

## **INQUIRY INTO PARTIAL DEFENCE OF PROVOCATION**

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Submission in favour of abolishing the partial defence of provocation, and reforming the self-defence provisions of the Crimes Act 1900.

# **Submission to the Inquiry into the Partial Defence of Provocation**

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## Summary

Community reaction to recent cases where an accused has successfully relied on the partial defence of provocation to reduce a charge of murder to manslaughter demonstrates that the defence no longer expresses community standards. Many experienced criminal lawyers, academics and members of the judiciary consider that provocation is a historical relic of the common law.

Part 1 of this submission discusses why the defence is no longer justified. Part 2 details how the operation of the defence is gender-biased and is mostly invoked by male accuseds who commit homicide in situations of escalating violence or as perpetrators of domestic abuse. Part 3 analyses the argument that provocation should be retained for an accused reacting to circumstances of domestic violence. Part 4 sets out the how provocation is relied on as a mitigating factor in sentencing. Part 5 considers alternatives to provocation for an accused reacting to circumstances of domestic violence.

This submission supports the proposition that the partial defence of provocation is mostly used to justify conduct that is no longer acceptable. To the extent that it is used in justifiable circumstances, ie by an accused who is the victim of prior domestic violence perpetrated by the deceased, an amendment to the partial defence of excessive self-defence to accommodate these cases would more coherently reflect prevailing community standards.

# 1. The partial defence of provocation no longer expresses community standards

If a person on trial for murder successfully raises the partial defence of provocation, the jury must convict that person of manslaughter, not murder. Section 23 of the *Crimes Act 1900* (NSW) sets out the elements of the partial defence of provocation. One requirement of the defence is that the person who killed the deceased formed an intent to kill or to inflict grievous bodily harm on the deceased as a result of that person's loss of self-control.<sup>1</sup>

An accused's loss of self-control thus allows him or her to escape a murder conviction. This is the case even though the accused has unlawfully killed someone, intending to do so, or at least intending to cause that person grievous bodily harm.

Over the last decade, the partial defence of provocation has been abolished in Tasmania, Western Australia and Victoria. It has also been the subject of significant reform in Queensland, the Northern Territory and the Australian Capital Territory. Delivering the Second Reading Speech for the Tasmanian Bill that abolished the partial defence of provocation, the Attorney-General said:

The main argument for abolishing the defence stems from the fact that people who rely on provocation intend to kill. An intention to kill is murder. Why should the fact that the killing occurred when the defendant was acting out of control make a difference? All the ingredients exist for the crime of murder.<sup>2</sup>

The defence of provocation has been historically rationalised as a concession to human frailty. It was conceived centuries ago for the purpose of alleviating the harshness of the mandatory death penalty for murder. At the time of its inception, employing violence to respond to provocative conduct was socially acceptable, if not socially expected.<sup>3</sup> Gleeson CJ recounted in *R v Chhay* (1994) 72 A Crim R 1 at 11:

The law developed in days when men frequently wore arms, and fought duels, and when, at least between men, resort to sudden and serious violence in the heat of the moment was common.

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<sup>1</sup>(2) For the purposes of subsection (1), an act or omission causing death is an act done or omitted under provocation where:

(a) the act or omission is the result of a loss of self-control on the part of the accused that was induced by any conduct of the deceased (including grossly insulting words or gestures) towards or affecting the accused, and

(b) that conduct of the deceased was such as could have induced an ordinary person in the position of the accused **to have so far lost self-control as to have formed an intent to kill, or to inflict grievous bodily harm upon**, the deceased,

whether that conduct of the deceased occurred immediately before the act or omission causing death or at any previous time.(Emphasis added.)

<sup>2</sup> Tasmania, Parliamentary Debates, Assembly, 20 March 2003, 60 (J Jackson—Attorney General and Minister for Justice and Industrial Relations).

<sup>3</sup> Victorian Law Reform Commission (2004) *Defences to Homicide*: Final Report, p 22.

However, violence is no longer a socially acceptable means of resolving disputes. Further, there are no longer mandatory sentences for most murders in NSW: the *Crimes (Sentencing and Procedure) Act 1999* (NSW) requires the courts to consider an offender's subjective circumstances when imposing a sentence for murder. The normative justification for retaining the partial defence of provocation is thus difficult to sustain.

In a 2006 analysis of the partial defence of provocation, academic Graeme Coss questions why a loss of control should elicit special leniency from law for the decision to kill another person.<sup>4</sup> As the historical foundations for the offences have fallen away, there is no public policy explanation to maintain the privileged treatment of this motivation for homicide. The public reaction to the outcome in recent case of *R v Singh* [2012] NSWSC 637 demonstrates that the defence does not give expression to community expectations about the justice system. Offences that constitute murder should be designated as such. Section 23 of *Crimes Act 1900* is a historical relict that justifies conduct that is no longer acceptable.

## 2. Provocation is gender-biased

Though gender-neutral in terms, in practice the partial defence of provocation tends to assist men rather than women. Gleeson CJ in *R v Chhay* went so far as to assert that the development of the defence was inherently gender-biased. His Honour said:

[T]he law's concession to human frailty was very much, in its practical application, a concession to male frailty... the law's concession seemed to be to the frailty of those whose blood was apt to boil, rather than those whose blood simmered, perhaps over a long period, and in circumstances at least as worthy of compassion.<sup>5</sup>

We have reviewed 32 cases\*<sup>6</sup> in which the partial defence of the provocation resulted in a manslaughter conviction. Those cases were decided in either the Supreme Court of New South Wales or the New South Wales Court of Criminal Appeal over the last ten years (Annexure A).<sup>7</sup> In some of them, the Crown had accepted a plea to manslaughter on the ground of provocation. In others, provocation was accepted by a jury at trial. Of the pleas the Crown accepted, only three were by a female offender. In each of those three cases, the female offender had been in an abusive relationship with the deceased, and had allegedly killed the deceased following a threat of violence by him.<sup>8</sup> The partial defence of provocation was made out at trial by two female offenders. In one case, the killing took place in

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<sup>4</sup> Graeme Coss, "The Defence of Provocation: An Acrimonious Divorce from Reality" (2006) 18(1) *Current Issues in Criminal Justice* 51, 52.

<sup>5</sup> *R v Mui Ky Chhay* (1994) 72 A Crim R 1, 11.

<sup>6</sup> \*For the purposes of this submission, *R v Jones and Others* [2007] NSWSC 1333 has been treated as one case. This case involved four male offenders and one female offender being convicted of manslaughter

<sup>7</sup> The facts of each case and sentencing outcomes in each of these cases are set out below at Annexure A.

<sup>8</sup> *R v Joyce Mary Chant* [2010] NSWSC 593; *R v Ferguson* [2008] NSWSC 761; *R v Russell* [2006] NSWSC 722.

the context of escalating violence between two rival family groups.<sup>9</sup> In the second case, the offender had killed an elderly uncle. The uncle had involved the offender's four year old child in a sexual act.<sup>10</sup>

The other 28 cases involved male offenders (including *R v Jones and Others* [2007] NSWSC 1333 which involved four male offenders and one female offender). By contrast, in at least eight of these cases the offender was motivated by some kind of sexual jealousy or suspicion of infidelity. These eight cases are broken down into two types of victim.

- In four cases the male offender killed a sexual rival.<sup>11</sup> An example is the recent case of *R v Won* [2012] NSWSC 855 where the offender stabbed the male victim seven times after finding him in bed with his wife.
- In the other four of cases the male offender killed his female partner.<sup>12</sup> In the recent case of *R v Singh* [2012] NSWSC 637, a jury found that the offender was provoked to strangled his wife because of a suspected an infidelity.

The 2005 case of *Regina v Williams* also involved a domestic killing. But in this case the motivation of the offender was not jealousy, but rather that the deceased "wouldn't do as she was told and she wouldn't get off the methadone".<sup>13</sup>

In a further 11 cases, the offender was provoked to kill the deceased by insults and threats of immediate violence directed towards an offender during an argument.<sup>14</sup> Where there was a threat of immediate violence, the offender sometimes relied on the partial defence of excessive self-defence in conjunction with provocation.

Our analysis suggests Gleeson CJ's assessment of the partial defence of provocation is borne out in practice. It tends to benefit men prone to kill out of jealousy or retaliate violently in arguments. In domestic circumstances, women are often the victims of the loss of self-control. Despite previous statutory reforms to the defence in NSW (including removing the element of suddenness to broaden its application to circumstances where the offender is the victim of prior domestic violence), the defence is still geared towards lessening culpability for a category of homicide typically committed by those who offend in 'hot-blood'.

Our review of the case law also reveals a clear difference in the motivations between male and female offenders convicted of provocation manslaughter in domestic

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<sup>9</sup> *R v Jones and Others* [2007] NSWSC 1333.

<sup>10</sup> *Regina v Kmb* [2003] NSWSC 862.

<sup>11</sup> *R v Won* [2012] NSWSC 855; *R v Gabriel* [2010] NSWSC 13; *R v Lovett* [2009] NSWSC 1427; *Regina v Lynch* [2002] NSWSC 1140.

<sup>12</sup> *R v Singh* [2012] NSWSC 637; *Regina v Munesh Goundar* [2010] NSWSC 1170; *R v Stevens* [2008] NSWSC 1370; *R v Hamoui* [No 4] [2005] NSWSC 279.

<sup>13</sup> *Regina v Williams* [2005] NSWCCA 99

<sup>14</sup> *R v Jay William Cook* [2012] NSWSC 480; *R v Vulovic (No. 4)* [2012] NSWSC 212; *Berrier, Steven John v R* [2009] NSWCCA 40; *Forrest v R* [2009] NSWCCA 11; *Clarke v Regina* [2008] NSWCCA 36; *R v Jones and Others* [2007] NSWSC 1333; *R v Barton* [2007] NSWSC 651; *R v Ari Hayden Bullock* [2005] NSWSC 1071; *R v Jeffrey Dunn* [2005] NSWSC 1231; *Regina v James Anthony Vella No. 60675 of 1994 Criminal Law* [2004] NSWSC 1339.

circumstances. Male offenders were driven by jealousy or a desire to “defend their honour” against a sexual rival. On the other hand, female offenders mostly killed to protect themselves or, in one case,<sup>15</sup> in response to the deceased’s inappropriate sexual behaviour with her child.

This finding is in-keeping with the observation of the Victorian Law Reform Commission’s 2004 Report:

When many men who kill their partners successfully raise provocation, the provocation is often their partner’s alleged infidelity and/or their partner leaving or threatening to leave. Their actions are therefore primarily motivated by jealousy and a need for control. In comparison, when women kill their partners and successfully raise the defence, there is often a history of physical abuse in the relationship.<sup>16</sup>

Provocation is not only biased in favour of male offenders, but when raised in domestic circumstances it may be seen to legitimise violence against women. The implication arising from several recent cases<sup>17</sup> is that the killing of women who are sufficiently provocative does not warrant a murder conviction. According to Kate Fitz-Gibbon, who analysed 15 provocation manslaughter cases from 2005-2010:

[A]n examination of the operation of provocation in NSW since 2005 reveals the gendered use of the partial defence and the emergence of key concerns relating to the legal legitimisation of violence against women.<sup>18</sup>

In light of the recent case *R v Singh* [2012] NSWSC 637, Fitz-Gibbon’s fears appear well-founded. In that case, the offender was sentenced to a non-parole period of imprisonment for 6 years with a total term of 8 years for killing his wife. The offender was found to have been provoked by his wife’s statements that she had never loved him, that she was in love with somebody else and would have him removed from Australia. The offender lost control and strangled his wife and cut her throat eight times with a box cutter. His sentence of 8 years is strikingly lenient when compared with two other recent cases of a domestic killing where the provocation defence failed and the offender was instead convicted of murder.

In *R v Biddle* [2011] NSW 1262, the offender was sentenced to 27 years imprisonment (8 years non-parole) and in *Grant v R* [2010] NSWCCA 44 the offender was sentenced to 16 years (11.5 years non-parole). There is a marked disparity between the sentences for murder and provocation manslaughter, sending the troubling message that where a partner is sufficiently provocative reacting with murderous violence is, at least to an extent, legitimate.

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<sup>15</sup> *Regina v Kmb* [2003] NSWSC 862.

<sup>16</sup> Victorian Law Reform Commission, *Defences to Homicide, Final Report*, note 15, p29.

<sup>17</sup> See *R v Singh* [2012] NSWSC 637, *R v Gabriel* [2010] NSWSC 13, *R v Stevens* [2008] NSWSC 1370.

<sup>18</sup> Fitz-Gibbon, K., “Provocation in New South Wales: the need for abolition”, *Australian & New Zealand Journal of Criminology*, 45 (2012) 210.



### 3. Protecting battered women?

A key argument for retaining the partial defence of provocation is that it serves those people (generally women) who kill in circumstances where they are the victims of prior domestic abuse. There is a general expectation in the community that people in these circumstances should be able to evoke the sympathy of the law. But perversely the requirement of a loss of self-control means that women who kill after being subjected to long-term abuse are less likely to be assisted by the defence, depending on the circumstances of the killing. The element of a loss of self-control favours hot-headed, spontaneous reactions rather than calculated decisions.

Women who seek to raise this defence are forced to satisfy requirements that are not designed to accommodate circumstances where the accused is the victim of prior domestic violence. The Victorian Law Reform Commission noted that unequal physical strength between a female offender and the deceased in circumstances of prior domestic violence means the killing often occurs in non-confrontational circumstances.<sup>19</sup> Even though there is no longer a requirement that the provocation be contemporaneous with the killing, a jury may be reticent to find that a woman lost self-control where there is a time-lapse between an act of domestic violence and the killing. This would be particularly so where, for example, the accused kills her partner while he is sleeping.

These actions are better characterised as self-defence or defence of others where children are involved in family violence. But relying on self-defences poses another set of hurdles for a female accused. The difficulties for women to escape circumstances of domestic violence are not always evident to a jury. Jurors may question whether the woman believed that the killing was necessary to protect herself or whether there was another means to escape, particularly where there is evidence the killing was pre-planned. Therefore, any reform to the partial defence of provocation should be conducted in conjunction with a review of the self-defence and excessive self-defence. The availability of alternative defences to murder in domestic violence situations is considered below.

### 4. Provocation as mitigation in sentencing

The punishment for murder in NSW is life imprisonment, although a sentencing court may impose a specified term. The standard non-parole period for murder is 20 years.

The recent cases of *R v Singh* [2012] NSWSC 637 and *R v Won* [2012] NSWSC 855 involved men who killed out of sexual jealousy and were convicted of provocation manslaughter. They were sentenced to relatively short terms of imprisonment. The public reaction to these decisions indicates that they are out of step with community standards which call for such killings to be recognised as murder, and for sentences to be imposed accordingly.

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<sup>19</sup>Victorian Law Reform Commission, *Defences to Homicide, Final Report*, note 15, p 134-135.

But the partial defence of provocation is still a concession to human frailty. A person who becomes so angry so as to lose self-control may sometimes (although not always) be less morally culpable than a person who commits a pre-meditated killing. A valid concern about abolishing provocation is that it would lead to undeserved murder convictions, and correspondingly, undeserved lengthy sentences. However, at the time that the partial defence was first established, courts did not have any discretion to take provocative behaviour into account at sentencing. Now, provoking conduct by the deceased can bear directly on an offender's culpability and commensurate punishment at sentencing. Section 21A(3)(c) of the *Crimes (Sentencing Procedure) Act 1999* allows a court to take provoking conduct into account as a mitigating factor in sentencing the offender. Given that NSW does not have a mandatory life-sentence for most murders,<sup>20</sup> abolishing provocation does not mandate unjustly longer sentences for murder where there is provoking conduct. The Court of Criminal Appeal pointed out in *R v Hoerler* (2004) 147 A Crim R 520 that while a conviction for murder will ordinarily attract a higher penalty, there is a degree of overlap in sentencing for murder and manslaughter, and sometimes a higher sentence may in fact be warranted in a manslaughter case.

This principle is illustrated by Barr AJ approach in *R v Shiels* [2011] NSWSC 1177 where the offender was found guilty of murder after his plea to manslaughter on the basis of provocation was rejected. In that case, Barr AJ referred to precedent sentences for manslaughter, rather than murder, despite the murder conviction. His Honour stated

[26] Notwithstanding the intent to kill and the nature of the attack, I think that the offence falls well below the mid-range of objective seriousness of offences of its type. I have already stated some of the reasons for this conclusion, but I have particularly in mind that the offender was sorely and repeatedly provoked before, disinhibited by the alcohol he had drunk, he finally lost his temper. That provocation was insufficient to justify a reduction of his verdict to one of guilty not of murder but of manslaughter, but it did significantly mitigate his criminality. Some regard must therefore be had to the range of sentences generally imposed for manslaughter.

The offender was ultimately sentenced to 20 years in prison, with a non-parole period of 13 years.

The sentence in *Shiels* was handed down following the judgment of the High Court decision in *Muldock v The Queen* [2011] HCA 39. Since that decision, NSW sentencing courts no longer rely on the legislative standard non-parole periods as a starting point for sentencing. Rather, courts must have regard to McHugh J's comments in *Markarian v R* [2005] HCA 25 [51]:

The judge identifies all the factors that are relevant to the sentence, discusses their significance and then makes a value judgment as to what is the appropriate sentence given all the factors of the case.

The standard non-parole period for murder of 20 years is now only one of many factors to be taken into account in sentencing.

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<sup>20</sup> cf. s 19B *Crimes Act 1900*. There is a mandatory life sentence for killing a police officer.

The current statutory regime allows for a range of mitigating factors to be taken into account at sentencing, including provocation, thus providing an adequate concession to the human frailty that originally prompted the development of the partial defence. Judges are well-equipped to assess the weight of provocative conduct when it comes to determining the appropriate sentence, depending on the nature and degree of the provocation. For example, someone who is provoked by ongoing threats and abuse<sup>21</sup> is probably less morally culpable than a person who kills his partner because she threatened to damage his car and “didn’t do what she was told”.<sup>22</sup> As such, the appropriate time for provocation to be taken into account is by a judge at sentencing, rather by a jury who may not appreciate all the nuances of the provocation and its effect on the offender.

### **Recommendation 1**

The partial defence of provocation should be abolished. The NSW Parliament should enact legislation repealing s 23 of the *Crimes Act 1900*.

## **5. Alternatives to provocation**

Self-defence<sup>23</sup> and excessive self-defence<sup>24</sup> provide a complete and a partial defence to the charge of murder respectively. Self-defence requires a jury to acquit an accused person if they find that the accused believed the act of killing was necessary for self-defence and it was a reasonable response in the circumstances as perceived by the accused. Excessive self-defence requires the jury to convict a person accused of murder of the alternate verdict of manslaughter if they find the accused believed the killing was necessary in self-defence but that the conduct was not a reasonable response in the circumstances perceived by the accused person.

The concept of self-defence better accounts for situations where the victim of on-going domestic abuse kills their abuser than the current provocation provisions. In circumstances where the killing defence goes beyond what is reasonable in the circumstances, the partial defence of excessive self-defence more accurately reflects the criminal culpability of the offender. Unlike provocation, the operation of the defence of excessive self-defence is limited to situations where the conduct was a response to violence or the threat of violence. While provocation may be relied on by those who intend to kill in anger, excessive self-defence is only available to those who believed that their conduct was necessary but overstepped the boundary.

Despite this excessive self-defence has been seldom relied upon by victims of domestic violence. In our review of 24 New South Wales cases decided over the last 10 years<sup>25</sup> where excessive self-defence was successfully invoked resulting in a manslaughter conviction, we did not identify any instances where victims of prior

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<sup>21</sup> See *Regina v Moore* [2006] NSWSC 1369.

<sup>22</sup> See *Regina v Williams* [2005] NSWCCA 99.

<sup>23</sup> *Crimes Act 1900*, s 418

<sup>24</sup> *Crimes Act 1900*, s 421

<sup>25</sup> Annexure B.

domestic violence have successfully relied on excessive self-defence (Annexure B). This compares to three successful pleas of provocation manslaughter.<sup>26</sup>

The Victorian Law Reform Commission observed that self-defence is hard to establish in cases where the accused is a victim of domestic violence.<sup>27</sup> Often it is difficult for the accused to demonstrate that at the time of the killing, the threat posed by the deceased was immediate and serious, the act of killing was proportionate to the threat, and there was no available avenue for escape.<sup>28</sup> Although these elements are not expressly required by the legislation, they are influential when a jury is assessing whether the accused held the belief that the conduct was necessary and reasonable in all the circumstances perceived by the accused.<sup>29</sup>

Self-defence and excessive self-defence are more appropriate vehicles to give effect to community expectation that victims of prior domestic violence who kill their abusers should receive some leniency under the law. But the legislative provisions dealing with self-defence and the partial defence of excessive self-defence need to be amended to properly accommodate the circumstances of domestic violence. To address this deficiency in the current formulation of the defence the NSW should consider adopting a provision similar to s 9AH of the *Crimes Act 1958* (VIC), which specifically provides that the defence of self-defence can be established in a domestic violence situation even where the threat is not immediate and the response is not proportional to the threat. The provision also allows the evidence of the general social, economic, cultural, and psychological features of domestic violence to be admitted when the jury assess whether the accused believed the act was necessary and whether the conduct of the accused was reasonable.

## Recommendation 2

Amend the *Crimes Act 1900* (NSW) to include a new s 421A, as below.

S 421A – Self-defence -

(1) Without limiting ss 418, 419, 420, 421, and 422, in relation to a making determination pursuant to s 421, where family violence is alleged a person may believe, and may have reasonable grounds for believing, that his or her conduct is necessary-

- (a) to defend himself or herself or another person; or
- (b) to prevent or terminate the unlawful deprivation of his or her liberty or the liberty of another person-

even if-

- (c) he or she is responding to a harm that is not immediate; or
- (d) his or her response involves the use of force in excess of the force involved in the harm or threatened harm.

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<sup>26</sup> Annexure A.

<sup>27</sup> Victorian Law Reform Commission, *Defences to Homicide*, Final Report, No. 94 (2004), 63.

<sup>28</sup> *Ibid.* at 63

<sup>29</sup> *Ibid.* at 63.

(2) Without limiting the evidence that may be adduced, in circumstances where family violence is alleged evidence of a kind referred to in subsection (3) may be relevant in determining whether-

- (a) a person has carried out conduct while believing it to be necessary for a purpose referred to in subsection (1)(a) or (b); or
- (b) a person had reasonable grounds for a belief held by him or her that conduct is necessary for a purpose referred to in subsection (1)(a) or (b); or
- (c) a person has carried out conduct under duress.

(3) Evidence of-

- (a) the history of the relationship between the person and a family member, including violence by the family member towards the person or by the person towards the family member or by the family member or the person in relation to any other family member;
- (b) the cumulative effect, including psychological effect, on the person or a family member of that violence;
- (c) social, cultural or economic factors that impact on the person or a family member who has been affected by family violence;
- (d) the general nature and dynamics of relationships affected by family violence, including the possible consequences of separation from the abuser;
- (e) the psychological effect of violence on people who are or have been in a relationship affected by family violence;
- (f) social or economic factors that impact on people who are or have been in a relationship affected by family violence.

(4) In this section-

child means a person who is under the age of 18 years; family member, in relation to a person, includes-

- (a) a person who is or has been married to the person; or
- (b) a person who has or has had an intimate personal relationship with the person; or
- (c) a person who is or has been the father, mother, step-father or step-mother of the person; or
- (d) a child who normally or regularly resides with the person; or
- (e) a guardian of the person; or
- (f) another person who is or has been ordinarily a member of the household of the person; family violence, in relation to a person, means violence against that person by a family member;

violence means-

- (a) physical abuse;
- (b) sexual abuse;
- (c) psychological abuse (which need not involve actual or threatened physical or sexual abuse), including but not limited to-
  - a. intimidation;
  - b. harassment;
  - c. damage to property;
  - d. threats of physical abuse, sexual abuse or psychological abuse;
  - e. in relation to a child-
    - i. causing or allowing the child to see or hear the physical, sexual or psychological abuse of a person by a family member; or
    - ii. putting the child, or allowing the child to be put, at real risk of seeing or hearing that abuse occurring.

(5) Without limiting the definition of violence in subsection (4)-

- (a) a single act may amount to abuse for the purposes of that definition;

- (b) a number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

## ANNEXURE A – NSW Cases of Provocation Manslaughter, 2002-2012

	Case	Summary	Plea	Defence/s relied upon	Sentencing
1	<i>R v Singh</i> [2012] NSWSC 637	Offender and deceased had an unhappy marriage. Offender suspected wife of having an affair. Shortly prior to the deceased's death, the couple argued. The deceased told the offender she never loved him, that she was in love with somebody else and would make sure he was removed from Australia. The offender became angry, lost self control and strangled the deceased. He then slit the deceased's throat at least eight times with a box cutter.	Crown did not accept offender's plea of guilty to manslaughter on the ground of provocation. Matter went to jury trial.  Jury found the offender not guilty to murder but guilty to manslaughter on the ground of provocation.	Provocation	McLellan J said he was satisfied that the actions of the deceased were provoking and sufficient to have occasioned an ordinary person in the position of the offender to lose control.  He held: "I am satisfied that the offender was an immature individual who became caught up in a situation which was unable to effectively handle. He was far from friends in India and had no resources to draw upon for emotional support. When it became apparent that his marriage had failed, he did not have the personal maturity or capacity to remove himself from the situation and avoid the conflict which ultimately took place."  Sentenced to 8 years in prison; 6 years non-parole.
2	<i>R v Won</i> [2012] NSWSC 855	The offender and his wife were in an unhappy marriage. The offender's wife began an affair after meeting the deceased in a Korean social club in 2008. The deceased was a close friend of the offender. One day the offender came home unexpectedly and found his wife in bed with the deceased. The offender picked up a knife and stabbed	Crown did not accept offender's plea of guilty to manslaughter on the ground of provocation. Matter went to jury trial.  Jury found the offender not guilty to	Provocation	Fullerton J stated: "I am satisfied that the death of the deceased was accompanied by an intention to kill and was the result of a sustained and determined attack delivered with considerable violence...for sentencing purposes the degree of provocation was not such as to reduce the objective gravity of the offending to any significant degree."

		the deceased seven times, allegedly shouting "I'll kill him" or "he must die."	murder but guilty to manslaughter on the ground of provocation.		Sentenced to 7 years and 6 months in prison, non-parole 5 years
3	<i>R v Jay William Cook</i> [2012] NSWSC 480	A fight broke out between two graffiti gangs, after animosity had built between the gangs for some time. In the fighting, the deceased said to the offender " <i>come back here cunt, I'm not finished with you yet</i> ". A fight between the two ensued and the deceased was stabbed by the offender in the chest.	Crown accepted offender's plea of guilty to manslaughter.	Provocation  Excessive self-defence	Garling J observed: "It was agreed between the parties that the plea of guilty to manslaughter was accepted by the Crown on the basis that at the time of the stabbing, Mr Cook formed the intention to inflict grievous bodily harm on Mr Burrows because he believed that this conduct was necessary to defend himself. However, as it is agreed, this conduct was not a reasonable response in the circumstances, as Mr Cook perceived them to be, because he used excessive force." Garling J declined to take provocation into account as a mitigating factor in sentencing as it had already formed part of the basis for the plea.  Sentenced to 7 years 6 months; 4 years non-parole
4	<i>R v Vulovic (No. 4)</i> [2012] NSWSC 212	Three men, including the deceased and the offender, were sitting around drinking alcohol together one afternoon. The offender and deceased got into a physical argument, where the deceased grabbed the offender by the neck, knocked him to the ground, demanded money from him and insulted his wife.  The offender took a knife from the kitchen and stabbed the deceased 5 times.	Unclear Jury found the offender not guilty to murder but guilty to manslaughter on the ground of provocation.	Provocation	Johnson J stated: "I am satisfied that the Offender and the deceased did not particularly like each other, and that not a great deal was required to lead to friction between the two men. I do not accept the defence submission that the aggressive conduct and words emanated, in a type of one-sided fashion, from the deceased to the Offender."  In determining the sentence, Johnson J stated: "It is clear that provocative words and conduct on the part of the deceased were directed towards the Offender, so as to lead the jury to return the verdict of manslaughter. However, I do not consider that the provocative conduct



					<p>may be said to constitute a high degree of provocation”</p> <p>Sentenced to 9 years in prison, 6 years non-parole</p>
5	<i>Regina v Munesh Goundar</i> [2010] NSWSC 1170	<p>A fight broke out between the offender and the deceased at the home of the offender, after the offender found out the deceased had been having a sexual relationship with his wife. The offender grabbed a knife and repeatedly stabbed the deceased in the stomach in the stomach and back.</p> <p>The deceased was then put in the bath, still alive and bleeding profusely, and left to die. The offender and his wife then drove to the bush to dispose of the deceased’s body.</p>	Crown did not accept offender’s plea of guilty to manslaughter on the ground of provocation. Matter went to jury trial – jury found guilty to manslaughter on the ground of provocation.	Provocation.	<p>Kirby J took into account the following factors in sentencing:</p> <ul style="list-style-type: none"> <li>- cultural factors – to sleep with someone’s wife is very, very insulting in the Fijian community</li> <li>- depression, adjustment disorder and alcohol probably “coloured his perception”</li> <li>- the incident leading to the loss of self control occurred weeks after the offender found out about the affair, in the course of a planned confrontation.</li> <li>- there was very little time between the provocative conduct (the deceased entering the room) and the loss of self control</li> <li>- this was a ferocious and sustained attack, with intention to kill</li> <li>- the dumping of the body was an aggravating factor</li> </ul> <p>Sentenced to 10 years and 8 months in prison, non-parole 8 years (got a 17.5% discount for pleading guilty)</p>
6	<i>R v Gabriel</i> [2010] NSWSC 13	The offender struck his wife seven times to the head with a skutch hammer, resulting in her death. The offender believed that his wife was being unfaithful to him, that she just wanted his money and did not love him.	Crown did not accept offender’s plea of guilty to manslaughter on the ground of provocation. Matter went to jury trial.	<p>Provocation</p> <p>Self-defence</p> <p>Substantial impairment</p>	<p>Price J stated (in sentencing): “I am satisfied beyond reasonable doubt that at the time he struck the further six blows, the offender had the intention to kill his wife. “</p> <p>“The degree of provocation offered to the</p>

		<p>The offender claimed that at the time of the first blow, he did not intend to kill or to inflict grievous bodily harm upon his wife but was acting in self-defence as his wife had attacked him with a knife. For the six blows which followed, he was acting under provocation. The offender also contended that, at the time of the offence, he was substantially impaired by reason of an abnormality of mind.</p>	<p>Jury found offender guilty of manslaughter on the grounds of provocation.</p> <p>Barrister submitted at sentencing that jury may have also factored in elements of self-defence.</p>		<p>offender cumulatively over the years by the deceased was not to my mind of a high order. The offender's underlying conditions, however, increased his negative perception of his wife's conduct and the hurt that he experienced. The provocation was materially heightened when the deceased placed the knife to the offender's throat. This was followed shortly thereafter by the loss of self-control. Tragically but for the introduction of the knife into the argument, the manslaughter would not have occurred. These are considerations, in my opinion, which reduce the objective gravity of the offence: <i>R v Alexander</i>(1994) 78 A Crim R 141 at 144.</p> <p>Sentenced to 9 years and 3 months in prison; 6 years and 3 months non-parole</p>
7	<i>R v Joyce Mary Chant</i> [2010] NSWSC 593	<p>The offender and the deceased were married. The deceased had "been bashing" and verbally abusing the offender regularly for many years. The abuse increased markedly after the deceased had a motor vehicle accident where he injured his head.</p> <p>One night, the offender and the deceased had an argument. The deceased was drunk. The deceased took out a rifle and fired it, which caused the offender to become fearful.</p> <p>The offender believed that the deceased was going to kill her. She was "out of her mind with fear and lost her self-control". The offender picked up the</p>	<p>Crown accepted offender's plea of guilty to manslaughter on the ground of provocation.</p>	Provocation.	<p>In sentencing, Howie J said: "There have been cases where an offender has been granted extreme leniency where the killing has occurred as a result of a long history of serious abuse. I do not believe that this is the situation here although I am willing to accept that it was a physically abusive relationship. On the facts I am bound to find that it was the deceased who introduced the loaded firearm into the events of the night and used it in a threatening manner toward the offender that resulted in a discharge of the weapon in the third bedroom. That is highly provocative conduct especially in light of the nature of the relationship between the deceased and the offender."</p> <p>Sentenced to 4 years and 9 months in prison; non-parole of 3 years and 9 months, plus a</p>

		rifle and shot him in the head.			further 10 months for improperly interfering with human remains.
8	<i>R v Horton</i> [2010] NSWSC 1007	The deceased was a small time user and supplier of heroin. The offender went to the deceased's car on the outskirts of town to buy drugs. The offender stated to police that the deceased stole \$2000 off him and then tried to stab me in the throat. The offender said: "[the deceased] tried to kill me: I just want my money back."	Crown accepted the plea of guilty to manslaughter.	Excessive self-defence  Provocation	Although the offender's plea was accepted by the Crown, with one factor being provocation, Davis J found the appropriate basis for the manslaughter verdict was unlawful and dangerous act because "I cannot be satisfied beyond reasonable doubt that the offender intended to inflict grievous bodily harm on the deceased."  Sentenced to 4 years and 3 months in prison; non-parole 2 years
9	<i>R v Lynch</i> [2010] NSWSC 952	The offender and the deceased had been drinking for a number of hours at Stuart's Point. The deceased made some inappropriate sexual comments towards the offender's girlfriend. A fight ensued, in which some others were also involved. At one point, the offender's girlfriend jumped in front of the offender and the deceased pushed her out of the way. The offender became very angry and lost control. He took out a knife and stabbed the deceased.	Crown accepted the plea of guilty to manslaughter on the ground of provocation.	Provocation	In assessing the objective criminality of the offender, Studdert J said: " I find that the degree of provocation offered was significant but by no means great."  Sentenced to 7 years in prison; non-parole 5 years
10	<i>R v Lovett</i> [2009] NSWSC 1427	The offender had been in a domestic relationship with Ms BG. While they were briefly separated, Ms BG met the deceased (a male). One day the offender walked into the house and saw Ms BG and the deceased drinking alcohol and smoking marijuana. The offender suspected that the deceased was trying to persuade Ms BG to start an intimate relationship with him. The	Not clear  The jury found that the offender was guilty of manslaughter on the grounds of provocation.	Accident  Self defence  Provocation	In sentencing, Barr AJ ruled out accident and self-defence. He found that it was not a case of excessive self-defence because the offender had taken the knife and intended to use it.  Accident was ruled out because the Crown had proved an intent to do grievous bodily harm.

		offender left, obtained a knife, returned to the house and saw Ms BG and the deceased having sexual intercourse. He stabbed the deceased.			<p>However, provocation was open on the facts: "The reality of what suddenly confronted the offender when he entered the house, on the other hand, must have been surprising, notwithstanding his suspicions, and in my opinion that was when he lost his self-control. The verdict shows that an ordinary person in his position could have been provoked to form the intent that he formed."</p> <p>Sentenced to 10 years and 8 months in prison; non-parole 8 years.</p>
11	<i>Berrier, Steven John v R</i> [2009] NSWCCA 40	<p>The offender and deceased had a history of altercations. The deceased accused the offender of hitting his young step-child. There was a punch-up</p> <p>Later that day, the offender went around to the deceased's house with a knife and asked the deceased if he wanted another fight. The Crown's evidence was that the deceased attempted to break off a tree branch as a weapon but the offender approached him from behind and stabbed him.</p>	<p>Pleaded not guilty to murder but guilty to manslaughter</p> <p>The jury found the offender guilty of manslaughter. Hidden J found that the proper basis of the verdict of manslaughter was provocation.</p>	<p>Provocation</p> <p>Excessive self-defence</p>	<p>The trial judge, Hidden J, found: "The provocation arose from the background of animosity between him [Mr Berrier] and the deceased, the fight earlier in the afternoon, and the aggression displayed by the deceased in chasing him with a piece of wood. In all likelihood, the deceased was intending to renew his aggression when he was attempting to break off a piece of branch immediately before being stabbed. I accept that the offender had been drinking earlier in the afternoon and was to some extent disinhibited by alcohol."</p> <p>The trial judge imposed a sentence of 9 years; 6 years non-parole. The sentence was unanimously upheld on appeal.</p>
12	<i>Forrest v R</i> [2009] NSWCCA 11	The offender lived in the same house as Ms Crittenden. They were not in a romantic relationship. One evening the offender brought the deceased back to the house for some drinks. Ms Crittenden used to be in an intimate	Crown accepted the plea of not guilty to murder but guilty to manslaughter	Provocation.	<p>The sentencing judge, Studdert J, accepted that the basis for manslaughter plea was provocation.</p> <p>Sentenced to 7 years 6 months in prison; 5 years 9 months non-parole.</p>

		relationship with the deceased and made it clear that the deceased was not welcome in the house. The offender asked the deceased to leave. The deceased was reluctant to leave and a fight ensued. The deceased approached Ms Crittenden said "I'll stab you" three times. After that, the offender came out of the house with a knife and stabbed the deceased twice. After the deceased fell, the offender said: "I love you Karen and no one threatens my mate's missus and gets away with it".			This sentenced was upheld on appeal.
13	<i>Clarke v Regina</i> [2008] NSWCCA 36	<p>The offender, his daughter Narelle and the deceased Mr Searle lived separately in adjacent streets and were known to each other. One day, Ms Clarke had a heated discussion with Mr Searle, after which she went to her father's home. She made a complaint to him, after which the offender armed himself with a hunting knife and confronted Mr Searle on the grass verge in front of his home. There were both an exchange of words and a physical encounter. The offender killed Mr Searle with a single thrust of the knife to his chest.</p> <p>The offender claimed that Mr Searle had taken off his belt and was using it to whack him.</p>	<p>Unclear</p> <p>Jury found the offender guilty of manslaughter.</p> <p>Barr J, the sentencing judge, found the basis of the verdict was manslaughter by unlawful and dangerous act, due to the provocation of the offender.</p>	<p>Provocation</p> <p>Excessive self-defence</p> <p>Unlawful and dangerous act</p> <p>Accident</p> <p>Self-defence</p>	<p>Sentenced to 8 years in prison; 6 years non-parole.</p> <p>This sentence was upheld on appeal.</p>
14	<i>R v Stevens</i> [2008] NSWSC 1370	The offender and the deceased had been in a de facto relationship. The relationship was dysfunctional – both were heavy drug users. One evening,	Pleaded not guilty to murder but guilty to manslaughter on the grounds of	Provocation	In sentencing, Hall J stated: "At the forefront of an assessment of the objective gravity of the offence is the fact that there has been a taking of human life with intent to kill or an intent to

		the offender became angry because the deceased disclosed that she had had a sexual relationship with another man. The offender was also angry that the deceased was abusing drugs and not caring for their children. The offender killed the deceased by punching or kicking her in the abdomen, causing internal bleeding.	provocation. The Crown accepted the plea.		inflict grievous bodily harm. The gravity of the offence is moderated by the fact, as I have found it in the present case, that the death was not planned and that there was a measure of provocation offered by the deceased in the period prior to and including the day on which the fatal incident occurred.”  Sentenced to 8 years and 8 months in prison; non-parole period of 6 years and 7 months.
15	<i>R v Ferguson</i> [2008] NSWSC 761	The offender and deceased had a domestic relationship. The relationship was unhappy. The (male) deceased often demanded sex from the offender, humiliated her and accused her of infidelity. He also encouraged the offender to use drugs and the offender developed an addiction.  One evening, the offender said she would leave the relationship. The deceased accused her of sleeping with a drug dealer. The offender became frightened because the deceased said “you will always have to look over your shoulder.” The offender grabbed a knife and stabbed the deceased three times. She was fatally injured.	Pleaded not guilty to murder but guilty to manslaughter on the grounds of provocation. Crown accepted the plea	Provocation  Substantial impairment by abnormality of the mind.	At sentencing, Barr J took into account that the deceased’s conduct was so provocative that the offender lost control. She formed the intention to kill suddenly and was subsequently overcome by remorse.  Sentenced to 7 years imprisonment; 3 years non-parole
16	<i>R v Frost</i> [2008] NSWSC 220	The offender was the ex-husband of the deceased, and they had a number of children together. The deceased was a drug addict, and upon returning from a rehabilitation centre in the Philippines, the deceased asked the offender to take the youngest daughter back to the	The offender pleaded guilty to manslaughter. Crown accepted plea.	Not clear – apparently provocation	In sentencing, Barr J considered the following: - The act of killing was precipitated by an outburst of anger caused by the deceased’s intention of selling their daughter for prostitution. - The offender’s subsequent actions, including burying the body was done in panic.

		Philippines, where she would be sold for prostitution. After an angry confrontation with the deceased, the offender strangled the deceased and buried her. After the killing, the offender withdrew funds from the deceased's bank account, but it was satisfied that the withdrawal of fund was intended for the children.			<ul style="list-style-type: none"> <li>- The offender was of good character and was supported by his children and current partner</li> <li>- The offender entered a guilty plea</li> </ul> <p>Sentenced to 6 years; 3.5 years non-parole</p>
17	<i>R v Beau Steven Mitchell</i> [2008] NSWSC 320	The offender and deceased had known each other for some time. The offender would often go around to the deceased's house to drink alcohol. The offender claimed that one afternoon, he woke from an intoxicated sleep and found the deceased fellating him. The offender grabbed a hammer that was in his pocket by chance and struck the deceased. He set the deceased's premises on fire and then left.	<p>Pleaded guilty to manslaughter.</p> <p>Crown accepted the plea.</p>	Provocation	For manslaughter, sentenced to 8 years, 3 months; 4.5 years non-parole
18	<i>R v Jones and Others</i> [2007] NSWSC 1333	The five offenders were members of the same extended family and the deceased was a close family friend. Prior to committing the offence, the offenders, the deceased, and members of the deceased's family were engaged in friendly gathering. After consuming significant amount of alcohol, the deceased became aggressive and violence erupted, which ended in the killing of the deceased and the wounding of another person.	Various	<p>Excessive self defence</p> <p>Provocation</p>	<p>Buddin J stated: "Accordingly, I shall proceed to sentence the five offenders in question upon the basis that each is a principal in the first degree to the manslaughter of the deceased and that the basis upon which their liability is to be assessed is that each was acting, at the relevant time, in excessive self-defence or defence of another or others and also under provocation."</p> <p>In sentencing, Buddin J observed: "I have not overlooked the fact that the offenders are to be sentenced upon the basis that they were, to some extent, provoked. That is a mitigating matter which is specifically referred to in s</p>

					<p>21A(3)(c) of the Act but it is nonetheless important to ensure that the matter is not given undue weight in a case in which it was also a factor in reducing the various offenders' culpability for the death of William Smith from murder to manslaughter."</p> <p>The sentences given to the offenders for manslaughter ranged from 8 years and three months, with a non-parole period of 5 years and 3 months, to 7 years, with a non-parole period of 4 years, 6 months.</p>
19	<i>R v Barton</i> [2007] NSWSC 651	<p>The deceased had been blackmailing the offender for a number of years over an incident where the deceased had touched a young boy inappropriately. He was also demanding money from the offender on a regular basis.</p> <p>One evening, the offender went to the deceased's house concerning a business venture. At the house, the deceased again asked the offender for money, the offender refused and the deceased threatened him with a rifle and said "you're fucking dead now." The offender was able to grab the rifle from the deceased and shot him in the back of the head.</p> <p>The next day, the offender returned to the deceased's house and set it alight, to disguise the killing. The deceased's children were inside and one of them died in the fire.</p>	<p>Pleaded not guilty to murder on the ground of self-defence.</p> <p>Jury returned a verdict of manslaughter. Buddin J found that the appropriate basis for the verdict was provocation.</p>	<p>Provocation</p> <p>Excessive self-defence</p>	<p>Buddin J stated: "The Crown relied heavily upon the evidence concerning the relationship between the offender and the deceased, including the evidence as to the deceased's persistent efforts in blackmailing the offender, in order to establish motive on the part of the offender. The pressure on the offender in all probability increased significantly in the period leading up to the fateful weekend on which M. was killed. In view of the evidence I have little doubt that the offender had reached the end of his tether. He was in a state of paralysis and was simply unable to resist the deceased's continuing demands and the violent threats which, on occasions, accompanied them. Those efforts which the offender made to resist the deceased were readily overcome by the deceased. Given his fear of going to the police about his situation, the offender saw himself as having no means of ever disentangling himself from the clutches of the deceased and lacked the personal resources to enable him to do so. In the circumstances I find to the requisite</p>



					<p>standard that the offender killed the deceased whilst acting under provocation, a significant feature of which was the fact that the offender had, for many years, been blackmailed by the deceased.</p> <p>In respect of the manslaughter, the offender was sentenced to 5 years in prison.</p>
20	<i>R v Russell</i> [2006] NSWSC 722	The offender and the deceased were in a domestic relationship characterized by alcohol abuse and violence. One night the deceased and the offender were at home drinking. They had an argument after the offender was on the phone to her daughter. The deceased said: "Why is she on the phone, she is nothing but a slut" and swore. The offender approached the deceased and hit her on the face. The deceased took a knife and said: "I'll kill you stone dead." The offender grabbed the knife and the deceased shouted: "stab me bitch, you haven't got the balls." The offender then stabbed him in the chest.	Pleaded not guilty to murder but guilty to manslaughter on the grounds of provocation. The Crown accepted the plea.	Provocation	<p>Newman J stated: "The fact that the prisoner stabbed the deceased in the left side of his body leads me to draw the inference that when she did so she intended to cause him grievous bodily harm. I say this because the stabbing of the deceased where she did is not consistent with the prisoner using the knife to frighten the deceased or to prevent him advancing upon her." Provocation was made out.</p> <p>Sentenced to 6 years in prison; non-parole 3 years.</p>
21	<i>Regina v Moore</i> [2006] NSWSC 1369	The offender was an elderly man who provided assistance to a fellow resident, Maureen, in his apartment block. The deceased was a young man. One day, the deceased stole Maureen's key and the offender confronted him about it. The deceased produced the key and threatened the offender. Throughout the course of the day, the deceased appeared at the offender's premises and	Pleaded guilty to manslaughter.	Provocation	Sentenced to 4 years 6 months; 2 years non-parole

		<p>threatened him with various implements.</p> <p>About a week later, the deceased appeared at the offender's apartment again and persistently yelled at him and called him names. The offender snapped and took a rifle, which he had owned for some years, and shot the deceased.</p>			
22	<i>R v Hamoui</i> [No 4] [2005] NSWSC 279	<p>The offender had a long and turbulent romantic relationship with the deceased. Two weeks before her death, the offender confronted the deceased about her new relationship with another man. On the afternoon of her death, the deceased had gone to meet up with the offender.</p> <p>The evidence was that the deceased was bound before she was strangled, and that she could offer little resistance because she was a diabetic low on insulin.</p>	<p>Unclear</p> <p>Jury found the offender not guilty of murder but guilty to manslaughter on the ground of provocation.</p>	Uncertain but appears to be provocation.	<p>David Kirby J made the following observations in sentencing: "First, it is plain that at some point before her death Ms Haklane was bound and helpless. I infer that she was already in a weakened state, having not had insulin, and that this was something well known to Mr Hamoui. Secondly, Mr Hamoui was both jealous and volatile. I infer that, whilst Ms Haklane was helpless, he strangled her, probably as a result of loss of self control. Thirdly, in the nature of things, manual strangulation involves the application of force to the deceased's throat for a significant period. I would infer an intention to kill. Fourthly, I am urged by the Crown to find that binding Ms Haklane in the manner described amounted to gratuitous cruelty."</p> <p>Sentenced to 11 years; non-parole 8 years</p>
23	<i>R v Ari Hayden Bullock</i> [2005] NSWSC 1071	<p>A fight between the offender and deceased occurred in a bar after the deceased accused the offender of trying to hit him with a pool cue. The deceased punched the offender several times and the offender tried unsuccessfully to retaliate. The offender</p>	<p>Pleaded guilty to manslaughter on the ground of provocation.</p> <p>Jury found defendant guilty of manslaughter</p>	Provocation.	<p>Sentenced to 8 years in prison; 5 years non-parole</p>

		left the bar, went home, and selected two large knives. He then stabbed the deceased outside the Lakemba Hotel.			
24	<i>Regina v Williams</i> [2005] NSWCCA 99	<p>The deceased and offender had had a relationship for around six months. The offender had a history of being short tempered and a history of illicit drug taking.</p> <p>One day, the offender and the deceased had a fight where the deceased threatened to damage his car. She also hit him in the head with a dumb bell. The offender then repeatedly hit the deceased in the head with a weight bar and dumb bell until she died. Then he hid her remains in the bush.</p> <p>When a witness asked the offender why he had killed the deceased, he replied: "She wouldn't do as she was told and she wouldn't get off the methadone".</p>	<p>Pleaded guilty to manslaughter on the ground of provocation. Crown did not accept plea. Matter went to jury trial.</p> <p>Jury found offender guilty of manslaughter on the ground of provocation.</p>	Provocation	<p>At first instance, O'Keefe J observed: "[The offender] is revealed as a hard man, readily aroused, lacking in self-control and quick to inflict injury on another. In my opinion the manslaughter of Donna Pearce by the prisoner is at the high, indeed very high, end of the spectrum of culpability."</p> <p>Sentenced to 14 years in prison; non-parole period 10.5 years. On appeal, the sentence was reduced to 12 years with a non-parole period of 9 years.</p>
25	<i>R v Jeffrey Dunn</i> [2005] NSWSC 1231	<p>The male offender and female deceased had been friends for years. The evidence was that after having a few drinks, the deceased would taunt the offender about his lack of success in life.</p> <p>One evening, they were at the offender's house and had been drinking for the previous 8 hours. The deceased was taunting the offender and the offender said, "if you don't shut up, I'm going to come over and kill you." The deceased continued to taunt the offender so the</p>	<p>Unclear</p> <p>Jury found offender guilty of manslaughter on the ground of provocation.</p>	Provocation	<p>Latham J said: "I would not regard the degree of provocation offered by the victim as significant, however the prisoner had endured her jibes for some years over the course of their relationship; so that the cumulative effect of the provocative conduct was triggered on this particular evening."</p> <p>Sentenced to 8 years in prison; 5 years non-parole</p>

		offender went into the kitchen and took two knives. His account was: "She kept on and on, so I went to the kitchen, I got two knives, and I walked down and I said, which one do you want Jackie, and she went, go for it, so I did."			
26	<i>Regina v Mohamad Ali</i> [2005] NSWSC 334	<p>The offender and deceased had been friends, until the offender started an intimate relationship with a woman (Ms Hammoud), with whom the deceased was obsessed.</p> <p>The deceased appeared at Ms Hammoud's residence and held a gun to her head. Subsequently he admitted to shooting at her house. There were further threatening exchanges, where the deceased threatened to kill her and her partner, the offender. One night, the deceased spent 12 hours tying up Ms Hammoud and forcing her to engage in sexual conduct with him.</p> <p>One day, the deceased appeared at the offender's premises and said, if the offender did not come out, the home of the offender's parents would be shot up. The offender went out and a struggle ensued, during which the offender got hold of the deceased's gun and shot the deceased.</p>	<p>Unclear</p> <p>Jury found not guilty of murder but guilty of manslaughter.</p>	<p>Provocation</p> <p>Excessive self-defence</p>	<p>At sentencing, Wood CJ said: "While his actions at this stage bordered on revenge, which would have elevated the offence to one of murder, I am satisfied, as no doubt was the jury, that the short time frame and the frightening situation in which he found himself, would not have allowed him an opportunity for the kind of reflection that would have moved from self-defence to revenge."</p> <p>Sentenced to 8 years 6 months; 2 years 8 months non-parole</p>
27	<i>Regina v James Anthony Vella</i> No. 60675 of 1994 Criminal	The deceased, Mr Sommerville, came to the offender's house one night, probably to buy drugs, and they had an argument. On a second visit to the	<p>Not clear</p> <p>Judge rejected plea of self-defence but found</p>	<p>Self-defence</p> <p>Provocation</p>	The trial judge stated: "It is urged in mitigation that the provocation by Sommerville was gross. So it was. But the loss of self-control induced by it was of relatively short

	<i>Law</i> [2004] NSWSC 1339	house, Mr Sommerville hit the offender twice in the back of the head with an iron bar. A heated argument ensued, where the offender (a very big powerful man) overpowered Mr Sommerville and struck him repeatedly in the head with the same iron bar. The offender then assisted some other load Mr Sommerville into the boot of a car to be driven away and burned.	provocation was open.		duration. Thereafter Vella pursued a long course of methodical bashing which went on for at least a quarter of an hour. That bashing was not committed in a frenzy. It was calculated, sadistic conduct inflicted by way of punishment upon a man pleading for mercy between the blows."  Trial judge sentenced him to 14 years; 10 years non-parole, which was upheld on appeal.
28	<i>R v Marlow</i> [2003] NSWSC 1130	The offender had been sexually assaulted by the deceased when he was 16 years old. There was evidence that he had been sexually assaulted again by the deceased shortly before the deceased's death. The offender took a knife and stabbed the deceased to death in the kitchen. He said: "I got him back, mum," shortly afterwards. As such, the Crown argued that it was a revenge killing, not an instance of provocation.	Crown did not accept offender's plea of guilty to manslaughter on the ground of provocation. Matter went to jury trial.  Jury found not guilty to murder but guilty to manslaughter on the ground of provocation.	Provocation	The judge identified the provoking conduct as the sexual assault at age 16 and the sexual assault shortly before the deceased's death.  Sentenced to 9 years in prison; non-parole 6 years 9 months.
29	<i>R v Bryan Steven Johnson</i> [2003] NSWCCA 129	When the offender was thirteen years old, the deceased invited him to his house to earn some money doing odd jobs. The deceased then proceeded to sexually abuse the offender on 6 or 7 occasions, and offered him cannabis.  Around 9 years later, the offender went to the deceased's house to get cannabis. The deceased made a sexual advance, the deceased pushed him	Not guilty to murder.  Jury accepted that the offender had acted under provocation and accordingly, found him guilty to manslaughter.	Self defence  Provocation	The trial judge accepted the jury's finding of manslaughter on the ground of provocation and proceeded to sentence the offender to 10 years in prison; 7.5 years non-parole.  On appeal, the CA reduced the sentence to 9 years, 6 years and 9 months non-parole.  Bell J stated: "In assessing the objective seriousness of the offence I take into account the circumstance that the applicant went to the

		away and the offender brandished a knife and told the offender to get out. There was a struggle with the knife during which the deceased was fatally wounded.			deceased's home and accepted his invitation to come inside for a cup of tea with the expectation that he may be the subject of a sexual advance. To my mind this demonstrates the degree of provocation to have been relatively low. As I have noted, a circumstance that aggravated the offence was that the applicant was on parole at the time of the killing."
					Sentenced to 9 years; non-parole 6 years 9 months
30	<i>Regina v Kmb</i> [2003] NSWSC 862	<p>The offender was the niece of the deceased, who had suffered mental disability due to dementia. The offender and her children lived with the deceased (the offender's uncle) and she was his primary carer.</p> <p>One afternoon at home, the offender discovered the deceased engaging in sexually inappropriate behaviour in front of her four year old child. The offender attacked the deceased and punched and kicked him until he died.</p>	<p>Not guilty to murder.</p> <p>Jury found not guilty to murder but guilty to manslaughter.</p>	Provocation	<p>Bell J stated: "I consider that the provocation was significant because the offender believed that her uncle was capable of making a decision to obtain sexual satisfaction by masturbating in front of G, and that he knew that he should not molest members of his family in this fashion."</p> <p>Sentenced to 6 years; 3.5 years non-parole</p>
31	<i>Regina v Lynch</i> [2002] NSWSC 1140	The offender's wife, Ms Lynch, was involved in relationships with other men. This caused the offender humiliation and distress. One day, Ms Lynch was flirting a lot with another man in front of the offender at a party. A significant amount of alcohol was consumed at the party by the offender, the deceased and Ms Lynch. The offender became angry and	<p>Pleaded not guilty to murder but guilty to manslaughter on the ground of provocation</p> <p>Crown accepted plea..</p>	Provocation	<p>Whealy J stated: "It is quite apparent that Elizabeth Lynch's behaviour was deliberate and provocative...It is clear that his loss of self control caused him to use the knife in a wild and somewhat indiscriminate manner while he was in the state of loss of self control. The degree of violence and aggression displayed by the prisoner in the bedroom however was in my opinion relatively high. However, it was a</p>

		several hours later returned to where Ms Lynch was staying and saw her in bed with the deceased. He stabbed the deceased twice with a knife.			level of violence that was commensurate with the prisoner's loss of self control."  Sentenced to 7 years and 8 months; 5 years and 9 months non-parole
32	<i>R v Tindall</i> [2002] NSWSC 1108	<p>The offender gave evidence at the deceased's trial where the deceased was charged with murder. The deceased was ultimately acquitted but from that time was hostile, aggressive and threatening towards the offender.</p> <p>The deceased would arrive at the offender's house and threaten to kill him and would hit him around the head. He also threatened to kill the offender's partner. One night the deceased arrived at the offender's house, sat down on the couch and demanded money and swore. The offender's partner and young child were asleep in the house at the time.</p> <p>The offender went into the kitchen and retrieved a hammer, which he then used to bash the deceased over the head, while the deceased was on the couch. The offender said he just couldn't take it anymore.</p>	<p>Pleaded not guilty to murder but guilty to manslaughter on the ground of provocation.</p> <p>Crown accepted plea.</p>	Provocation	<p>Hidden J said: "However, it is clear that the offender's loss of self control was the result of the cumulative effect of the deceased's behaviour over the preceding months. Viewed in this way, I consider that the provocation under which he was acting at the time of the killing was grave indeed. He had been hounded by the deceased for no known reason other than that he had given evidence for the prosecution at a trial arising out of a violent death of their own father. The circumstances elicit considerable sympathy for him and provide him with a powerful claim for leniency."</p> <p>Sentenced to 5.5 years in prison; 2.5 non-parole</p>

## ANNEXURE B – NSW Cases of Excessive Self-Defence, 2007 - 2012

	Case
1	<i>R v Smith</i> [2012] NSWSC 38
2	<i>Smith v Regina</i> [2011] NSWCCA 110
3	<i>R v Horton</i> [2010] NSWSC 1007
4	<i>R v Glanville</i> [2010] NSWSC 364
5	<i>R v Good</i> [2010] NSWSC 402
6	<i>R v HT</i> [2010] NSWSC 324
7	<i>Stephens v R</i> [2009] NSWCCA 240
8	<i>R v Jones and Others</i> [2007] NSWSC 1333
9	<i>Stewart, Wade John v R</i> [2009] NSWCCA 152
10	<i>R v TT; ET; RT</i> [2009] NSWSC 437
11	<i>R v ABBAS</i> [2009] NSWSC 127
12	<i>SALAH, Dror v R</i> [2009] NSWCCA 2
	<i>R v Scott David Lynn</i> [2008] NSWSC 1122
13	<i>REGINA v HATCH; REGINA v NORMAN; REGINA v WAGSTAFF</i> [2008] NSWSC 1411
14	<i>R v Trevor James STEPHENS</i> [2008] NSWSC 1429



15	<i>R v Stewart</i> [2008] NSWSC 563
16	<i>R v Williamson</i> [2008] NSWSC 686
17	<i>R v Steven KATIC</i> [2008] NSWSC 1330
18	<i>R v C R</i> [2008] NSWSC 1208
19	<i>Regina v APT</i> [2008] NSWSC 302
20	<i>R v Diab</i> [2007] NSWSC 577
21	<i>R v Turuta</i> [2007] NSWSC 1505
22	<i>R v KING</i> [2007] NSWSC 1134
23	<i>R v HANSELL</i> [2007] NSWSC 1136
24	<i>R v Hamilton; R v Sandilands</i> [2007] NSWSC 452