




Speech By
Nikki Boyd

MEMBER FOR PINE RIVERS

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CRIMINAL LAW AMENDMENT BILL

 **Ms BOYD** (Pine Rivers—ALP) (3.01 pm): I rise today to support the Criminal Law Amendment Bill 2016. From the outset I want to pay my regards to the chair, the member for Ferny Grove, Mark Furner, and acknowledge that this was indeed the last bill that the member for Ferny Grove put through in his capacity as chair before receiving his promotion to the Minister for Local Government and Minister for Aboriginal and Torres Strait Islander Partnerships. He has done a resounding job as the chair of the Legal Affairs and Community Safety Committee in the 55th Parliament. I think it is very fitting that a bill such as this was one of the final bills that he oversaw in his role as the committee chair.

Today I particularly want to talk about the clause around the gay panic defence that is contained in this bill and the work that has occurred through the committee process and, in particular, the voices that committee members heard through the committee process as well. The gay panic defence is 'essentially a defence strategy in murder cases, based on common law, whereby evidence of an unwelcome sexual advance made by the purportedly gay victim towards the accused is led in support of establishing the defence of provocation'. The case law precedent, which forms part of the common law, allows people accused of murder to claim that they were provoked to kill by an unwanted homosexual advance, thereby reducing criminal responsibility of the crime to manslaughter.

By way of background, the current version of section 304 reflects amendments made in 2011 which included that the onus now rests with the defence to establish provocation, whereas previously the prosecution was required to disprove the defence if raised, and the defence of provocation can no longer be based on words alone unless they are of an 'extreme and exceptional character'. The Criminal Code does not contain a specific defence for homicides that are provoked by unwanted homosexual advances. Rather, the defence has been developed by judges in case law.

We heard a lot from submitters around clause 10 of the bill relating to non-violent sexual advances being used to establish provocation as a partial defence to murder. This results in the killer or killers avoiding mandatory life sentences for murder. We know it commonly as the gay panic defence throughout our communities. Although section 304 of the Criminal Code does not refer to any specific sexual orientation or gender, the courts have allowed it to be established if the perpetrator felt that their victim, who happened to be the same gender as them, was making a sexual advance. Legislation that contains either actual or perceived discrimination can be seen to give permission for some in society to give lesser value to a particular subgroup involved.

We heard through the committee proceedings about the high violence rate throughout the LGBTI community here in Queensland. A number of submitters referred to these statistics as evidence around why we needed reform in this space. They reported around the disproportionately high rates of violence to the LGBTI community. Mr Stephen Page pointed out some statistics in his submission. He stated—

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).

During the public hearing the LGBTIQ Action Group elaborated further, saying—

Legislation that contains either actual or perceived discrimination can be seen to give permission for some in society to give lesser value to a particular subgroup involved. In this case, a perpetrator can think, 'It's only a gay person who I killed, so it doesn't matter as much, because the law allows me the chance of a lesser sentence for killing a gay person.' As a community, we must speak up and say that we value all citizens equally and that discrimination is not acceptable. We must ensure that our law is not used to target vulnerable groups.

The Anti-Discrimination Commission in Queensland also commended the bill on the basis of the removal of the potentially discriminatory nature through section 304, stating—

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 committee heard about the work that has been done in the last decade. It came after a particularly tragic incident in a Queensland churchyard in Maryborough. We heard from Catholic priest Father Paul Kelly about the petition that he ran in the community which received over 290,000 signatures. The petition was titled 'Stop allowing "gay panic" as an excuse for murder in Australia'. The committee heard from the LGBTI community that there is a notion of hierarchy in the value of life in this country. It is unbelievable in this day and age that this is so. The defence as it exists continues to marginalise the LGBTI community and makes members feel as though their lives do not carry the same value as others. This is a social issue as much as it is a legal issue.

Mr Phil Browne, who is the Convenor of the Brisbane LGBTIQ Action Group, was asked during the committee proceedings whether there has been a scenario where provocation would come into play. He told of his experience of going to an event that he referred to as a gay dance where people waited outside the dance to deliberately attack people. On one occasion he said that people were waiting outside the dance with blocks of two by four hitting people over the head as they left the venue. He talked of what happened to him on leaving the hall. He said—

... it was outside a remote hall that had a well-known gay dance there every so often. This group of thugs had made it their mission to stake out that hall waiting for people. It was premeditated. The important factor here is that I was leaving the dance alone. It was two in the morning. There was nobody around; there were no witnesses. We also feel quite vulnerable knowing—there are potentially no witnesses to some of these killings—that people could potentially lie. If they are able to convince a judge and/or jury that what they are presenting sounds credible and believable and reasonable beyond doubt then they could well get away ... with murder. LGBTI people do feel very vulnerable while this still exists.

Mr Potts, the immediate past president of the Queensland Law Society, spoke about his personal experience in being a lead lawyer in a case called Sebo that was used by the Law Reform Commission to substantially change some laws in this area. He spoke of his personal experience with the difficulties within the legislation and his desire to ensure that laws are fit for purpose here in Queensland. He told the committee—

I want to make it absolutely plain from the outset that we—

the QLS—

unequivocally and strongly oppose what is known as the gay panic defence. This has no place in the law of Queensland. We do not support policy or legislation that has a discriminatory or prejudicial effect on any individual, in this particular case members of our LGBTIQ community.

He went on to talk about our role as the parliament and what we ought to do in terms of considering to legislate out or make more difficult the effects of discrimination and the results of discrimination.

We heard also from Mr Stephen Page, who is a solicitor and an accredited specialist in family law. It is his view that the law should not discriminate; that the law should be equal for all people; and that it is one of the fundamentals of our democracy. When he was asked what change in this space would mean for the LGBTIQ community, Mr Page said that he thought it would send a very powerful message from parliament that, whilst making sure the law is fair and the law is tough on crime, people cannot claim falsely that someone has come on to them unless they go through the checklist of what are exceptional circumstances. He stated—

I think it would be a very powerful message ... to particularly gay men in this state that they are being cared for, that they are worthy, that they are being treated equally.

Mr Page also penned an article that was published in the *Brisbane Times* recently. This is particularly poignant in terms of the conversation that we are having about a society that is fair and just and that does not marginalise individuals. The title of his article is 'We hold hands, they point fingers and throw stares'. His article states—

Valentine's Day is a chance to celebrate and express love, but many people are still subjected to abuse for doing so.

It was supposed to be a celebration, but one word might have ruined everything.

"Faggots."

On the five-minute walk home from dinner, through Brisbane's Fortitude Valley, a complete stranger yelled it at us. We weren't doing anything, except walking. Usually we would hold hands. It was too hot to hold hands that night. So we just walked.

We ignored the caller, and just kept walking. I was not going to let such hate rain on my anniversary, celebrating 30 years as a solicitor.

One might think a place like Fortitude Valley, a supposed gay bubble, is safe from this abuse. Not so. Too often, we have been called "faggots" or much worse, for holding hands in public, or just walking, or just being us.

Usually, once or twice a week, when we are walking holding hands, someone walking the other way will stare at us. Sometimes it is the look of discomfort of seeing two grown men holding hands. But more commonly it is the death stare: The stare that we don't deserve to be alive because what we are doing is unnatural; that we are perverts. Often those staring at us are a man or a woman holding hands with their partner. The hypocrisy seems to escape them. Often we will smile back at them, a reaction they don't expect.

Just after Christmas, we caught the tram on the Gold Coast. It was the middle of the day. There were security cameras everywhere. Nevertheless, a young man got on, saw us, and made a reference to his views about our perceived sexuality. He did it with menace. It was scary. Mitch and I are not shrinking violets, but this guy was trouble. My reaction was to avert my eyes, to avoid trouble. Mitch's was to notice that this thug had a bow leg. So, if he attacked us, Mitch would go for the bow leg in order to protect us. Finally he got off. We each breathed a sigh of relief.

And if you think this is an aberration, a uniquely Queensland problem, it's not. It might seem counter-intuitive, but when we have been to Sydney and Melbourne (Melbourne being the worst of the three cities), we have copped lots of this homophobic abuse.

Even in New York, we notice most gay couples will not hold hands out of fear. When we walked in Central Park, we saw another gay couple. On seeing us, they tentatively reached out, then held hands. They had become revolutionaries in their own minds. Their fear of abuse or assault was overcome, and they were able to express their love for each other.

The couple gave us a big smile each as they walked past.

Stephen was a submitter to the committee. He and his partner, Mitch, were married in 2015 in a US ceremony. This article, which was published on 13 February this year, is part of a series called 'My Shoes' where readers are invited to share their personal experiences.

One of the things that we heard resoundingly through this process was that stakeholders wanted change in this space. For a long time they have been advocating for change in this space. They told us they saw this change as one that was fair, one that was just and one that ensured our laws were fit for purpose. Our laws should not marginalise members of our community, particularly not vulnerable members of our community. There is no place for behaviour such as that which Stephen wrote about here in Queensland. I think it is incumbent on us in this place to legislate out or make more difficult the effects of discrimination throughout Queensland. This legislation does just that. It has been a long time coming. It was only a Labor government in Queensland that would deliver on this. I commend the bill to the House.