




Speech By
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MEMBER FOR CHATSWORTH

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CRIMINAL LAW AMENDMENT BILL

 **Mr MINNIKIN** (Chatsworth—LNP) (4.30 pm): I rise to contribute to the debate on the Criminal Law Amendment Bill 2016. The Criminal Law Amendment Bill 2016, which we are debating this afternoon, reintroduces a number of changes that the LNP introduced under the Justice and Other Legislation Amendment Bill 2014. In addition to these changes, however, this bill will also aim to ensure that a person who commits murder cannot rely on an unwanted sexual advance as a basis for the partial defence of provocation which, if successfully raised, reduces murder to manslaughter, commonly referred to as the gay panic defence.

I note that the gay panic defence or the defence of provocation has been abolished in every Australian state or territory except, as previous speakers have alluded to, in this great state and South Australia. In fact, in most jurisdictions the defence has been abolished in either one of two ways: by abolishing the defence of provocation entirely; or by enacting a specific exception to the gay panic defence in circumstances where a non-violent sexual advance is the only provocative conduct alleged by the defendant.

I am a proud advocate for the LGBTI community. I proudly support the Australian Transgender Support Association Queensland Inc. through printing their newsletter and providing donations to their various events. Two of their state executive members reside in my Chatsworth electorate. I am very proud of their advocacy work.

I am also proud to be part of a political party, the LNP, which is in support of alleviating those concerns for this very community. We all bleed the same blood. We all bruise the same way. How appropriate is it that we are debating this important bill on world Harmony Day. Advanced citizenship requires that we value the sanctity and dignity of everyone regardless of their colour, creed, religious beliefs and sexual orientation.

Although the LGBTI community has come a long way in relation to equality and equity, there are still challenges and prejudices that need to be overcome, not by all but by some members of society. It is through my association with advocates and members of the LGBTI community that I am all too aware of the concerns that this community has with the legal precedents that have been applied in the use of section 304 of the Criminal Code for unwelcome sexual advances from someone of the same sex.

While the LNP supports this change in principle, we do have some concerns which have been outlined by some of the previous speakers and indeed raised by the Queensland Law Society. That is clause 10 of the current bill may have unintended consequences that may diminish the legal defence for women defending themselves against unwanted sexual advances should they accidentally murder their alleged attacker.

The Queensland Law Society has stated that they are concerned that the present drafting of the removal of the unwanted sexual advance defence could potentially affect circumstances other than those comprising a gay panic defence. They are concerned about this defence being unavailable to a defendant who had been sexually assaulted or raped at some point by the victim.

The Queensland Law Society believes that, in these circumstances, there is support for an argument of unwanted sexual advance being used to support a provocation defence for murder. While subsection 3A, or circumstances of an exceptional character, goes some way to addressing this concern, the Queensland Law Society remains concerned that the circumstances of an exceptional character are not specifically defined, albeit clarified in a fashion by proposed subsection 6A. The Queensland Law Society has gone on to say—

If this amendment is made, it may have unintended consequences in some circumstances. Take for example where a person is propositioned for sexual intercourse, including a touching, against their will and this person has a background of having been sexually abused as a child or previously raped.

It went on further to state—

Under the amendment this person would not be permitted to demonstrate to a Court, or more importantly a jury, that they had lost their self-control and responded lethally to the provocative act. This could potentially lead a Court to that previous sexual assault by the victim might not be an “exceptional circumstance”, which does not appear to be the intention of the legislation.

The LNP understand that the aim of this amendment is specifically to remove the non-violent homosexual advance provocation defence in common law. The use of the defence of provocation in this manner is prejudicial and discriminatory to lesbian, gay, bisexual, transsexual and/or intersex persons. While it is important we see this amendment pass, it is equally important that any legal changes made should work towards mitigating the possibility of any unintended consequences for the safety of local communities and, in particular, young women defending themselves from unwanted sexual advances. It is for this reason the LNP will move amendments to give effect to the concerns raised by the Queensland Law Society. I am extremely proud to be contributing to the debate on this bill today.