

Diana's story:

Reformed criminal defences in Queensland





Introduction

In December 2025, we concluded our two-year review of Queensland's criminal defences. Our recommended reforms would make the law simple and modern, reflect contemporary community attitudes and improve access to justice for victim-survivors of domestic and family violence. Our 36 recommendations and the rationale for them can be found in [*Just, clear and modern: Reformed criminal defences for Queensland - Final Report 1*](#).

This report places our recommendations in a human context. It applies our recommended reforms to a set of hypothetical facts in 'Diana's story'. Diana* is a victim-survivor of domestic and family violence who is charged with murdering her abusive partner, Vernon.

We share Diana's story to demonstrate some of the limitations of the current law and to illustrate how our recommended reforms, if implemented, would improve just outcomes for Queenslanders.

Diana's story does not demonstrate all our recommended reforms or reflect all circumstances where criminal defences may

be relevant. It will not reflect everyone's experience of domestic and family violence or of Queensland's criminal justice system.

We simplify legal language and processes to make Diana's story accessible and our recommended reforms easy to understand. We acknowledge that individual outcomes will depend on a range of factors, including factors not discussed in Diana's story.

We begin with Diana's story, before considering how certain defences might apply if Diana's matter proceeded through Queensland's criminal justice system. We consider:

- self-defence
- killing for preservation in an abusive domestic relationship
- killing on provocation.

We then consider possible sentencing outcomes for Diana and discuss how our recommended reforms to practice and procedure may improve Diana's access to justice. We conclude by considering how Diana's experience might differ if she identified as an Aboriginal person or Torres Strait Islander person.

* Diana is a fictional character from a vignette created for our [Community Attitudes Survey](#). Any likeness to a real person is unintentional.

Trigger warning

This story contains material that may be confronting and may cause sadness or distress, or trigger traumatic memories for people, particularly those who have experienced violence and abuse. For some people, this can feel overwhelming. If you need to talk to someone, please reach out to your own support network or contact a support service (details on back cover).



Diana's story

Diana lives with her partner, Vernon, in regional Queensland. They have been living together for four years and are the parents of Sam, who is two years old.

Vernon has been abusing Diana for about three years. This includes calling Diana names, telling her she is worthless and threatening to kill her. Vernon has isolated Diana from her friends and family. He controls her finances and regularly monitors her movements. Vernon is also physically abusive, often punching, slapping, kicking and shoving her. This has resulted in bruising, black eyes and hospitalisation for broken bones. Vernon has strangled Diana on several occasions, one of which resulted in Diana losing consciousness.

Sometimes, when Vernon is abusing Diana, she fights back. Diana has not left Vernon or sought help from domestic and family violence services because she is afraid of what Vernon would do to her and Sam if she does.

On one occasion, when Diana was pregnant, Vernon put his hands around Diana's neck and attempted to strangle her. Diana screamed loud obscenities and scratched at Vernon. The neighbours heard a commotion and called the police. When the police arrived, Diana was still

emotional. Diana was afraid of Vernon and refused to make a statement to the police. The police did not see any injuries to Diana but saw the scratches on Vernon. He made a statement that Diana had attacked him causing the scratches. Diana was charged with Assault Occasioning Bodily Harm and subsequently a domestic violence order was made against her, protecting Vernon as the victim. Diana has no other criminal history.

On another occasion, Vernon physically attacked Diana and she was hospitalised. The police obtained a domestic violence order against Vernon, protecting Diana as the victim. Diana again refused to provide a statement to the police and Vernon was not charged.

One day, Diana and Vernon were in the kitchen and started to argue. Vernon slapped Diana in the face and told her that she was useless. Then Vernon said no one would miss her if he killed her.

That night, when Vernon was asleep, Diana took a knife from the kitchen and killed him.

The following day, Diana was taken into custody and charged with Vernon's murder.

What happens to Diana?

Diana will be held in custody, initially in a watchhouse and then in a prison. As Diana lives in regional Queensland, it is likely Diana will be transferred to a correctional facility far from her home, making it difficult for Sam to visit her.

Once Diana obtains legal representation, her lawyer can assist her to apply for bail. However, as Diana has been charged with murder, she is unlikely to get bail. Instead, Diana will be held in prison until her matter is resolved. This could take up to three to four years.

Diana's lawyer will advise her of the defences available to her and the potential outcomes. As Diana has been charged with murder, she may:

- be acquitted
- have the charge reduced to manslaughter
- be found guilty of murder.

Murder and manslaughter both involve unlawfully killing another person. The difference is whether there is intent to kill or cause grievous bodily harm and whether a defence applies. It depends on the facts of the case and will lead to different sentencing outcomes.

To be acquitted, Diana could plead 'not guilty' and raise self-defence at trial. Self-defence is a complete defence. This means that if murder is proven but a jury finds Diana killed Vernon in self-defence, Diana would be acquitted and would be released without criminal conviction.

If Diana is unsuccessful in raising self-defence, or does not raise self-defence, she may raise a partial defence. 'Killing for preservation in an abusive domestic relationship' and 'killing on provocation' are partial defences relevant to Diana's matter. If murder is proven but a jury finds that a partial defence applies, Diana would be convicted of manslaughter instead of murder. The Court would consider a range of factors to determine an appropriate sentence.

If murder is proven and a jury does not agree that self-defence or a partial defence applies, Diana would be convicted of murder. She would receive a mandatory life sentence with a minimum non-parole period of 20 years imprisonment. Sam would be 22 years old by the time Diana is eligible to be released on parole.

Women in Diana's situation are often not acquitted based on self-defence under the current law, despite offending in circumstances where self-defence is a relevant defence. They also face challenges raising partial defences. For example, it can be difficult to provide evidence of their abuse. These challenges, together with the mandatory life sentence for murder, make it risky to go to trial to raise a defence.

Instead, Diana may offer to plead guilty to manslaughter to avoid the risk of a murder conviction. Diana would still receive a custodial sentence for manslaughter. This would mean going to prison and not being able to raise Sam, but for less time than 20 years. Diana may decide to do this despite having grounds for acquittal under self-defence.

Our recommended reforms aim to provide better access to defences in these circumstances.





Self-defence

Self-defence recognises that in certain circumstances, it may be lawful for a person to use force to protect themselves or another person.

Current law

To raise self-defence under the current law, there must be evidence Diana was defending herself against an assault which caused a reasonable fear of death or grievous bodily harm. Different legal tests then apply depending on whether Diana provoked the assault.

Vernon telling Diana that ‘no one would miss her if he killed her’ could have been interpreted by Diana as a threat to kill her. Given her history of being abused by Vernon, including being strangled to the point of losing consciousness and hospitalisation, Diana likely feared death or grievous bodily harm following their argument in the kitchen.

Research shows that victims of domestic and family violence who leave their abusive partner are at increased risk of being killed by their abuser, and that leaving is usually the more dangerous course of action. As such, there are grounds for Diana believing that killing Vernon with a knife instead of fleeing the property was the only way to protect herself.

However, a jury with limited understanding of domestic and family violence may not perceive Vernon’s actions in the kitchen that afternoon (slapping Diana, calling her useless and saying no one would miss her if he killed her) as sufficient to cause a reasonable fear of death or grievous bodily harm.

Common myths about domestic and family violence include:

- victims can leave an abusive relationship without risk to themselves or others
- physical violence is more serious than other controlling behaviours

- victims are weak and passive
- failing to report abuse to police means it did not happen or was not serious.

There is little documented evidence of Vernon’s abuse of Diana because Diana did not report every incident to the police. Diana’s history of using resistive violence, as evidenced by the domestic violence order taken out by Vernon against her, could also challenge a jury with outdated attitudes about the way victims of domestic and family violence usually behave. As Diana killed Vernon while he was asleep, a jury may conclude that Diana’s actions were a disproportionate response and find she did not act in self-defence.

As the current law requires Diana’s actions to be in response to a ‘triggering’ assault by Vernon, Diana may face difficulties raising self-defence. Vernon’s words may not be sufficient to constitute an assault. Assault involves the use of force, or the threat of and present ability to use force. As Vernon was asleep when Diana killed him, he was not using force. A jury may also find he was ‘presently unable’ to use force against Diana, meaning there was no assault that Diana was responding to.

Diana may face difficulties raising self-defence. If the elements of murder are proven and no other defence applies, Diana would be convicted of murder and would receive a mandatory life sentence with a minimum non-parole period of 20 years imprisonment.

Our recommended reforms

Under our recommended reforms, self-defence would apply if Diana believed she needed to use lethal force to prevent death or serious harm to herself or someone else.

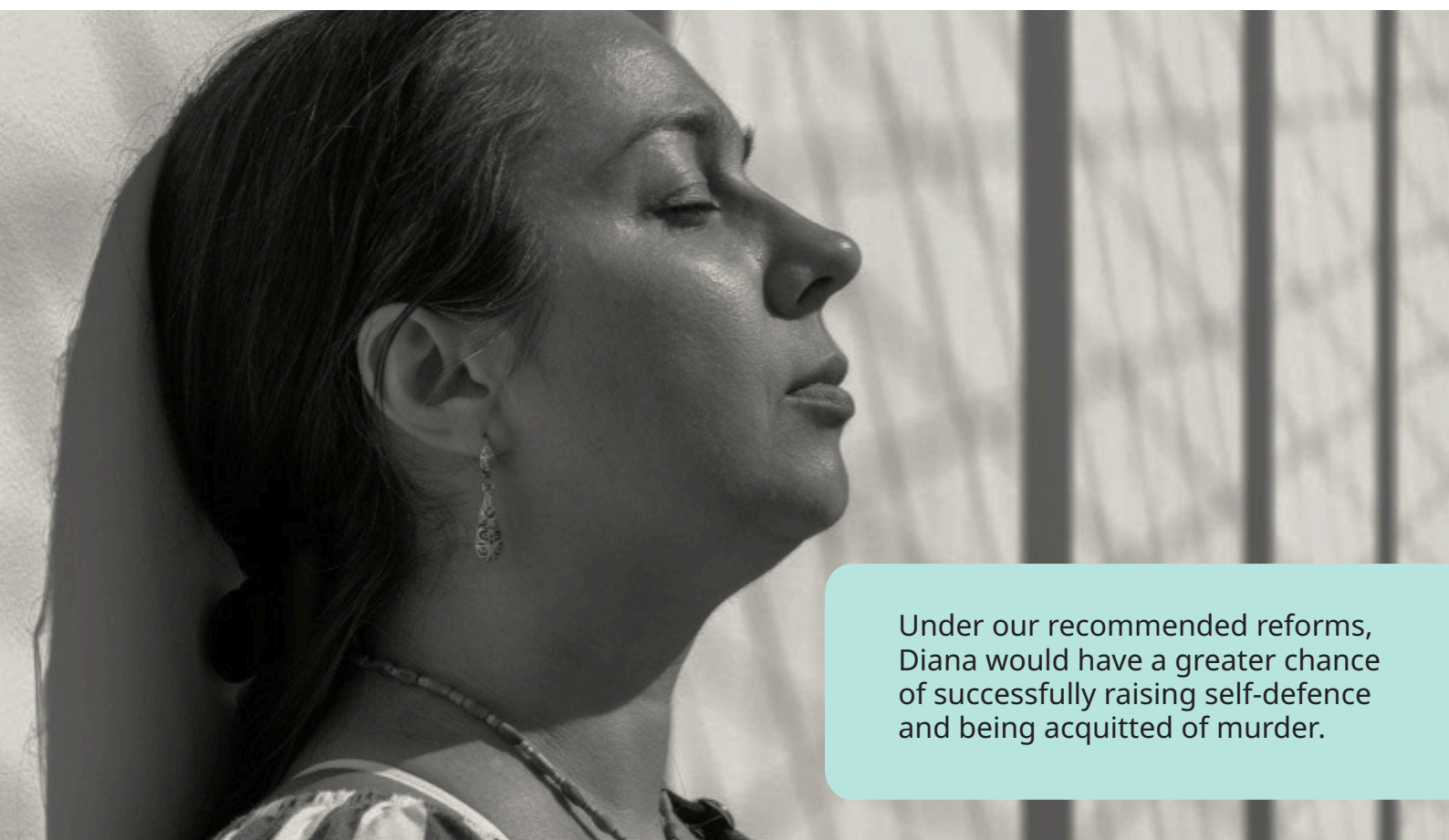
Our recommended reforms remove the requirement for a 'triggering' assault for Diana's actions to constitute self-defence. This would encourage greater consideration of other contextual factors, including the history of domestic and family violence in Diana and Vernon's relationship, to determine whether Diana's actions were necessary in self-defence.

Vernon's history of physically abusing and coercively controlling Diana, including by strangling her, is a lethality indicator that shows Diana was at risk of being killed by Vernon. It shows that Diana's fear of being harmed was reasonable. Vernon slapping and insulting Diana and telling her no one would miss her if he killed her were not an isolated incident that Diana 'disproportionately' responded to by killing him with a knife. Rather, his actions occurred within a context of abuse which is relevant to Diana genuinely believing she needed to use lethal force to protect herself

from being killed or seriously harmed by Vernon.

The continuing threat of harm to Diana from Vernon is fundamental to this case. Our recommended reforms make clear that imminence and proportionality are not inherent requirements for self-defence in situations of domestic and family violence. A person may believe that they need to use force and their use of force may be reasonable even if they are responding to non-imminent threats of harm or if their use of force is greater than the harm threatened.

The fact that Vernon was asleep and unarmed at the time of the attack, and that Diana used a knife following a verbal threat of future harm, would not reduce Diana's prospects of successfully relying on self-defence given the context of their relationship. The use of 'serious harm', rather than 'grievous bodily harm', would also capture harm beyond physical injury and include harm that causes severe and life altering trauma.



Under our recommended reforms, Diana would have a greater chance of successfully raising self-defence and being acquitted of murder.



Killing for preservation in an abusive domestic relationship

This defence is relevant for victims of serious domestic and family violence who kill their abusers.

Current law

If Diana was not successful in raising self-defence, she could raise the partial defence of 'killing for preservation in an abusive domestic relationship'.

Under the current law, if the jury finds that:

- there was a history of acts of serious domestic violence by Vernon against Diana
- Diana believed her actions were necessary to protect herself from death or grievous bodily harm and
- Diana had reasonable grounds for her belief

the partial defence of 'killing for preservation in an abusive domestic relationship' would apply. Diana would be convicted of manslaughter rather than murder. The Court would consider a range of factors to determine an appropriate sentence.

There is some evidence of a history of abuse by Vernon, including hospital admissions and records of police callouts. However, this evidence is limited as Diana did not report

her abuse to the police. The requirement for a history of abuse can operate unfairly for victims who do not have independent evidence of their abuse or who are unable or unwilling to give evidence in their defence.

The requirement for 'reasonable grounds' for Diana's belief (that she needed to use force to protect herself from death or grievous bodily harm) will be difficult for Diana to satisfy. In practice, this means that a jury needs to agree there was no reasonable alternative course of action available to Diana to protect herself from death or grievous bodily harm at the time she killed Vernon.

As discussed above, a jury with outdated attitudes about domestic and family violence may struggle to understand why Diana did not leave Vernon but instead waited until he was asleep before killing him. They may not grasp the significant and increased risk of homicide that Diana faced if she left Vernon and may doubt whether Diana had 'reasonable grounds' for believing that killing him was the only way to protect herself.

Very few victim-survivors of domestic and family violence have successfully raised this defence and Diana may also be unsuccessful. If the elements of murder are proven and no other defence applies, Diana would be convicted of murder and would receive a mandatory life sentence with a minimum non-parole period of 20 years imprisonment.

Our recommended reforms

Our recommended reforms repeal this partial defence and replace it with a new partial defence. The new partial defence aims to provide a genuine safety net for victim-survivors of domestic and family violence who try, unsuccessfully, to raise self-defence at trial.

The new defence would apply if the jury found that Diana believed killing Vernon was necessary to protect herself or someone else from death or serious harm, but that her actions were not a reasonable response in the circumstances.

There would be no requirement to demonstrate 'reasonable grounds' for Diana's belief. It would be sufficient that Diana genuinely believed she needed to use the knife against Vernon to protect herself from death or serious harm. This genuine belief would be assessed from Diana's perspective, considering her experience of being abused by Vernon.

The jury would also need to be satisfied that Vernon had committed acts of serious domestic violence against Diana in the course of an abusive domestic relationship. A history of

domestic violence would not need to be established, just that Vernon had committed acts of serious domestic violence against Diana. The partial defence could also apply if Diana believed her actions were necessary to defend someone else, such as Sam.

A jury would consider whether this partial defence applied at the same time as considering whether self-defence applied, simplifying the jury's task and making the law easier to understand and apply.

If the elements of murder are proven but Diana successfully raises our recommended partial defence, she would be convicted of manslaughter rather than murder.

The Court would then consider a range of factors to determine an appropriate sentence.





Killing on provocation

Defences based on the concept of provocation reduce or remove a person's criminal responsibility for using force in response to the actions of another. They recognise that a person who is provoked to lose self-control and use violence can be considered less blameworthy than a person who uses calculated violence.

Current law

The partial defence to murder of 'killing on provocation' is also relevant. To raise the defence of killing on provocation under the current law, Diana must show that Vernon's actions caused her to suddenly lose control in 'the heat of passion' and act before there was time for her 'passion to cool'.

If successful, this defence would reduce Diana's conviction from murder to manslaughter. The Court would then consider a range of factors to determine an appropriate sentence.

As Vernon was asleep when Diana took a knife from the kitchen and killed him, a jury may not consider that Vernon's actions caused Diana to 'suddenly lose self-control' or act before there was time for her 'passion to cool'.

Provocation is generally not a useful defence for people in Diana's situation. Victim-survivors who kill their abusers are rarely 'provoked' in the legal sense but act to protect themselves from being killed or seriously harmed. That is, they are usually acting defensively.

Diana may face difficulties raising provocation. If the elements of murder are proven and no other defence applies, Diana would be convicted of murder and would receive a mandatory life sentence with a minimum non-parole period of 20 years imprisonment.

Our recommended reforms

Our recommended reforms repeal the defence of killing on provocation. Provocation defences operate in a gendered way, typically excusing male violence borne of anger or jealousy. This is inconsistent with community attitudes and scientific research.

Together, our recommended reforms to provocation and sentencing for murder would mean that provocation would not be available as a defence but would be considered by the Court in sentencing. Our reforms would give the Court discretion to set a minimum non-parole period that is appropriate in the circumstances and reflects culpability.

If the elements of murder are proven but Diana can show that her actions were provoked by Vernon, she would be convicted of murder and provocation would become a mitigating factor that could reduce her sentence.

Sentencing Diana

Current law

Diana has been charged with murder. Under the current law in Queensland, murder carries a mandatory life sentence with a minimum non-parole period of at least 20 years imprisonment.

If Diana is unsuccessful in raising the defences of self-defence, killing for preservation in an abusive domestic relationship or killing on provocation, she would be convicted of murder at trial.

If Diana is convicted of murder, the Court must sentence Diana to life imprisonment with a 20-year minimum non-parole period. For offences other than murder, the Court can take mitigating factors into account, for example, that Diana is a victim of domestic and family violence, that her offending is linked to her experience of domestic and family violence, and her history of being abused by Vernon. Under current law, the Court cannot take mitigating factors into account in sentencing for murder. This would mean that Diana must stay in prison for 20 years before becoming eligible for parole. If Diana successfully applies for parole, she would then serve the rest of her life sentence under supervision in the community. Sam would be 22 years old by the time Diana was eligible for parole and would grow up without both of his parents.

If Diana is sentenced for manslaughter, the Court would consider a range of factors to determine an appropriate sentence. This would include mitigating factors relating to Diana's experience of domestic and family violence. While Diana would not be subject to the mandatory penalty for murder, she would still serve a lengthy custodial sentence.

Our recommended reforms

Our recommended reforms to sentencing for murder retain the mandatory life sentence while giving the Court discretion to set the length of the minimum non-parole period.

This means that if Diana was convicted of murder, the Court could vary the standard non-parole period and consider a range of relevant factors to determine a just sentence, as the Court currently can for offences other than murder. This could include the history of abuse perpetrated by Vernon against Diana and the fact that her offending is linked to her experience of domestic and family violence. It could also include her risk of being killed by Vernon and Diana's parental responsibilities for Sam.





Diana's journey through the justice system

Our final report includes recommendations to improve the rules and processes for investigating, charging, prosecuting and defending criminal charges. They aim to improve access to justice for victim-survivors of domestic and family violence and other disadvantaged communities as well as reduce delay in the criminal justice system.

If implemented, our recommended reforms would impact every stage of Diana's pathway through the criminal justice system, including her interactions with the police prior to Vernon's death.

Before Vernon's death

The police were made aware of the domestic and family violence between Vernon and Diana on several occasions. On one of those occasions, Diana's use of violence to protect herself from Vernon contributed to her being misidentified as the perpetrator of domestic and family violence. As a result, a domestic violence order was taken out against her. Being misidentified as a perpetrator may have made Diana more reluctant to report her abuse to the police. Diana may have assumed the police would believe Vernon over her and may not have seen this as a way of seeking help or keeping her and Sam safe.

Our recommended reforms would give the police improved training in domestic and family violence and greater guidance in determining the person most in need of support and protection in a relationship where domestic and family violence is occurring. This means the police would be more likely to accurately identify Diana as the person most in need of

protection, not Vernon. This may increase Diana's trust in the justice system, improve her ability to access domestic and family services and enhance her safety. It may also prevent Vernon from using the criminal justice system to further his abuse of Diana.

Preventing Diana from being misidentified as a perpetrator of domestic and family violence would also reduce the likelihood of unjust outcomes after Diana is arrested and charged with Vernon's murder.

Investigating and charging Diana with murder

Societal expectations about what victims look like and how they should behave can influence how victim-survivors of domestic and family violence are treated, including by the criminal justice system. Diana does not present as a 'typical' or 'ideal' victim of domestic and family violence, meaning that she is less likely to be treated with sympathy and support by the police and other criminal justice stakeholders.

The 'ideal victim' is typically white, not aggressive, has no criminal record, is someone who has tried to leave or sought help and who primarily experiences physical forms of violence. Diana does not conform to this stereotype. In the past, Diana has fought back rather than left when attacked by Vernon. She has been charged with Assault Occasioning Bodily Harm and named as the perpetrator on a domestic violence order. Diana has also not sought help from domestic and family violence services and has previously refused to provide statements to the police.

These factors may influence how the police interact with Diana and may affect their investigation into Vernon's death. Diana may fear the police due to previous experiences. Without appropriate support, Diana may find it difficult to disclose her history of abuse to the police or to her lawyer. If she is not recognised as a victim-survivor of domestic and family violence, Diana may feel pressured into pleading guilty to manslaughter. Diana's ability to tell her story may be impacted by trauma. If she is not questioned fairly, Diana's evidence may be affected and the decision to charge Diana with murder may not be informed by all relevant information, leading to an unjust outcome.

Our recommended reforms would more appropriately equip police to recognise Diana as a victim-survivor of domestic and family violence and provide gender-responsive and trauma-informed support. As a victim-survivor of domestic and family violence, Diana would have access to increased safeguards and protections during police questioning. The Director of Public Prosecutions would have updated guidance on prosecuting and obtaining evidence from victim-survivors. The police would also receive improved training on available defences, improving efficiencies and just outcomes.

Before Diana's murder trial

Once Diana is charged with murder, the police will lodge her murder charge at the Magistrates Court. The charge will then go through a 'committal process' to inform Diana of the case against her and ensure there is sufficient evidence. This process can be lengthy and can involve complex proceedings regarding evidence and witnesses. Once completed, the Court will 'commit' the charge to the Supreme Court to proceed for trial or sentence.

Under current procedures, the police will most likely have responsibility for Diana's murder charge throughout the committal process. Once Diana's charge is committed to the Supreme Court, responsibility for her case will transfer to the Office of the Director of Public Prosecutions.

Under our recommended reforms, the police would lodge Diana's charge at the Magistrates Court and the Office of the Director of Public

Prosecutions would then become responsible for the charge during the committal process. This means the Office of the Director of Public Prosecutions would take earlier carriage of Diana's matter, regardless of where Diana lives.

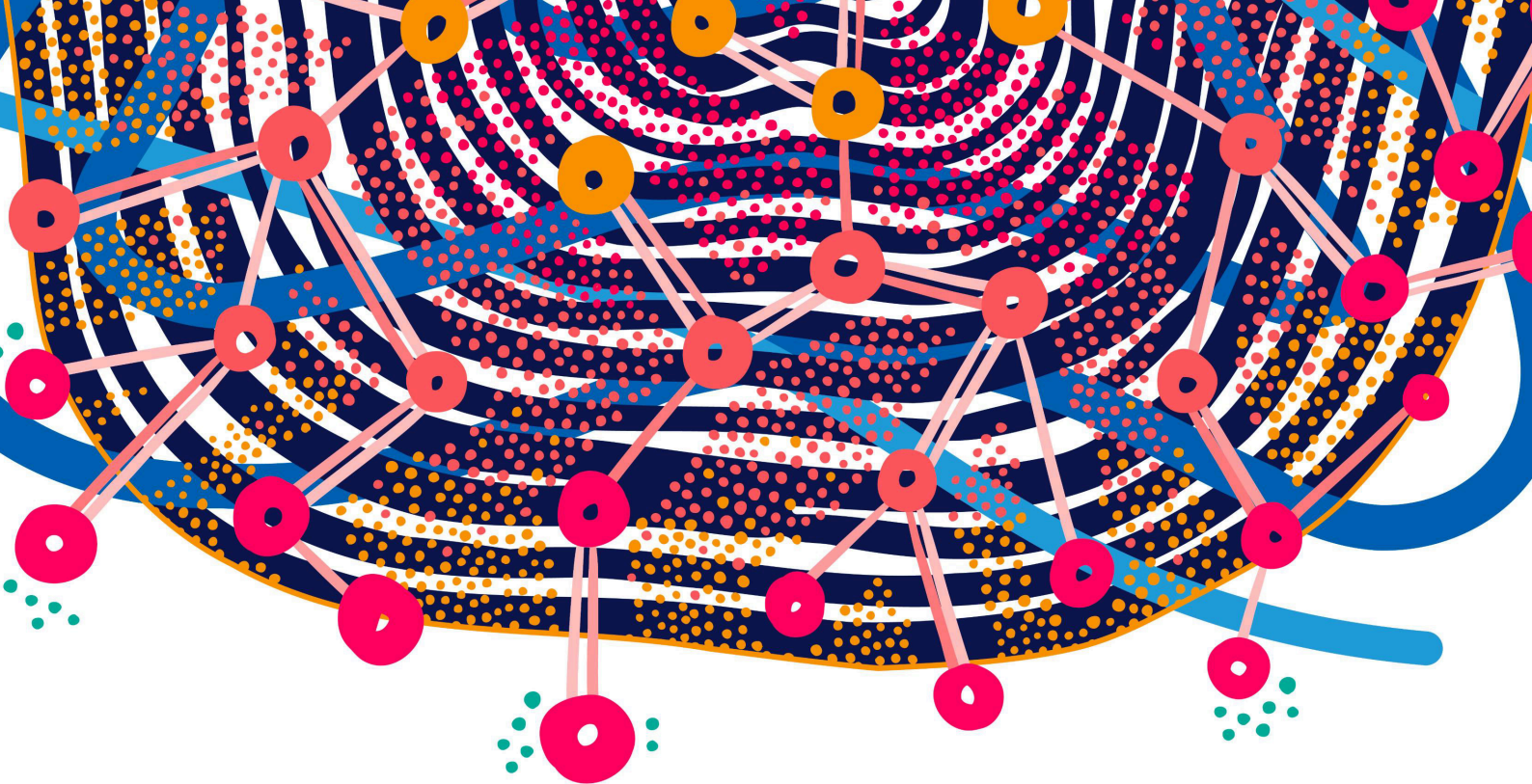
This would ensure greater efficiencies by reducing the double handling of Diana's file, encourage early identification of potential issues and support early resolution of her matter. It may also result in Diana's charge being reduced to manslaughter, if appropriate, removing the risk of Diana receiving a mandatory life sentence.

Our recommended reforms also clarify Diana's right to request access to relevant domestic violence evidence, such as the domestic violence order against Vernon, to support her case.

During Diana's murder trial

As a victim-survivor of domestic and family violence, Diana is at risk of being retraumatised by her trial. Our recommended reforms would introduce various measures to support Diana and ensure her trial is conducted in a trauma-informed way. They also aim to ensure the judge, jury and lawyers all fully understand the nature and impact of the violence Diana experienced from Vernon. These measures include:

- Permitting the Court to extend special witness protections to Diana when giving evidence. Diana could access these protections as a victim-survivor charged with an offence against her perpetrator. Special witness protections include giving evidence behind a screen or via video and having a support person present.
- Enabling Diana to access support from the Queensland Intermediary Scheme. The scheme provides support to vulnerable witnesses to minimise communication barriers with the Court.
- Allowing evidence from a Domestic Family Violence Expert Panel to support Diana's ability to access relevant defences.
- Mandating jury directions about domestic and family violence, including the use of self-defence in response to domestic and family violence, as relevant to Diana's matter.
- Improving jury directions regarding the defences available to Diana.



Cultural considerations

If Diana identified as an Aboriginal person or Torres Strait Islander person, she may face additional barriers to justice. Aboriginal peoples and Torres Strait Islander peoples are significantly overrepresented in the criminal justice system as offenders, victims and victim-survivors. This overrepresentation is linked to historic and ongoing effects of colonisation.

Diana would be more likely to be misidentified as a perpetrator of domestic and family violence, rather than recognised as a person in need of support and protection. Her cultural identity would be another way in which Diana would not conform to the stereotype of what an 'ideal victim' looks like, potentially impacting how the police interacted with her and subsequently conducted their investigations. Diana may be fearful of the police and less likely to report her abuse due to over-policing and racial profiling of Aboriginal peoples and Torres Strait Islander peoples.

Diana may also struggle to access culturally safe legal representation. English may not be her first language and cross-cultural communication

barriers may impact Diana's ability to tell her story to her lawyer.

Our recommended reforms aim to increase access to justice for Aboriginal peoples and Torres Strait Islander peoples by:

- improving cultural capability training for people who work in the criminal justice system
- funding Community Justice Groups to provide District and Supreme Courts with cultural reports to assist with bail applications and sentencing for Aboriginal peoples and Torres Strait Islander peoples
- increasing funding for culturally appropriate legal and advocacy services, improving access to culturally safe legal representation and minimising communication barriers
- providing access to safeguards during police questioning and special witness protections during trials for Aboriginal peoples and Torres Strait Islander peoples
- allowing evidence of traditional laws and customs of Aboriginal peoples and Torres Strait Islander peoples to be admitted as evidence.



Conclusion

Our recommended reforms are critical to ensuring people in Diana's situation receive just outcomes. They provide Diana with a greater chance of being acquitted or having her murder conviction reduced to manslaughter if she was acting to protect herself or Sam in self-defence.

If implemented, our recommended reforms should increase the number of domestic and family violence victim-survivors in Diana's situation having the confidence to go to trial to raise a defence, rather than pleading guilty to manslaughter to avoid the risk of being convicted of murder and facing a mandatory life sentence.

Support services

13YARN:	13 92 76	QLife:	1800 184 527
Lifeline:	13 11 14	No to Violence:	1300 766 491
Kids Helpline:	1800 55 1800	DV Connect:	
Beyond Blue:	1300 224 636	• Women's line:	1800 811 811
1800RESPECT:	1800 737 732	• Men's line:	1300 789 978
Rainbow SDFV Helpline:	1800 497 212		