

**Matilda Alexander**  
**President, LGBTI Legal Service Inc**

**Mark Thomas**  
**Management Committee, LGBTIQ Legal Service Inc**

**The Hon Yvette D'Ath**

**Attorney-General, Minister for Justice, Minister for Training and Skills**

**Department of Justice and Attorney General**

*Hardcopy and email: attorney@ministerial.qld.gov.au*

Dear Attorney-General

Firstly, may we congratulate you on your appointment as the First Law Officer of Queensland and wish you every success over the course of your tenure in that office.

We are writing to you on behalf of the Management Committee of the Lesbian Gay Bisexual Trans Intersex Community Legal Centre.

You may be aware that, towards the end of the previous Labor government, the then Attorney-General, the Hon Paul Lucas, commissioned an "Expert Panel on Provocation", chaired by the Hon John Jerrard, to consider possible amendments to the *Criminal Code* which would have the effect of overruling the High Court decision in *Green*. Mark Thomas, a member of the Management Committee was a member of that Panel, representing LGBTIQ Legal Centre Inc. The composition of the committee is set out at p 3 of the Report (attached for your convenience).

It is a matter of record that the recommendation of the Panel was that s 304 of the *Criminal Code* be amended to ensure that an unwanted non-violent sexual advance would not be enough to establish provocation unless there were exceptional circumstances. The Hon Paul Lucas indicated in a press release of 25 January 2012 that "these (recommended) amendments make it crystal clear that someone making a pass at someone is not grounds for a partial defence and by no means an excuse for horribly violent acts." The Attorney-General's intention to implement the recommended change was announced in a press release of 25 January 2012 titled "State Government to change 'gay panic' defence", a copy of which appears on the Queensland Government website at <http://statements.qld.gov.au/Statement/ld/78540>.

With the change of government in 2012, the incoming Attorney-General, the Hon Jarrod Bleijie, unfortunately ruled out the possibility of the recommended changes being given effect.

The principal recommendation of Justice Jerrard's Report was that section 304 of the *Code* should be amended by the insertion of a new sub-section (9) as follows:

- (9) Subsection (1) does not apply, other than in circumstances of an exceptional character, if the sudden provocation is based on an unwanted sexual advance towards the defendant or other minor touching (*see Report at p9*)



Note that subsection (1) creates the general partial defence of provocation, reducing murder to manslaughter where “the act which causes death [is done] in the heat of passion caused by sudden provocation, and before there is time for the person’s passion to cool”,

As an organisation represented on the original Committee convened to consider the amendment of the *Criminal Code* to abolish the so-called “homosexual advance defence”, we urge you strongly to implement the legislative changes which were recommended by the Hon John Jerrard in his Report.

In doing so, we note, as did Justice Jerrard, that the so-called “gay panic” or “homosexual advance” defence has not been frequently advanced by defendants in trials in Queensland. However, to dismiss the need for change on this basis is, in our view, to miss the point.

As is referred to briefly in the Report (see p 7), Mark Thomas made the point to the Committee that the *Criminal Code* is more than simply a set of rules used in the administration of criminal justice: it is a significant – perhaps the *most* significant – public document which records the values which Queensland, as a civilised society, prizes. As such, it should include words which demonstrate that certain types of behaviour are wholly unacceptable – in this instance, that under no circumstances should a non-violent sexual advance ever justify killing, or reduce the perceived seriousness of the conduct such that it amounts to manslaughter. In resolving the deadlock in the committee in favour of this amendment, Justice Jerrard explicitly recognised the importance of the goal of having a *Criminal Code* “which does not condone or encourage violence against the LGBTI community” (p 9 of the Report).

Michael Kirby, then a member of the High Court, expressed a similar view in his dissenting judgement in *Green v The Queen* ([1997] HCA 50; (1997) 191 CLR 334):

Any unwanted sexual advance, heterosexual or homosexual, can be offensive. It may intrude on sexual integrity in an objectionable way. But this Court should not send the message that, in Australia today, such conduct is objectively capable of being found by a jury to be sufficient to provoke the intent to kill or inflict grievous bodily harm. Such a message unacceptably condones serious violence by people who take the law into their own hands

If you want to discuss this further, we would be pleased to meet with you at your convenience.

Yours sincerely

Mark Thomas

for Matilda Alexander (President) and Management Committee, LGBTI Legal Service Inc.

*Attached: Report of the Hon Justice John Jerrard to the Hon Paul Lucas, Attorney-General and Minister for Local Government, January 2012.*