



31 May 2012

The Hon Greg Smith MP
Attorney General
Level 31 GMT
1 Farrer Place
SYDNEY NSW 2000

Dear Attorney General

Homosexual Advance Defence

I write to request specific exclusion of non-violent homosexual advance or "gay panic" as a defence under the *NSW Crimes Act*.

Constituents who have contacted me are concerned the law continues to allow that a violent response to a non-violent sexual or romantic advance is the act of a reasonable person through the defence of "provocation", or a perceived threat through the defences of "self defence" and "excessive self defence". They point out that these defences can unfairly be applied to cases where the victim is gay or perceived to be gay.

I understand that the "provocation" defence can be used to have a conviction reduced from murder to manslaughter where the accused argues that the victim's non-violent advance caused them to lose control and commit murder. I share community concern that this defence is open to abuse by men who cannot control their anger or violence.

This defence no longer exists in Tasmania or Victoria, where the Victorian Law Reform Commission reported that it legitimises killings committed in anger, and the Model Criminal Code Officers Committee recommended its removal. Removal of the provocation defence was the key recommendation of the 1998 NSW Working Party on Homosexual Advance Defence.

In response to my representations on this matter, the previous Attorney General said in 2009 that all other Working Group recommendations had been implemented, self defence had been codified and provisions for excessive self defence introduced in 2001. However my letter referred to a 2008 gay panic case in which a conviction for stabbing a man to death in response to a non-violent homosexual advance was reduced to manslaughter under these provisions.

Legal advisers tell me that the 2001 changes to self defence and the reintroduction of excessive self defence permit gay panic defence because they are based on subjective perception of threat, with no requirement for the advance to be unlawful and no test whether it is reasonable.

In Victoria, this defence can only be used if the threat is unlawful and of "death or really serious injury". The Australian Capital Territory excludes non-violent sexual advance alone from provocation.

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These defences are useful in cases of domestic violence and the legal advisers tell me that the changes I have outlined would not reduce women's protection from the law. This would need to be considered in any proposal for change.

Could you please amend the law to specifically exclude Homosexual Advance Defence and inform me what action you will take?

Yours sincerely

A handwritten signature in black ink that reads "Clover Moore". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Clover Moore
Member for Sydney