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FEBRUARY 21 2017 - 7:12PM

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Gay panic law reform bill should be passed, committee recommends

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Queensland MPs should pass laws which would overturn the "gay panic" defence, a parliamentary committee has recommended.

The homosexual advance defence, to use the legal term, has been used by people accused of murder to claim they were provoked due to an unwanted sexual advance.



A parliamentary committee has recommended the gay panic reform bill be passed. Photo: Getty Images

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The successful application of section 304 of the Criminal Code, killing on provocation, reduced the criminal responsibility to manslaughter, meaning the defendant avoided life in jail.

The Criminal Code does not contain a specific defence for murders that are provoked by unwanted gay advances, but it has been developed by judges in case law.

The Legal Affairs and Community Safety Committee, considering the bill, recommended it be passed in a report tabled to Parliament late on Tuesday.

LGBTI Legal Service law reform director Thomas Clark welcomed the decision and said he hoped the bill could be passed as soon as possible.



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"We fully support the recommendation and call on the Queensland Parliament to pass the bill to ensure that this discriminatory and prejudicial defence is never raised in Queensland again," Mr Clark said.

"It's an overdue and welcome reform for the LGBTI community and sends a clear message of equality."

Community Legal Centres Queensland director James Farrell said the changes were sensible reform and the recommendation cleared the path for the bill to pass through Parliament.

"While unwanted advances are unwelcomed, they shouldn't give someone a free pass when they commit murder," Mr Farrell said.

"In modern Queensland, there's no reason to treat people differently on the basis of who they love."

Mr Farrell said the Queensland government had made great strides forward, with equalised age of consent laws, civil partnerships and other measures, but there was still more to do.

"And of course, it's time for the federal government to do more, as we look for political leadership on marriage equality," he said.

Clause 10 of the government's bill would amend section 304 of the Criminal Code, so it would not be available on the basis of an unwanted sexual advance, other than in exceptional circumstances.

The Queensland Law Society expressed concerns around the lack of a definition of "circumstances of an exceptional character" in the bill.

"The lack of definition of "circumstances of an exception character" might actually lead to a court allowing in an "unwanted sexual advance" defence to provocation by attempting to argue that a homosexual advance is an exceptional circumstance, which is entirely contrary to the intention of the legislation and would contravene the drafter's intention," the QLS's submission read.

The department responded by saying that by defining the phrase, it might have the unintended consequence of fixing the concept or limiting its scope, which might lead to unjust outcomes.

In its report, the committee acknowledged the concerns and said the proposals in Clause 10 should be reviewed in five years to establish whether they had operated as intended.

The non-government members also believed Attorney-General Yvette D'Ath should consult with the QLS and Bar Association about the term "circumstances of exceptional character" with a view to possibly providing examples in the bill.

Ms D'Ath introduced the [Criminal Law Amendment Bill](#) in November.

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A petition calling for the changes, created by [Catholic priest Father Paul Kelly, has more than 290,000 signatures.](#)

He was motivated to campaign on the issue after a man was bashed and killed in his church grounds at Maryborough in 2008.

The defence has been abolished in every Australian state or territory, except for Queensland and South Australia.

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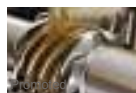
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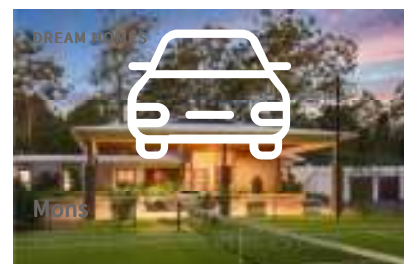
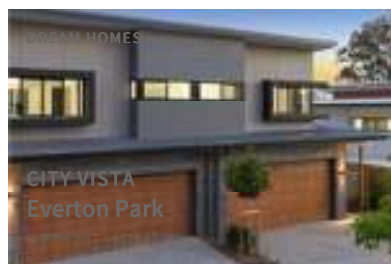
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