

1st May 2025

Queensland Law Reform Commission

email: qlrc-criminaldefence@justice.qld.gov.au

Dear Commissioners,

RE: A REVIEW OF PARTICULAR CRIMINAL DEFENCES

Thank you for providing us with the opportunity to respond to this Inquiry and in particular respond to issue of the current review of particular criminal defences to murder.

We recognise this is a very complex and technical area and shall provide insights where we can and from our practice knowledge about sexual violence and its intersection with domestic and family violence, being cases of intimate partner sexual violence.

About QSAN

The Queensland Sexual Assault Network (QSAN) is the peak body for sexual violence prevention and support organisations in Queensland. We have 20 member services, including specialist services for Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women with intellectual disability, young women, men and children and our membership are located throughout Queensland, including in rural and regional locations.

Our network of non-Government services is funded to provide specialist sexual assault counselling, support, and prevention programs in Queensland. QSAN is committed to working towards ensuring all Queenslanders who experience sexual violence recently or historically, regardless of age, gender, sexual orientation, cultural background receive a high-quality response in line with best practice, client-centred principles. Our work and analysis of sexual violence is from a feminist perspective and addressed within a specialist trauma framework.

We are committed to engaging with government and other bodies to raise systemic issues of concern, and to ensure the voices and experiences of victims of sexual violence are considered in the formulation of policy and legislation that impacts on sexual violence victims in Queensland.

1. Introduction

Intimate Partner Sexual Violence

The work of QSAN intersects with domestic and family violence routinely, as we respond to victim survivors who have experienced intimate partner sexual violence as part of their domestic and family violence relationship. Invariably these victim survivors are at high risk of lethality and ongoing violence, as sexual violence is a high-risk indicator and can commonly co-occur with other very high-risk activities such as strangulation, sexual jealousy and the use of pornographic material. Sexual violence is also a common feature of coercive control.

Intersection with lethal violence

In 2024, in response to a recommendation by the Women's Safety and Justice Taskforce, the Queensland Domestic and Family Violence Death Review and Advisory Board was tasked to undertake an 'intimate partner sexual violence case review'. The findings from the review were consistent with QSAN's client experience and instructive of the relevance of sexual violence to the consideration of the current review.

The case review noted the following about the dynamics of IPSV:

*“Similar to DFV, IPSV incidents **primarily occur in private**. When violence is witnessed, it is usually by people known to both the PUV and victim (e.g., family and friends). Research indicates that **IPSV frequently occurs in the context of violent arguments (i.e. forced sexual activity after a violent argument) and out of fear to prevent violent escalation and repercussions of sexual refusal**. Several studies found that relationship conflict predicted IPSV generally, including victimisation of partners and non-partners, suggesting that both behaviours **may be associated with a combative approach to interactions with women**. In a study of intimate partner violence perpetrated by men who had been court-ordered to attend men's behaviour change programs in the United States, almost all (98.2%) of those arrested for physically assaulting their partner were sexually violent towards her. This further highlights the high rates of **combined non-sexual physical violence, psychological abuse, emotional abuse and IPSV**.” (p.15)*

Additionally, the report noted that “several studies have suggested that IPSV is demonstrative or symptomatic of perpetrator's feelings of entitlement over victims, which may in turn lead to increased homicide risk when this entitlement and control is challenged” (p.16) Sexual violence can also entrap victims in the relationship making it extremely difficult to separate and remove themselves from the perpetrator.

The report's findings of the case review of Queensland deaths found there were high levels of sexual violence:

“The most common type of sexual violence in the cases reviewed was sexual jealousy (28 of the 35 cases, 80%), followed by sexual assault (25 of the 35 cases, 71%), sexual coercion (15 of the 35 cases, 43%), and sexual abuse (13 of the 35 cases, 37%). Forced sexual activity was the least common type of sexual violence reported (7 of the 35 cases, 20%)”. (p.26)

A consistent theme that was found was under reporting of the full extent of the IPSV and this was particularly acute for Aboriginal and Torres Strait Islander women.

What is the problem regarding legal defences and what are we trying to fix?

As stated previously, amendments to the legal defences are complex and changes can have unintended consequences. However, this should not be a reason not to change and to try to make improvements for victims of DFV and intimate partner sexual violence.

From a gendered violence perspective, the key concerns about the current laws and approach are that:-

- Violent domestic violence abusers can unjustly take advantage of the law by either avoiding responsibility or reducing their full responsibility by accessing partial defences.
- Women who kill their abuser in circumstances of life-threatening DFV are unable to appropriately access the defences and partial defences because of the gendered nature of legal norms, practice and understandings.

How can we best address this?

In addition to any changes to the law, the following changes would make a significant difference and, in many cases, would support 'black letter law' changes:-

- Most importantly, ensuring that the relevance of a history of domestic and family violence is well understood and that a full history of domestic and family violence (including intimate partner sexual violence) is put before the jury to provide context for behaviour and decision-making. This would be in both cases where the abuser kills the DFV victim, or the victim kills the abuser.
- That a holistic approach is adopted by the court in interpretation and decision-making rather than a narrow and incident-based approach. The adoption of a wholistic approach is consistent with Queensland's contemporary approach to legal decision-making involving cases of domestic and family violence, moving away from siloed reasoning and, additionally is compatible with many of the Women's Safety and Justice Taskforce recommendations, including the criminalisation of coercive control.

Additionally, it would also be consistent with Section 8(2) of the Domestic and Family Violence Act's definition of domestic and family violence:

Behaviour, or a pattern of behaviour, mentioned in subsection (1)—

(a) may occur over a period of time; and

(b) may be more than 1 act, or a series of acts, that when considered cumulatively is abusive, threatening, coercive or causes fear in a way mentioned in that subsection; and

(c) is to be considered in the context of the relationship between the first person and the second person as a whole.

- That domestic and family violence experts (including knowledge of IPSV) are routinely used at the trial.
- That a specialist approach is developed in these cases, including the use of specialist multidisciplinary units for defence and prosecution. That these specialist units include specialist domestic and family violence and sexual violence specialist workers to assist the lawyers to obtain the relevant evidence about the history of violence, better understand trauma, its impact on presentation and decision making.
- Other practical issues, as outlined in the consultation document including but not limited to new protective measures for police interviews for women who have killed their abuser.
- DFV and sexual violence training for criminal lawyers.

Recommendation 1

In addition to any changes to changes to black letter law, the following changes should also be introduced:-

- ***Importantly ensuring that the relevance of a history of domestic and family violence is well understood and that a full history of domestic and family violence (including intimate partner sexual violence) is put before the jury to provide context for behaviour and decision-making. This would be in both cases where the abuser kills the DFV victim, or the victim kills the abuser in a context of DFV.***
- ***That a holistic approach is adopted by the court in interpretation and decision-making rather than a narrow and incident-based approach.***
consistent with Section 8(2) of the Domestic and Family Violence Act's definition of domestic and family violence:
Behaviour, or a pattern of behaviour, mentioned in subsection (1)—
(a) may occur over a period of time; and
(b) may be more than 1 act, or a series of acts, that when considered cumulatively is abusive, threatening, coercive or causes fear in a way mentioned in that subsection; and
(c) is to be considered in the context of the relationship between the first person and the second person as a whole.
- ***That domestic and family violence experts (including knowledge of IPSV) are routinely used at the trial.***
- ***That a specialist approach is developed in these cases, including the use of specialist multidisciplinary units for defence and prosecution. That these specialist units include specialist domestic and family violence and sexual violence specialist workers to assist the lawyers to obtain the relevant evidence about the history of violence, better understand trauma, its impact on presentation and decision making.***
- ***Other practical issues, as outlined in the consultation document including but not limited to new protective measures for police interviews for women who have killed their abuser.***
- ***DFV and sexual violence training for criminal lawyers.***

Use of DFV, sexual violence experts

The use of these experts will introduce a contextual understanding of DFV and address false myths and narratives that can be believed by community members and used by lawyers to advance their cases. Their importance is especially important given the QLRC findings from the background paper, *Understanding Domestic and Family Violence and its Role in Criminal Defences*¹ that found significant gender disparities in the communities understanding of violence.

There were significant differences in the attitudes of male and female participants, with men:

- *having higher minimising and victim-blaming attitudes (though this difference was minor with most participants, both men and women, having low levels of minimising and victim-blaming attitudes)*
- *more likely to minimise the impact of non-physical forms of abuse*
- *more likely to underestimate the gendered impact of DFV. (p21)*

Exclusion of girlfriend/ boyfriend relationships

A reliance on the definitions under the Domestic and Family Violence Act 2012 for determining what is a domestic violence relationship can exclude girlfriend/ boyfriend relationships as they do not meet the criteria and/or there can be arguments about meeting the criteria of a “couple relationship” as required by the legislation.

Recommendation 2

That the current definition of “couple relationship” in the Domestic and Family Violence Act 2012 be reviewed to ensure it meets contemporary understandings of domestic and family violence relationships.

We will now address issues contained in the consultation paper, *Equality and Integrity: Reforming criminal defences in Queensland*.

2. Consultation questions

Mandatory Life (Question 11)

Q11 Should the mandatory life sentence for murder be: (a) retained for all murders (b) retained but only for particular cases (c) replaced with a presumptive life sentence or (d) replaced with a maximum life sentence?

We believe the current approach in Queensland which is mandatory life and a minimum non parole period may, as noted in the consultation paper “*disproportionately impact disadvantaged persons, including Aboriginal peoples and Torres Strait Islander peoples and their communities and DFV*

¹ https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0017/821105/20250218-qlrc-cdr-bp3-final.pdf

victim-survivors, because the court's ability to recognise mitigating and aggravating factors is restricted".

One of the considerable impacts is it is likely that victims of DFV who have killed their abuser in circumstances of life threatening DFV may find the risk of pursuing self-defence too high in Queensland because of the current sentencing practice and plead to a lesser charge, usually manslaughter.

We prefer that the approach was changed to option (d) a maximum life sentence which would allow for discretion in sentencing that consider different levels of culpability.

This may allow for self-defence to be more confidently pursued by DFV victim survivors as although there would be risks, if the person was found guilty, the issues of the DFV would be more able to be taken into account in sentencing.

Recommendation 3

That the mandatory life sentence for murder be replaced by option Question 11 (d) a maximum life sentence.

Our further recommendations, including the removal of some defences and partial defences is subject to this important change to mandatory life in Queensland occurring. If this change does not occur, we would be reluctant to remove any defences or partial defences to allow a full range of options for a victim of DFV who may be charged with killing their abuser in circumstances of life-threatening violence.

Reforming self-defence (Proposal 1)

We agree with the QLRC proposed reform.

Recommendation 4

Repeal sections 271, 272, 273 of the Criminal Code and replace them with the QLRC Proposal 1.

Proportionality and responding to sexual violence

Q2 For the purposes of proposal 1: (a) how should 'serious injury' be defined? (b) should a non-exhaustive list of factors be included to assist in determining whether the person claiming self-defence has acted reasonably?

Many victim-survivors of sexual violence report to QSAN members they felt their life was in danger when they were being raped or sexually assaulted. QSAN believes that serious injury should include sexual violence and rape and could be included explicitly as in the Victorian approach. Any drafting should ensure it does not provide an excuse for homophobic violence. Eg. A sexual advance from a male to another male being an excuse for murder.

We also agree with the development of a non-exhaustive list of factors in making determinations about reasonableness but that these should be developed with DFV and sexual violence experts.

However, we think there are limitations and some dangers for DFV victims in the proposed list as provided in the consultation paper. The use of “imminence” in the list could re-introduce this concept for victims of DFV after other legal changes have tried to remove it as an impediment for women who are victims of DFV in arguing self-defence.

The current list does not fully encapsulate a history of DFV, and we would prefer an approach that simply states that a history of DFV (including any IPSV) and/or coercive control is considered.

A reference to “duration” of the relationship may inadvertently exclude some DFV relationships where the relationship moves quickly to consolidate, as a tactic to entrap the victim. Eg. where the couple moves quickly to a commitment stage (eg. Moving in together) and these relationships also can involve serious and escalating violence.

Recommendation 5

That serious injury should include sexual violence, similarly to the Victorian approach but ensuring that any drafting does not excuse homophobic violence.

That there be a non-exhaustive list of factors developed to assist the assessment of reasonableness that include a history of DFV and the list be developed in consultation with DFV and sexual violence specialists.

Imminence (Proposal 2)

P2 The new self-defence provision should provide that evidence that the defendant experienced domestic violence (as defined in section 103CA Evidence Act 1977) is relevant to an assessment of self-defence. It should further provide that the person may believe that the person’s conduct is necessary in self-defence, and the conduct may be a reasonable response in the circumstances as the person perceives them, even if: (a) the person is responding to a non-imminent threat of harm or (b) the use of force is in excess of the force involved in the harm or threatened harm.

We agree with relevance of the domestic violence history in assessing self-defence and the introduction of (a) and (b) to assist women who may kill in circumstances of non-imminent harm and where their use of force may seem disproportionate to the harm or threatened harm involved but would be reasonable taking into account the history of DFV in the relationships

Recommendation 6

We agree with Proposal 2.

Self-induced intoxication (Proposal 3)

Proposal 3 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.

We have concerns this would exclude many women who have experienced DFV and self-medicate by using of alcohol or other drugs or may otherwise use alcohol or other drugs from the self defence provision or other partial defences.

In relation to perpetrators, if a full history of domestic violence is put before the jury and the patterns of violence are evident in the relationship over a period of time then this may be the best way of establishing intention and excluding their access unreasonably to any defences/ partial defences.

Recommendation 7

We do not support Proposal 3 in relation to self-induced intoxication.

New partial defence of trauma

Q9 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? How should this be framed?

We are very concerned about such a partial defence being misused by perpetrators of DFV. Although it might be limited in use to those who are in most need of protection, this can sometimes be difficult to ascertain. It is a common tactic for perpetrators to obtain DVOs against the victim.

We are particularly concerned as the government has stated it will be introducing 12-month police protection directions, which are police protection orders that can be issued without court oversight. The DFV sector is concerned that issues of misidentification may increase in these circumstances.

Recommendation 8

QSAN does not support the introduction of a partial defence of trauma because of its potential misuse by perpetrators of DFV.

Excessive self-defence

Q10 Should the Criminal Code be amended to add a new partial defence to murder that applies where the defendant has acted excessively in self-defence and, if so, should the defence apply: (a) only in the context of DFV where the person in most need of protection kills their abuser or (b) generally?

We support a new partial defence of excessive self-defence, but it be limited, in the context of DFV to the person who was in most need of protection kills their abuser. We have concerns about its misuse especially in circumstances where a victim may have been mis-identified. Some guidelines should be developed that guide the court/ jury and that the fully history of violence is put before the court and expert evidence is used.

Recommendation 9

Although QSAN supports a new partial defence of excessive self defence we believe it should also be introduced with guidelines for determining the person in most need of protection (developed with DFV and sexual violence experts), in circumstances where the full evidence of the DFV relationship is put before the jury and expert DFV evidence is used.

Early identification and procedure

QSAN agrees with the following suggestions proposed:

- The introduction of a DFV expert panel
- Making DFV directions mandatory
- Introduce special provisions for DFV victims during police interview;
- Expressly recognise DFV victim-survivors who offend and Aboriginal and Torres Strait Islander people as special witnesses.
- Improving access to bail for DFV victims.
- Introduce specialist prosecutors and defence for women who kill.
- Limiting evidence of victim blaming and character assassination of the victims of DFV.

Recommendation 10

QSAN agrees with the following recommendations:

- ***The introduction of a DFV expert panel***
- ***Making DFV directions mandatory***
- ***Introduce special provisions for DFV victims during police interview;***
- ***Expressly recognise DFV victim-survivors who offend and Aboriginal and Torres Strait Islander people as special witnesses.***
- ***Improving access to bail for DFV victims.***

- *Introduce specialist prosecutors and defence for women who kill (Though QSAN suggests a multi-disciplinary team including DFV and sexual violence workers)*
- *Limiting evidence of victim blaming and character assassination of the victims of DFV.*

3. Other ideas

QSAN support these additional ideas:

Bad Character Evidence

We support the introduction of a similar provision to the UK that allows for the admissibility of the defendant's bad character into criminal proceedings if one of the following "gateways" are satisfied.

The admissibility of evidence that falls outside the definition of bad character within the meaning of [section 98](#) is governed by [section 101](#) of the Act which provides that

"In criminal proceedings evidence of the defendant's bad character is admissible if, **but only if** –

1. all parties to the proceedings agree to the evidence being admissible;
2. the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross examination and intended to elicit it;
3. it is important explanatory evidence;
4. it is relevant to an important matter in issue between the defendant and the prosecution;
5. it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant;
6. **it is evidence to correct a false impression given by the defendant; or**
7. **the defendant has made an attack on another person's character.**

Please see more information about this legislation below:

<https://www.cps.gov.uk/legal-guidance/bad-character-evidence>

Disclosure of prior inconsistent statements by the accused

We understand that this is in practice in the United Kingdom and support these changes in Queensland.

Consent to serious harm for sexual gratification not a defence

We support the introduction of a similar provision that exists in the United Kingdom, but inclusive of strangulation.

The UK provision states:

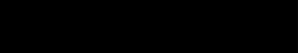
A person is unable to consent to the infliction of harm that results in ABH (Actual Bodily Harm) or other more serious injury, for the purposes of obtaining sexual gratification.

A defendant will be unable to rely on a victim's consent to the infliction of such harm as part of any so-called 'rough sex' defence and will remain liable to prosecution for ABH or GBH.

[Domestic Abuse Act 2021 \(legislation.gov.uk\)](https://legislation.gov.uk)

If you require any further information, please do not hesitate to contact the Secretariat.

Kind Regards,


Angela Lynch
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QSAN.