



Statutes Amendment (Provocation, Self Defence and Sentencing) Bill 2020 August 2020.

The Youth Affairs Council of South Australia (YACSA) is the peak body in South Australia representing the interests of young people, youth workers, organisations and networks throughout the non-government youth sector. Policy positions are independent and not aligned with any political party or movement. YACSA supports the fundamental right of all young people to participate in and contribute to all aspects of community life, particularly the decision-making processes that impact them.

The debate surrounding provocation laws often centres on the so-called “gay panic” defence and this is not without justification. In Australia¹ and in other jurisdictions², provocation mechanisms have been used to defend violence based on the physical reaction to a non-violent same sex sexual advance and how this advance impacted upon the individual’s masculinity and sexuality.

Provocation mechanisms that included a “gay panic defence” have been repealed entirely in Tasmania, Western Australia, Victoria, Queensland and New South Wales, and in the Northern Territory and the Australian Capital Territory, the partial defence of provocation has been modified so that non-violent sexual advances cannot be used to argue provocation. Despite the South Australian Government committing in 2019 to introduce legislation that would abolish the defence of provocation³, this did not occur, leaving South Australia as the only jurisdiction to have a non-violent sexual advance provocation clause remaining within legislation.

According to the South Australian Law Reform Institute’s (SALRI), *Provoking Operation of Provocation Stage 1 Report*, criticisms of the present law of provocation go beyond the “gay panic” defence, and as such, any reform in this area should extend further than simply removing this aspect of the legislation. There has been strong criticism that the defence of provocation is significantly gender biased and favours males who have killed a female partner. Conversely, the legislation doesn’t adequately reflect the situation of women who have been driven to kill an abusive partner due to an experience of domestic and family violence or those who may have been at imminent risk of being killed by a domestic partner⁴.

SALRI recommends that South Australia adopt an approach that is based on the Victorian model of self-defence, that removes provisions for a non-violent sexual advance defence while also taking into account experiences of domestic and family violence in applying self-defence provisions. These reforms would not only ensure that a discriminatory and damaging element of existing legislation was abolished but would also provide that evidence of domestic and family violence is relevant to underpin a legal defence that force was necessary, and that the defendant’s conduct was reasonable or proportionate⁵.

¹ Blore, K. (2012). The Homosexual Advance Defence and the Campaign to Abolish it in Queensland: The Activist’s Dilemma and the Politician’s Paradox. *QUT Law & Justice Journal*. Volume 12, Number 2, 2012.

² Andresen, W. C. (2019). I track murder cases that use the ‘gay panic defense,’ a controversial practice banned in 9 states. *The Conversation*. January 30, 2020. Viewed 11 August 2020,

<https://theconversation.com/i-track-murder-cases-that-use-the-gay-panic-defense-a-controversial-practice-banned-in-9-states-129973>

³ Attorney General’s Department (2019). *State Government Moves to Abolish Provocation Laws*. [Media Release], 9 April 2019. Viewed 17 August 2020, <https://www.agd.sa.gov.au/newsroom/state-government-moves-abolish-provocation-defence>

⁴ Plater, D., Line, L., Fitz-Gibbon, K (2017) *The Provoking Operation of Provocation: Stage 1* (South Australian Law Reform Institute, Adelaide. Viewed 7 August 2020, https://law.adelaide.edu.au/system/files/media/documents/2019-01/provocation_stage_1_report.pdf

⁵ Ibid.

YACSA believes that equality under the law for all citizens is a fundamental human right and legislation should not exist that either directly or indirectly contributes to inequality, discrimination and homophobia. The Statutes Amendment Bill seeks to abolish the provocation law that allows for a non-violent sexual advance defence while also ensuring that evidence of family and domestic violence can underpin a legal defence for women who have killed an abusive partner. As such, YACSA supports the Statutes Amendment (Provocation, Self Defence and Sentencing) Bill 2020.



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