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My thoughts in relation to provocation are I think best illustrated by a case I was involved in at both the trial and appellate stage. It immediately came to mind when considering this reform exercise being undertaken (and some of the questions considered) at the moment.

https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2023/286.html?context=1;query=rebecca%20payne;mask_path=

https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/2024/273.html?context=1;query=rebecca%20payne;mask_path=

In short compass, Victoria has notably fewer defences available but the defences available in Queensland are, in my view, complicated and could be streamlined. Unfortunately, there has been a trend towards murder convictions for females at trial in circumstances where some of the QLD-styled defences *should* have been available to them, and acquittals may have followed.

So because of the reduced types of defences available in Victoria, a gender disparity is created. This is, of course, less than ideal.

However, the sentencing regime in Queensland for a charge of murder is untenable, unconscionable and utterly contrary to the realities of what the criminal justice system is confronted with – in particular, a sentencing judge.

The case of Rebecca Payne immediately came to mind because after trial, she was found guilty of murder but her circumstances were so unique and the family violence she was exposed to so horrific that despite the running of a trial, her sentence was an objectively 'good' one. The sentencing remarks of the learned judge make it clear, in my view, that her Honour went 'as low as possible' without infringing sentencing principles. As you can see from the outcome of the appeal, the Victorian Court of Appeal nonetheless reduced her sentence significantly.

Mandatory sentencing in regime would see an offender like Ms Payne be sentenced to life imprisonment and required to serve a mandatory minimum non-parole period of 20 years. While there is a 'standard sentencing' scheme in Victoria which stipulates 25 years for murder, Ms Payne was sentenced to 12 years' imprisonment with a non-parole period of 7 years. The COA, both during the oral hearing and in its decision – at [135] – make reference to the defence of provocation that once was in Victoria. And that is, of course, different to the family violence defences available in Victoria. Variety in provocation defences does matter and the importance of that variety should not be underestimated.

That such a sentence is possible in Victoria, which properly and necessarily reflects critical mitigating factors and principles like mercy, but not in Queensland is indicative of how contrary to community standards mandatory sentencing for homicide offences is in Queensland.

In addition and by way of contrast, a recent case I was involved in – R v Kresto Wal Wal & Ors – also provides a graphic illustration of the total lack of ability by a sentencing judge to sentence according to findings, differing involvement, etc. That is, in a case of that kind, where some accused were found to have brandished weapons, done some positive act, instigated the plan in some way and others featured none save for an ultimate finding of being part of a common unlawful purpose (like my client, Juma Makuol) all received the

precise same sentence (life, 20 years non-parole). Put simply, the mandatory sentencing regime for murder makes absolutely no sense and, on a practical level cannot be said to achieve relevant sentencing principles without totally offending others.

Some other thoughts generally in relation to repeal of some of the defences available in Queensland:

1. Repealing defences does not necessarily act in the interests of the community, or in the interests of justice. Instead, it can act to cripple the proper administration of justice;
2. It is important to remember the important role played by the jury – what is a genuine defence of provocation (as opposed to 'excusing lethal violence borne of anger and jealousy') is a matter for the jury, who are representatives of the community in the courtroom;
3. The vulnerable members of the community are the ones who are most likely to be charged in Qld (and, indeed, generally speaking). Mandatory sentencing does little to deal with underlying issues. This is something that has been spoken about and acknowledged in an often tokenistic way (forgive my bluntness) without proper regard to the vicious cycle that is fostered. References to the community's attitude towards recidivists deals with only one side of the coin. History has shown that band-aid solutions do not work.

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[redacted] thank you for reaching out and I am grateful for the extension granted. if I can provide any supplementary views or input in any other way, please let me know.

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