Abolishing defensive homicide will benefit female victims and offenders

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DISCLOSURE STATEMENT

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The Victorian Department of Justice has released its long-awaited review into operation of the controversial offence of defensive homicide. The Consultation Paper proposes the offence’s abolition on the basis that it is “inherently complex”, “has no clear benefit” for women who kill in the context of family violence and has been “inappropriately” used by men who kill.

Defensive homicide was

Eileen Creamer is one of just three women to be convicted of defensive homicide in Victoria. A Victorian government report has proposed abolishing the controversial law. AAP/Julian Smith
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implemented in November 2005 alongside the abolition of the controversial partial defence of provocation. While provocation served to reduce murder to manslaughter where an accused lost their self-control in response to provocative conduct, defensive homicide was designed to allow the criminal law to better respond to persons who kill in response to prolonged family violence.

Defensive homicide applies where a person kills with the belief that their act of lethal violence was necessary to defend themselves, or another person, but where it is shown that they had no reasonable grounds for that belief.

The proposal to abolish defensive homicide in Victoria is a welcome acknowledgement that the offence has operated for over seven years in unintended ways that are out of line with the intentions of the original law reforms. Convictions for defensive homicide to date have overwhelmingly involved homicides outside of the context of family violence involving a male defendant and a male victim.

Despite this obvious disjunct between the intended use of the offence and its operation in practice, the abolition of defensive homicide is met with concerns that its removal may disadvantage female defendants. The law’s inadequacies in this area are well documented. In this respect, the concerns of domestic violence stakeholders are unsurprising. However, these concerns are also potentially unwarranted. A close reading of the paper reveals that women – both victims and offenders – will be given a better system of justice under the government’s proposals for reform.

To date, three women have been convicted of defensive homicide. Eileen Creamer was convicted in 2011 following a contested trial, while Karen Black and Jemma Edwards were convicted in 2010 and 2012 respectively following the Crown accepting a guilty plea. All three women killed male partners who had a history of perpetrating family or sexual violence.

Jemma Edwards had been subjected to domestic violence from 1999 to 2005 by her husband, James. These incidents often required police intervention and Edwards had an intervention order taken out against her husband. On the night of his death, Edwards alleged that her husband had been drinking heavily and threatening that he was going to kill her. During her police interview, Edwards described her husband threatening to cut out her eyes and ears, and threatening to use petrol to disfigure her face “so no-one would ever look” at her again. It was in response to these immediate threats, and in the context of years of abuse, that Edwards fatally stabbed her abusive husband.

While cases such as Jemma Edwards’ may appear to fit within the confines of this offence, a conviction for defensive homicide arguably does not serve the interests of the female defendant in these cases. Defensive homicide suggests that the woman’s belief that she was acting to defend herself was unreasonable.

In light of the documented history of violence, defensive homicide arguably misinterprets the nature of the lethal violence perpetrated. This misrepresentation of the lethal violence committed by women in response to family violence is well-recognised in the report.

Homicides occurring in the context of family violence – such as that by Jemma Edwards – do meet the reasonable belief requirement and should be able to be resolved under self-defence laws. A complete self-defence defence results in an acquittal as opposed to defensive homicide, which typically carries a term of imprisonment. The government’s report contains additional proposals for reform to the Victorian law of self defence which will be important in ensuring women can access this complete defence where appropriate.

This builds on the 2005 Victorian law reforms, which saw the introduction of evidentiary reforms aimed at allowing women’s experiences of family violence to be better heard and understood by the courts. These reforms were an important step forward in appropriately recognising and responding to the harms of family violence. The current proposals adds to this.

It is important that the Victorian criminal justice system continues to move forward in its response to family violence. Defensive homicide has proven to be both an inappropriate and inadequate category of homicide for this purpose.

Importantly, the government’s report also proposes legislation that will limit the extent to which evidence about the deceased victim can be relied upon in homicide trials. The report proposes to achieve this through reforms on existing laws relating to “improper” questioning and also by adapting current character evidence laws. This is a monumental step forward for the Victorian law of homicide, which saw the overt injustice of victim blaming evidence in the 2004 trial of James Ramage for the killing of his wife, Julie.

The government’s proposals to abolish defensive homicide would rightly remove an offence that is not needed in Victoria’s criminal law. It has failed to provide a more just response for lethal violence committed in the context of family violence, and at the same time it has opened up an avenue away from murder for men who kill in circumstances more warranting of a conviction for murder.