

**provocationinquiry - Re: Provocation Inquiry - Amended Options Paper**

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**From:** Phil Cleary  
**To:** provocationinquiry <provocationinquiry@parliament.nsw.gov.au>  
**Date:** 22/10/2012 8:07 AM  
**Subject:** Re: Provocation Inquiry - Amended Options Paper

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Hello Lynn

I inadvertently sent my preferred model without comments, which are now presented with this email.

Most provocation killings involving a female victim are in essence revenge killings. Invariably the killing is a consequence of the woman declaring her intention to leave or having left the relationship. In such cases the defense relies on presenting a picture of a duplicitous, hurtful woman who has abandoned a helpless man afflicted by love or passion. The narrative comes at the expense of a woman's human rights and plays on perceptions of the sexual power of women and how this power compromises men.

The only way to counter such narratives and the denial of a woman's rights on which they are predicated is to exclude 'particular types of conduct'. As such infidelity, real or alleged, and words – which are not discussed in Option 2 as I read it - would be excluded as the basis of a provocation defense. Lawyers of course will attempt to find a way of admitting relationship evidence that serves the purpose of sullyng the character of the accused. This has been the true, I would argue, of a number of 'wife killing' cases post provocation in Victoria. I would ask that the committee seeks further legal advice on how to construct the law in such a way as to avoid this likelihood.

Phil Cleary

#### Option 2: 'Exclusionary conduct' model

This model would explicitly exclude a range of particular types of conduct which, on their own, could not form the basis of a defence of provocation. The types of conduct commonly suggested as those which should be expressly excluded as being able to form the basis of a provocation defence include anything said or done by the deceased to indicate a change in the nature of the relationship<sup>1</sup> and non-violent sexual (or homosexual) advances.

Several stakeholders, including NSW Women's Legal Service, the NSW Domestic Violence Committee Coalition and Wirringa Baiya Aboriginal Women's Legal Service, supported an exclusionary conduct model. More detail on this option is outlined in submissions from a number of stakeholders (including Submissions 37, 3