



NEW SOUTH WALES  
BAR ASSOCIATION

**Servants of All** Yet of None

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12/153

11 November 2013

The Director  
Criminal Law Review Division  
NSW Department of Attorney General and Justice  
GPO Box 6  
SYDNEY NSW 2001

Dear Ms Musgrave

*Proposed amendments to the partial defence of provocation*

Thank you for giving the New South Wales Bar Association the opportunity to respond to the proposed amendments to the partial defence of provocation.

The position of the Association is that amendment of s. 23 *Crimes Act 1900* is unnecessary, but for the most part the Association would not oppose the proposed amendments. In particular, the Association would not oppose amendments to the effect that the partial defence will not be available where the provocative conduct was a non-violent sexual advance to the accused and no more.

As regards proposed s 23(2)(b) "the conduct of the deceased was a serious indictable offence", the Association points out that this would not include representations by the deceased that he had committed such an offence or intended to commit such an offence. It should. It is suggested that s 23(2)(b) provide as follows:

(b) the conduct of the deceased included the commission of a serious indictable offence or a representation that a serious indictable offence had been, or was to be, committed by the deceased.

As regards s 23(4), it provides that "Conduct of the deceased may constitute extreme provocation even if the conduct did not occur immediately before the act causing death". This is no doubt intended to replicate the final words of the current s 23(2): "... whether that conduct of the deceased occurred immediately before the act or omission causing death or at any previous time". It would be desirable to retain that language, so that s 23(4) should be reformulated:

(4) Conduct of the deceased may constitute extreme provocation whether that conduct occurred immediately before the act causing death or at any previous time.

Should you or your officers require any further information, please do not hesitate to contact the Association's Executive Director, Mr Philip Selth, on 9232 4055 or at [pselth@nswbar.asn.au](mailto:pselth@nswbar.asn.au).

Yours sincerely

A handwritten signature in black ink, appearing to read "Phillip", with a stylized flourish at the end.

Phillip Boulten SC  
President