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The offense of defensive homicide in Victoria is said to allow for victim-blaming and misuse of the justice system – should it be abolished? AAP/Dave Hunt

Research published last week revealed that from November 2005 to September 2012, 18 of the 22 cases of defensive homicide in Victoria resulted from homicides perpetrated by a male offender upon a male victim.

Just one case during this period involved a male perpetrator and a female victim. In contrast to the dominant use of the offence by males, there have been just three female offenders convicted of defensive homicide in the first seven years of the offence’s operation.

In November 2005, the Victorian government abolished provocation as a defence to murder, but introduced the charge of defensive homicide. The offence operates whereby a person who kills another with the belief that their act was necessary to defend themselves or another person, but has no reasonable grounds for that belief can be convicted of defensive homicide.

Not intended as a replacement for the provocation defence, defensive homicide was designed to provide a safety net for women who kill in response to prolonged family violence, but are unable to raise the strict requirements of a complete defence of self-defence.

But despite the government’s best intentions, in the seven years since the law was implemented, battered women have not overly benefited from this new offence.

The offence has been used predominately in cases of male on male violence. This is not surprising given that the majority of homicides in Victoria are committed by one man upon another. However, it does raise one question: is the offence – like its predecessor of provocation – operating to diminish the seriousness of lethal male violence through...
convictions less than murder?

The disjuncture between the theoretical use for defensive homicide, and the cases in which it has been successfully argued, was recognised in August 2010 when the former state government began a review of the offence’s operation. But since the change of Victorian state leadership in November 2010, the review has stalled.

While the current government has indicated that the review will be completed, it is unclear when it will be finalised and what the recommendations for reform will be. What is clear is that the operation of defensive homicide should not continue without review, reform, and – in all likelihood – abolition.

The fact that narratives of victim-blaming still exist – despite the end of provocation as a defense – demonstrates the need to now abolish defensive homicide. The ramifications of victim-blaming were shown in the trial of Luke Middendorp.

Middendorp was convicted in May 2010 of the defensive homicide of his estranged girlfriend, Jade Bownds. While Middendorp is the only male intimate homicide offender to successfully raise defensive homicide to date, the case provides a clear warning that victim-blaming narratives continue to stain our courts.

On September 1, 2008, Middendorp killed Bownds by stabbing her four times in the back. At trial Middendorp did not contest that he had fatally stabbed Bownds. Rather, the trial was centred on whether he did so in self-defence and whether his perception that he was defending himself was reasonable. In seeking the answers to these questions it was arguably Bownds – not her undisputed killer – who was put on trial.

This is evident from the descriptors used to describe Bownds throughout the trial. The judge, defence and prosecution counsel repeatedly referred to her as a “difficult” woman, implying she was likely to have contributed to her own death. The further denigration of Bownds’ character is captured in the prosecutor’s description of her as “no angel” and the defence counsel’s words in his closing address. He said that while it was not in his nature to:

> …speak ill of the dead…at times it is our duty to do so. This is one of those times.

These are only two examples of the many ways that Bownds’ victim status was denied throughout the trial and in sentencing.

What the trial neglected to consider in the same level of detail that was paid to Bownds’ personal history was the grim reality of the couple’s history of domestic violence. The problems associated with the former provocation defence were demonstrated once again, as attention shifted to victim-blaming.

The tendency to blame the victim can be found in other instances of alleged defensive homicide. In many of the cases since 2005 there was no warranted threat posed by the victim to their attacker and, in several of these instances, a verbal exchange between the offender and the victim was cited as enough to incite the offender’s fear.

When the provocation defence was abolished, it was highlighted that any legal avenue that allows for the words of a deceased victim to be “put on trial” is highly concerning. It is much the same with defensive homicide and for this reason alone, it has no place in the Victorian criminal justice system.

Beyond victim-blaming, the operation of defensive homicide has also served to minimise the
seriousness of male lethal violence perpetrated with knives. Convictions for defensive homicide in this context undoubtedly conflict with the government's expressed intention to show a "tough on crime" approach to knife crime, which aimed to curb the knife culture amongst young Victorian males.

A conviction for defensive homicide in cases where a knife was not only used but was brought to the scene of the crime certainly trivialises the seriousness of this form of lethal violence.

What is needed is clear. The government must prioritise their review of defensive homicide and end the lengthening list of injustices.

For a state that so adamantly recognised the injustice of the verdict in the Ramage case and, in particular, the posthumous treatment of James Ramage's estranged wife and victim, Julie Ramage – it is important that we continue to take steps to ensuring that alternative offences, such as defensive homicide, cannot be abused by violent men in their avoidance of a murder charge.

When finalising their review, the government should abolish defensive homicide. It is an alternative offence to murder that has allowed for manipulation, victim-blaming and misuse of the justice system. It has no place in our legal system.

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