

## The Offence of Defensive Homicide: Lessons Learned from Failed Law Reform

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### Introduction

The offence of defensive homicide occupied a short space in the history of Victorian homicide law: introduced in November 2005, under review from October 2010 and abolished as of 1 November 2014.<sup>1</sup> Albeit short, its nine-year operation stimulated academic debate, media attention and community concern. The offence was introduced as part of a wider package of reforms to the law of homicide, which included abolition of the controversial partial defence of provocation. The government's introduction of the new offence was underpinned by concerns that abolishing provocation would limit the legal defences available to the charge of murder, with only the complete defence of self-defence for persons who kill in response to prolonged family violence available if there were no intermediate defences or offences. While the VLRC (2004) recommended that this gap be filled through the reintroduction of the partial defence of excessive self-defence,<sup>2</sup> the offence of defensive homicide was favoured by the Government partly on the premise that by serving as an alternative offence it would provide judges with a clearer insight into the reasoning behind jury verdicts.

This chapter examines what can be learnt from the nine-year operation of the offence of defensive homicide. The first half of the chapter presents a detailed case analysis of the operation of the offence and the contexts of lethal violence in which defensive homicide was raised as an alternative to murder. As cases of female-perpetrated defensive homicide are examined in detail earlier in this collection (Tyson et al, 2015, this collection: Chapter 5) this chapter focuses on male-perpetrated defensive homicide. Drawing from the case analysis, the second half of the chapter considers what can be learnt from the introduction, operation and abolition of the offence of defensive homicide for future homicide law reform in Victoria and elsewhere.

In examining what can be discerned from the operation of defensive homicide, this chapter draws on more than five years of research examining the operation of the

<sup>1</sup> At the time of its introduction and up to the point of its 2014 abolition, Victoria has remained the only jurisdiction in Australia to legislate for an offence of defensive homicide.

<sup>2</sup> The partial defence of excessive self-defence was abolished in Victoria in 1987 following the decision of the Australian High Court in *Zecevic v DPP (Vic)* (1987) 162 CLR 645.

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