

Final Report

**Review of the
Law of Homicide**

Project 97

September 2007

**Law Reform
Commission of
Western Australia**



The Law Reform Commission of Western Australia

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Foreword

In Western Australia, homicide includes wilful murder, murder, manslaughter, infanticide and dangerous driving causing death, together with a range of defences. The law of homicide rightly attracts very significant public attention and concern because of the effects of such offences upon individuals and society at large. Nothing arouses strong emotions and fear more than the intrusion of untimely or violent death into daily life. This Report deals with the appropriate response of Western Australian law to actions and events which pose difficult legal, moral and social questions.

An Issues Paper was released in May 2006 to seek the views of the public and of the legal profession. The Issues Paper posed some 31 questions and set out four invitations to submit across the range of the offences and defences and sought submissions on matters such as provocation, self defence, the distinction between wilful murder and murder, diminished responsibility and 'battered women's syndrome' to name but a few.

The Law Reform Commission has endeavoured to address its terms of reference in a way which takes into account the wide concerns and interests of contemporary society in Western Australia and also deals with the legal issues in a coherent fashion. The statement of guiding principles, which is set out in the introduction to this Report, emerged during research and writing for the project as a response to the need to take account of the breadth and complexities of the law of homicide, the defences and their consequences. The principles are an important starting point in considering the Commission's recommendations.

The Commission has looked at the way homicide offences, defences and the sentencing provisions interlock, being conscious that nothing occurs or operates in a vacuum. The consequences of change in one area need to take account of effects in another to balance the varying circumstances in which offences and defences may arise and interact. For this reason the recommendations contained in this Report must be viewed and treated as a coherent package of reform. During the project the Commission has considered defences which are generally applicable under the Criminal Code, as well as specifically applying to homicide, and this has led to some recommendations which have a wider applicability than homicide.

There are many people without whom this work would not have been possible whose names appear in the acknowledgments and the Commission thanks them for their heroic effort to produce this Final Report. But it is particularly important to acknowledge and thank all those who took time to make submissions formal and informal, without whom the process of law reform would be undermined.

Gillian Braddock SC
Chair
28 September 2007

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Abbreviations

ABS	Australian Bureau of Statistics
ALRC	Australian Law Reform Commission
CLMIA Act	Criminal Law (Mentally Impaired Accused) Act 1996 (WA)
Code	Criminal Code (WA)
DPP	Director of Public Prosecutions
FDVU	Family and Domestic Violence Unit
LRCWA	Law Reform Commission of Western Australia
MIARB	Mentally Impaired Accused Review Board
NHMP	National Homicide Monitoring Program
NZLC	New Zealand Law Commission
MCCOC	Model Criminal Code Officers Committee
NSWLRC	New South Wales Law Reform Commission
QLRC	Queensland Law Reform Commission
VLRC	Victorian Law Reform Commission