**New homicide laws have proved indefensible**

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**The intent of the 2005 legal reforms is far from being realised.**

**T**HE case surrounding Jade Bownds' death raises the sobering thought that Victorian law is still not adequately contending with the grim, gendered realities of family violence.

Five years ago, two much-publicised homicide cases came to play a huge role in the reform of Victoria's homicide laws. Heather Osland was convicted of the killing of her abusive husband. She received a 14½-year sentence, while her co-accused adult son David, who inflicted the blow that killed his stepfather, was acquitted at a separate trial on the grounds of self-defence.

A lengthy campaign ensued to gain a pardon for Heather. The Bracks government denied this on September 11, 2001. Two weeks later, however, Attorney-General Rob Hulls instituted a review into homicide legislation.

When the Victorian Law Reform Commission handed down its recommendations in 2004, even fresher in the public's mind was the case involving Julie Ramage, whose husband was the last person to be able to use the controversial defence of provocation. Ramage was convicted of manslaughter, not murder, and was jailed for 11 years, with parole after seven.

In response to VLRC recommendations, Hulls announced an overhaul of the laws in October 2005. Provocation was out. Defensive homicide was in. Hulls argued ''the law regarding provocation was developed from times past when it was acceptable, especially for men, to have a violent response to an alleged breach of a person's honour''.

This idea of provocation was centuries-old, reflecting anachronistic assumptions about women as chattels and objects of subordination. Provocation was able to be used by violent men as an excuse for jealous rage and anger. The removal of provocation meant such behaviour could no longer be diluted and have what should have been murder convictions downgraded to manslaughter, with a lesser sentence.

The new partial defence called ''defensive homicide'' was to be applied when a person believed it necessary to kill to protect themselves (or another), but that belief was ultimately unreasonable.

Hulls observed that ''like provocation, self-defence evolved from a bygone era when the law was concerned with violent confrontations between two males''.

He added: ''The Common Law has slowly changed to take into account other circumstances where a person may kill to protect themselves - for example, when a person kills in response to long-term family violence.''

The key point here is that much of this reform was designed to take better account of family violence. In announcing these changes, Hulls said: ''Importantly, where a killing occurs in the context of family violence, the legislation will affirm that [a woman] can argue self-defence even if the threat from which she is defending herself is not immediate, and even where her response involved greater force than the harm with which she was threatened.''

Homicide statistics have a chilling gender dimension - more women are killed by their sexual partner, or ex-partner, than by anyone else.

This week, Shaye Beck, mother of 22-year-old Jade Bownds, who was stabbed to death, has called for this system to be reviewed. The killer of her daughter, Luke Middendorp, was acquitted of murdering Bownds and instead convicted of ''defensive homicide''. Jade's mother is right to ask, rhetorically: ''Taking into consideration my daughter's injuries - a fractured jaw, a black eye, a knife cut to her ear and multiple bruises - how on earth can anyone even suggest defensive homicide?''

Middendorp was issued with a family violence order nine months before Bownds' death. After stabbing his 50-kilogram girlfriend in the back four times, the over-six-feet-tall, 90-kilogram Middendorp was heard telling his victim she got what she deserved and called her a ''filthy slut''. He was sentenced to 12 years in jail and, with time already served, will be eligible for parole in six years.

Shaye Beck's call for a review is understandable. Family members want intentional killing to be labelled for what it is - murder.

Five years is a long enough passage of time to contemplate a formal review. Importantly, the Middendorp outcome is not the only case in this period that suggests the motivating intent of the 2005 reforms is not being realised.

In removing provocation in 2005, Mr Hulls said ''the government will not support a mechanism that implicitly blames the victim for a crime - one that has been relied upon by men who kill partners or ex-partners out of jealousy or anger''.

Now, we have two questions for the Attorney-General regarding the capacity of Victorian law to provide better protection for women and to take stronger account of the gendered realities of family violence.

In the absence of provocation as a defence, is defensive homicide becoming its replacement?

What is required of the legal system to uphold the original intent of these law reforms, particularly where there is a history of violence towards the woman and where the woman killed is a victim blamed?