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Proposal 1: Defensive homicide should be abolished

Defensive homicide should not be abolished. Despite shortcomings in the law, abolishing defensive homicide would be more problematic. If there is no other partial defence to replace defensive homicide, women who kill their partners in the context of family violence will receive more severe outcomes than is currently the case.

Proposal 2: Excessive self-defence should not be introduced

Excessive self-defence should be introduced if defensive homicide is abolished.

Proposal 3: The first limb of common law self-defence should be reinstated

The first limb of common law self-defence should be reinstated in line with the Victorian Law Reform Commission's original recommendations.

Question 1: What should the second limb of the test for self-defence be?

The second limb of the test for self-defence should recognise the experiences of family violence victims. The gender-based stereotype around self-defence, namely that it needs to be immediate and proportionate, fails to understand the cumulative impact of various forms of family violence. A woman who kills her violent and abusive partner is likely to kill in circumstances where her action may not be in response to an immediate attack but rather her actions are in response to an ongoing cycle of violence, abuse and threats. Victims of family violence live in a constant state of fear. Even when there is no immediate physical confrontation, a victim will always believe their safety is at risk due to prior and sustained violence.

Thus, the second limb of the test for self-defence should be a subjective test as proposed by the Victorian Law Reform Commission:

Was the accused's response a reasonable response in the circumstances as perceived by the accused?

Proposal 4 : There should be a consistent test for self-defence for all offences

Proposal 5: The common law test for self-defence should be abolished

Proposal 6 : Social context evidentiary laws should be extended to all claims of self-defence

Social context evidentiary laws should be extended to all claims of self-defence. Cases such as *R v Black* [2011] VSC 152 and *R v Edwards* [2012] VSC 138 highlight a poor understanding of the nature, dynamics and impacts of family violence.

Professionals who work directly with victims of family violence, such as experts from the Women's Domestic Violence Crisis Service, should be called upon by legal counsel to give expert evidence. An expert with family violence-specific training and extensive practical experience working with victims will be able to identify evidence-based risk factors present in a case. For example, the *Family Violence Risk Assessment and Risk Management Framework* used by specialists at the Women's Domestic Violence Crisis Service, considers behaviours that put women and children at high risk of injury or death. These behaviours include threats to kill the victim, harmed or threatened to harm victim, breaches of intervention orders, obsession/jealous behaviour towards victim, controlling behaviours and sexual assault of victim. If these factors had been considered in cases such as *R v Black* and *R v Edwards* it would recognise that a woman who has been subjected to family violence was reasonable under the circumstances in her assessment of the danger she faced.

Question 2 : Should new evidence laws be introduced to prohibit improper questions about homicide victims?

Question 3: Should new evidence laws be introduced to allow rebuttal evidence about the character of homicide victims

Proposal 7: These reforms should be reviewed after five years

These reforms should be reviewed after five years.

Is there any other aspect of the *Defensive Homicide: Proposals for Legislative Reform* Consultation Paper that you would like to comment on?

In addition to legal reform, specialised family violence training is needed for legal professionals so they can better understand the nature and impacts of family violence and the dynamics of abusive relationships.

Also recommended is the establishment of a specialist list for homicide cases involving family violence and a specialist domestic homicide unit in the Office of Public Prosecutions.