapment. These defences should not be treated as mutually exclusive. The law should recognise that self-defence, duress, and compulsion can overlap—particularly in cases involving domestic and family violence (DFV). Women should not be denied a full acquittal simply because their defensive actions also reflect elements of coercion or compulsion. A more integrated approach would ensure that the complexity of DFV is properly understood and that women are not unfairly penalised for the multifaceted nature of their responses to abuse.

2. Retain and Reform Partial Defences as a Safety Net

As outlined in the section *Partial Defences Serve as a Necessary Safety Net*, the availability of partial defences plays a crucial role in enabling women to raise self-defence at trial by mitigating the perceived risk of a murder conviction.

We recommend:

- Introducing excessive self-defence as a partial defence
- Repealing the partial defence of "killing for preservation in an abusive domestic relationship," which effectively guarantees a manslaughter conviction and undermines legitimate self-defence claims
- Avoiding trauma-based partial defences that risk pathologising women's actions; instead, trauma-informed principles should guide court processes and investigations more broadly

[4] *Criminal Code 1899 (Qld) s271.*

We acknowledge concerns that partial defences may inadvertently undermine genuine claims of self-defence. However, our research suggests that their availability can empower women to pursue a full defence at trial, knowing that a fallback option exists if the jury is not persuaded.

3. Remove the Mandatory Life Sentence for Murder

As discussed in the section, *2. Mandatory Sentencing Undermines Justice*, we strongly recommend abolishing the mandatory life sentence for murder. If it is retained, partial defences, such as provocation, must remain available to mitigate unjust outcomes.

4. Address Prosecutorial Overcharging and Plea Bargaining Practices

Our research identified a pattern of overcharging women with murder, followed by pressure to plead guilty to manslaughter. Many of these women had strong self-defence elements in their cases and may have been acquitted at trial. We recommend:

- Prosecutorial guidelines that encourage charging manslaughter—not murder—where there is credible evidence of DFV and defensive violence
- Greater transparency and oversight of plea negotiations
- Ensuring women are fully informed of the legal pathways and evidentiary checkpoints available at trial

Reforms intended to improve access to defences to homicide can only be effective if abused women proceed to trial and utilise the new provisions.

5. Improve Access to Private Legal Representation and Culturally Competent Counsel

In our study of women who kill during a confrontation or immediately after,[5] women represented by private counsel were significantly more likely to be acquitted. Indigenous women, in particular, were overrepresented in convictions and underrepresented in trial outcomes. We recommend:

- Increased funding for legal aid services with specialist DFV and Indigenous legal expertise
- Training for legal practitioners on the intersection of race, gender, and trauma in DFV cases
- Support for Indigenous women to access culturally safe legal representation

Conclusion

Our research demonstrates that the current legal framework in Queensland fails to deliver justice for many women who kill their abusive partners. These cases are not simply difficult or tragic—they are, in many instances, miscarriages of justice. Women with legitimate claims to self-

[5] Dioso-Villa & Nash, *Supra* note 1, at 48.

defence are being overcharged, pressured into guilty pleas, and convicted in circumstances where the law should have protected them.

The proposed reforms to simplify the test for self-defence are a welcome and necessary step. However, as our findings show, legislative change must be accompanied by systemic reform. This includes judicial education, evidentiary reform, and the retention of partial defences as a safety net. Most critically, the mandatory life sentence for murder must be reconsidered. If it is not removed, then complementary reforms—such as the retention of partial defences like provocation and excessive self-defence—are essential to ensure that women are not unjustly penalised for actions taken in the context of prolonged abuse. Without these safeguards, the risk of wrongful convictions and disproportionate sentencing will persist.

We urge the Queensland Law Reform Commission to take this opportunity to lead a transformative shift in how the legal system responds to women who act in self-defence. These reforms are not only about legal doctrine—they are about restoring faith in a justice system that too often fails those who need it most.

We thank the Commission for the opportunity to contribute to this important review and welcome any further engagement to support the development of a more just and equitable legal framework.

Yours sincerely,

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