

HARRINGTON FAMILY LAWYERS

Our Ref: SP:pd

4 January 2017

The Research Director
Legal Affairs Community Safety Committee
Parliament House
BRISBANE QLD 4000

By email: lacsc@parliament.qld.gov.au

Dear Sir/Madam

Submission as to the Criminal Law Amendment Bill 2016

1. Summary

I write to support clause 10 of the bill which is to amend Section 304 of the *Criminal Code*, the effect of which amendment is to abolish gay panic defence.

2. Who am I?

I am a solicitor in a private practice. I was admitted in 1987 and practise primarily in family law. I have for almost 20 years spoken out and lobbied to ensure that there is equality in the law for LGBTI people. In 2015 I was awarded LGBTI Q Activist of the Year. In 2016 my firm was awarded the Small Legal Practice Initiative Award by the Queensland Law Society in its Equity and Diversity Awards, for my firm's advocacy for women and LGBTI people in particular.

For about 15 years I wrote a legal column for gay magazines in Queensland.

I was a key organiser of the foundation of the Brisbane LGBTI Legal Service Inc. In 2015 that service awarded me the Rainbow Key Award. In 2016 I was one of two presenters celebrating the 6th anniversary of that service held in the Banco Court of the Supreme Court of Queensland. The other presenter was the Honourable Michael Kirby.

I have made representations to Attorneys-General Dick, Lucas and D'Ath seeking the abolition of gay panic defence in Queensland.

3. Bipartisan support

Although this Bill has been put before the house by the attorney, I note that in the past the then Opposition Leader Mr Springborg stated publicly that the Opposition would support the abolition of gay panic defence in Queensland. I would hope that that bipartisan support remains. The health and safety of LGBTI people in Queensland should not be the subject of a political score card.



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4. Why gay panic defence should be abolished

Then Human Rights Commissioner, (and now Federal Liberal MP) Tim Wilson in his national consultation report *Resilient Individuals: Sexual Orientation, Gender Identity and Intersex Rights* called on the two States that allowed gay panic defence to remain, namely Queensland and South Australia, to abolish it. Abolition by Queensland would bring Queensland into line with most other states.

Mr Wilson in his report asked participants in a survey what they would describe an inclusive Australia to look like. Three responses to me stand out:

- *“Equality at all levels, no special rules for minorities but neither should there be any persecutions for people’s preferences whatever they may be”*
- *“A place where it is simply unremarkable to be LGBTI”*
- *“A country where I can walk down the street and hold the hand of the woman I love without prejudice*”

The commission states in its report, at page 15:

“Research consistently identified higher than average rates of violence, harassment and bullying towards LGBTI people in Australia. It is well established that violence, harassment and bullying affect the well-being and equality of life of people who experience it”.

A 2012 report quoted at page 15 in the commission report revealed 25.5% of the survey respondents reported an experience of homophobic abuse or harassment in the previous 12 months. In addition, a further 8.7% reported experiencing threats of or actual physical violence. Approximately 40% of trans men and women reported experiencing some form of verbal abuse, and almost a quarter reported some form of harassment. Additionally 65% of participants in the 2014 first annual national trans mental health study reported experiencing discrimination or harassment. It was difficult for the commission to comment on rates of violence, harassment and bullying for intersex people due to the absence of available data.

In their ground breaking research *Speaking out, stopping homophobic and transphobic abuse in Queensland (2010)* Dr Alan Berman and Shirleene Robinson paint a disturbing picture of abuse towards LGBTI people in Queensland. The most common form of abuse was, not surprisingly, verbal abuse which affected 73% of 796 respondents in their life time. Five hundred and ten respondents or 47% experienced harassment including spitting and offensive gestures. Four hundred and fifty two respondents or 41% experienced threats of physical violence in a life time. Two hundred and fifty four respondents or 23% were subjected to physical attack or assault without a weapon (including being punched, kicked or beaten). The authors note at pages 36 to 37 that:

“The figures describing the levels of physical attacks or assaults on the LGBTIQ population of Queensland are a striking deviation from broader population statistics from the year 2000, which declared that 7.6% of a single “mainstream” Queenslanders had been the victim of assault. This means that members of the LGBTIQ population approximately three times more likely than “mainstream” Queenslanders to experience physical violence. Figures from respondents who indicated they had experienced physical assault with a weapon (9% of survey respondents) are also included, the members of the Queensland LGBTIQ population are more than four times more likely to experience physical assault than all Queenslanders In some instances, perpetrators unleash physical violence after reading cues which they perceive to be single “homosexual” or “unmanly”. In one

such instance, a male respondent, who was wearing drag after returning from a fancy dress party, described being “punched and kicked and told that I needed to know what it was to be a real man”. Another male, leaving his work premises in Brisbane was walking home when “three young drunk men who had been on Caxton Street drinking after a football match approach. One hit me in the stomach, the other slapped my backside, tousled my hair, waved me goodbye as I ran. Called me something akin to “gay” as they ran and another male was hit in the face with a metal pole and suffered a broken nose and nerve damage”.

Another respondent described how he was “attacked from behind, spun around, elbowed in the face”. Another described how he was:

“beaten to a pulp [with his] face smashed in, unconscious, teeth missing, jaw broken in five places, five metal plates and screws to hold the jaw together, jaw wired shut for 4 months, infections in the face, reconstructive surgery needed and braces needed for a further 4 years to realign teeth.”

Put simply, if Parliament enacts this proposed change, which I consider to be well drafted, and which does not victimise those subjected to domestic violence, it will give a powerful message to the community that these types of assaults are unwelcome, unapproved and should not be tolerated.

My husband and I (and I say husband as we married in the United States in 2015 although the marriage is not recognised in Australia) live in Fortitude Valley. The Valley of course and New Farm are known for gay cultures. One might think we were safe there. Alas this is not true. Almost every other day for the “sin” of holding hands or being perceived to be different, we are given the death stare, or look of disdain, or have yelled at us abusive homophobic terms. We have done nothing by our conduct to deserve such abuse.

On 30 December 2016 we happened to be sitting on a tram on the Gold Coast. This was in the middle of the day. We weren't holding hands. We weren't being affectionate. We just sat there. A young man got on the tram and at which point he saw us, formed the view that we were gay, directed abuse towards us all the while the subject of CCTV. Our reaction was to avoid eye contact and act protectively. We should not have to live in fear in going about our normal lawful activities simply because we are perceived as being different. I was at that time afraid that I and my husband were going to be assaulted. I am no shrinking violet but that was scary.


I urge the committee to support this provision and for the House to pass the amendment.

I am happy for this submission to be published, and prepared to give evidence to the committee if that assists. The opinions set out in my submissions are my own.

Yours faithfully


Stephen Page
Harrington Family Lawyers
Accredited Specialist Family Law




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