



ANTI DISCRIMINATION
COMMISSION QUEENSLAND



16 January 2017

Acting Research Director
Legal Affairs and Community Safety Committee

lacsc@parliament.qld.gov.au

Dear Research Director

Criminal Law Amendment Bill 2016

Thank you for the opportunity to provide a submission on the Criminal Law Amendment Bill, which was introduced in the Queensland Parliament on 30 November 2016 and referred to the Legal Affairs and Community Safety Committee for examination and report.

While the Bill includes a number of criminal law-related amendments, this submission of the Anti-Discrimination Commission (Commission) is confined to the amendment of the Criminal Code section 304, killing on provocation.

The killing on provocation provision operates as a partial defence to a charge of murder, by reducing the criminal responsibility of the defendant to manslaughter. A conviction for murder carries a mandatory sentence of life imprisonment, whereas a conviction for manslaughter carries a maximum penalty of life imprisonment.

Historically, the partial defence of provocation has been successfully relied on where a man has killed another in a response to an unwelcome homosexual advance. It has been referred to as the 'gay panic defence', and criticised by many, with calls for its abolition.

Human rights principles require that all people are equal before the law and entitled to equal protection of the law without discrimination. Equality before the law and freedom from discrimination are fundamental rights, and are expressed in Articles 2 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR). The rights and principles under international human rights agreements, including the ICCPR, are the foundation of Australian anti-discrimination legislation, including the Queensland *Anti-Discrimination Act 1991*.

People of all sexualities and gender identity have the right to enjoy equality before the law on the same basis as other people. The Queensland *Anti-Discrimination Act 1991* provides some protections for lesbian, gay, bisexual,

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transgender, and intersex people, by prohibiting discrimination and vilification on the basis of sexuality and gender identity.

Queensland's criminal laws should reflect the human rights principles of equality before the law and freedom from discrimination, as well as the purposes and intent of the *Anti-Discrimination Act 1991*.

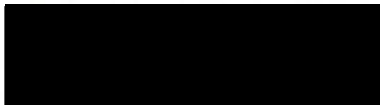
The Bill would amend the killing on provocation defence so that it would not be available on the basis of an unwanted sexual advance, other than in circumstances of an exceptional character. An 'unwanted sexual advance' is defined as a sexual advance that is unwanted, and where the advance involves touching, the touching is minor only. The amendment includes examples of what may be minor touching, depending on all the relevant circumstances, namely, patting, pinching, grabbing, or brushing against the person.

The amendment would exclude unwanted sexual advance irrespective of sexuality. The partial defence would not be available on the basis of unwanted sexual advance, whether a homosexual or heterosexual advance.

This approach to the legislation is consistent with the human rights principles of equality before the law and freedom from discrimination.

The Commission thanks the Committee for the opportunity to provide this submission.

Yours sincerely

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NEROLI HOLMES
Acting Anti-Discrimination Commissioner