



**Submission on the exposure draft
Crimes Amendment (Provocation) Bill 2013**

**Northern Rivers Community Legal Centre
12 November 2013**

Introduction

The Northern Rivers Community Legal Centre (“**NRCLC**”) is a Regional Remote and Rural (“**RRR**”) community legal centre based in Lismore that was established in 1996. Our target client groups include women and those that identify as LGBTI (lesbian, gay, bisexual, transgender and intersex). Our Centre provides information, advice, referral and representation in a range of matters, including to those who have experienced or are escaping violence.

One of the programs that the NRCLC auspices is the Northern Rivers Women’s Domestic Violence Court Advocacy Service (“**NRWDVCAS**”). The NRWDVCAS assists, supports and advocates for women experiencing domestic violence who are seeking the protection of an Apprehended Domestic Violence Order at seven (7) Local Courts being: Ballina, Byron Bay, Casino, Kyogle, Lismore, Murwillumbah and Tweed Heads.

The NRCLC also provides advice and assistance to those seeking Apprehended Personal Violence Orders.

Our aims are:

- To advocate for social justice, particularly for people who are socially or economically disadvantaged, and whose inability to access the legal system further aggravates or perpetuates their disadvantage.
- To provide and promote accessible legal services including advice, advocacy, client support, community legal education and to investigate and recommend law reform for the residents of the Northern Rivers region of New South Wales.
- To recognise and to promote the self-determination of Indigenous Australian peoples, their rights to their lands and all aspects of their culture, and their right to justice.

Our vision is to provide access to quality legal information, advice, advocacy and education in order to achieve social justice for all including animal and environmental protection.

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Summary

NRCLC commends the NSW Government for the creation of this draft Bill that in most aspects appropriately limits both those that are eligible to rely on the partial defence of provocation and the circumstances in which the defence may be relied upon.

We view the restrictions put forward in this Bill as sufficient to redress any previous abuse or over reliance on this defence where an accused lost their temper as a result of their own emotional instability or in a fit of jealousy. This Bill also significantly removes many of the ‘victim blaming’ aspects of the previous defence and limits the consideration of the conduct of the deceased to whether or not their conduct was a serious indictable offence.

Extreme provocation

We agree with the Government’s view that the defence is more appropriately described as one to ‘extreme provocation’ as opposed to the Committee’s recommendation of ‘gross provocation’. It is our view that in addition to being too broad, ‘gross provocation’ also provides a further subjective element into the test of provocation that adds unwarranted complexity in its application.

We also welcome the clearly defined scope of the term ‘extreme provocation’, in particular that it is limited actions of the deceased that amount to a serious indictable offence. Previously almost any action in the right setting could give rise the application of this defence.

Non-violent sexual advance

NRCLC assists many clients that have experience homophobic violence and other gender related abuse that has been as a direct consequence of the client identifying (or

suspected of being) lesbian, gay, bisexual, transgendered or intersex (“**LGBTI**”). The specific removal of the homosexual advance or gay panic defence through section 23(3)(a) is welcomed by NRCLC.

The wording of section 23(3)(a) however leaves it open for an accused to rely on a non-violent sexual advance of the deceased as one action of extreme provocation if it was not done in isolation. It is our submission that a non-violent sexual advance should not be a factor considered at all in determining whether the conduct of the deceased constitutes extreme provocation.

The specific removal of this conduct as potentially amounting to extreme provocation will accord with the Government’s and the Committee’s view that only the most egregious forms of provocative conduct should be provided a partial defence to murder.

Recommendation

Remove the word ‘only’ from section 23(3)(a) so that it reads:

(a) the conduct was a non-violent sexual advance to the accused, or

Domestic violence

We welcome the provisions of section 23(4) that do not require the conduct of the deceased to occur immediately before the act causing death in order to constitute extreme provocation. This recognises the detrimental and often traumatic impact that long term domestic violence has on many people experiencing violence.

This long term effect, appropriately referred to as ‘slow burn’ situations by the Legislative Council Select Committee on Provocation (“**Committee**”) is cumulative and

has with many of our clients caused them to lose self-control and commit and act of violence.

A significant proportion of our clients report that the mental harm that they have suffered at the hands of the perpetrator of domestic violence is often more extensive and harder to recover from than any physical harm suffered. We are pleased to note that intimidation with the intention to cause fear of physical or mental harm, an offence pursuant to section 13 of the *Crimes (Domestic and Personal Violence) Act 2007*, meets the proposed definition of 'extreme provocation'.