

Media Release

Chiefs of Staff, News Directors

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New Law Reform paper examines self-defence and the law

If you use force to protect yourself, would the law then protect you? The Tasmania Law Reform Institute (TLRI) at the University of Tasmania has released Final Report No 20, *Self-defence*. The Report considers the circumstances in which a person can lawfully use force (including lethal force) to defend themselves or another.

In particular, it focuses on the difficulties which arise when a person is mistaken about the existence of a threat, or about the seriousness of the threat posed by another.

Director of the TLRI, Ms Terese Henning, said there is “considerable debate” about the extent to which a person can rely on a mistaken belief for the purposes of self-defence, and whether the reason for the mistake has a role to play in determining the availability of the defence.

A mistaken belief in the need for self-defence is particularly problematic in four situations:

1. when it results from a delusion caused by a mental illness;
2. when it is the product of psychological factors personal to the accused that made him or her more sensitive to threats of danger than the normal person;
3. when it arises from self-induced intoxication; or
4. when it proceeds from a delusion caused by drug-induced psychosis.

“The Report also contributes to the current conversation about family violence by considering the operation of the defence where victims of family violence take self-protective action.

“It is uncertain to what extent the current law accommodates this situation and there have been claims that the defence provides too little recognition of the position of victims of family violence,” Ms Henning said.

The Report makes recommendations for extending the defence and clarifying its application in such cases.

The Report makes 23 recommendations in all, including recommendations relating to the approach to be taken to evidence of drug-induced psychoses and the interaction between the defence of self-defence and the defences of intoxication and insanity.

It also makes recommendations for specific amendments to the *Evidence Act* to accommodate the admission of family violence evidence in self-defence cases and in relation to partial defences to murder.

The Report concludes that the implementation of many of the suggested reforms will require a comprehensive review of the defence of insanity in s 16 of the *Criminal Code*.

The Report is available to view on the Institute's webpage: <http://www.utas.edu.au/law-reform/publications/ongoing-law-reform-projects2>

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