

## Grab and Drag Issues Paper - Response:

Option 1: Create a new offence

Question: 1: Should there be a new offence of 'grab and drag'?

No...

Premise: particularising 'grab and drag' as a separate offence [and then another when new perpetration types expose new holes...] is a slippery slide to needing myriad complex and cross-purpose offences that could never hope to address all offending circumstances. And 'Grab and drag' is merely one action of possible many in that type of offending where there is nefarious intent, and doesn't really address the underlying causal/offending issues.

To my mind, it'd be better to look at the offences we've got, and identify circumstances and characteristics that exist when offences we already have don't adequately deal with the subject offending. Patterns and characteristics emerge in the analysis... deal with those patterns and characteristics. A significant underlying characteristic of the example offending and others of its ilk [and in fact a significant characteristic that can occur in all types of offending] that leads to serious harm for victims, I believe, is a *power imbalance*. So my response addresses the underlying problem, rather than merely one manifestation of that underlying problem.

Option 2: Change existing offences to include the 'grab and drag' action

Question 2: Should existing offences be changed to better address 'grab and drag' actions?

Yes... sort of, and *indirectly*, and not with something as blunt as a singled-out action such as 'grab and drag'.

And it depends on means/mechanisms and appetite for implementation... so my answer in this respect may be more relevant as answer to Question:4. I'll describe my proposal in response to Question:4.

Option 3: No change to the law

Question 3: Is there a need to change the law to deal with 'grab and drag' actions?

No... Not specifically limited to 'grab and drag'; and Yes... insofar as to deal with an underlying issue.

Question 4: Do you have any other ideas about how to deal with 'grab and drag' actions?

Yes... and something more of an 'expanded thinking' approach...

My proposal is predicated on the '*physical elements*' as indicated in your:

12 Serious crimes are made up of '*physical elements*' and '*fault elements*'.

*Physical elements* of an offence relate to the conduct and any circumstances that must be proved.

*Fault elements* set out the person's mental state that must be proved.

...and it [my proposal] would require introducing a notion of what could be described as e.g. "**power imbalance**" into say the '*physical elements*'. *Power imbalance* is a characteristic that can and needs to be proved, and my proposal is intended to provide a mechanism [a lever] for increasing the max penalty available for an offence commensurate with extent of any power imbalance the offending and circumstances.

[Following are some initial thoughts on implementing such a thing [into e.g. the examples/descriptions of offences/offending/etc and mechanisms described in the Issues Paper this is responding to. There will invariably be many other considerations for such a thing to be implemented].

1. Provide a device for determining a power imbalance severity *weight* factor in respect of whatever conduct and actions are described and evidenced as occurred in the offence being prosecuted [e.g. in 'grab and drag' or myriad other actions]; that metric can then be used to adjust the max penalty for the subject offence [refer 3.].

2. Define what can constitute '*power imbalance*'.

2.1 A [power imbalance] *relationship* between offending/perpetrating party[ies] and victim party[ies].

2.2 Some suggested characteristics of respective party '*power imbalance*' relationship

- Physical bulk [and proved to be used in a context of power imbalance]
- Health/ fitness/ ability/ disability
- Numbers and extent of peer activity of parties [and any aiding/abetting] in any subject offending action
- skill-set and/or tooling applied in subject action [could be anything from a diminutive person with lethal martial arts skill or punching tactics, or weaponry, other knowledge used ... characteristics without which there would not have been greater imbalance in or towards harm/impact caused.
- ...

### 3. Mechanism to adjust the max penalty in extant offences.

3.1 Provide for adjustment of the offence's maximum penalty based on the severity weight factor, perhaps simply by increasing max penalty by a percentage or to a specific value, taken from a table. [A variation that is a percentage of the offence's max penalty would help keep the max value proportionate to the offence].

3.2 Merely increasing max penalty doesn't interfere with sentencing discretion, it just caters to the any impact/severity of power imbalance that isn't a normal characteristic of the offence/penalty.

That's ostensibly it. Keep it as simple as possible but well defined and understood.

And as a starting-point for 'Benefit' and 'Needs further consideration' lists:

#### Benefit:

- It provides IMMEDIATE DETERRENT to ANY offender/s engaging a power imbalance against any victim/s across myriad categories of offending and offences that already exist.
- Parties in an incident appreciate they have an implied *active* [or *positive*] duty, within their own agency, to not engage in power imbalance.
- Results in less offending and identification of those with issues exercising said implied active/positive duty to not engage in power imbalance – and opportunities for attention to mental health issues affecting same, with an outcome towards even less recidivism.
- It becomes a '*thing*' that gets culturally/socially acknowledged as a tangible '*thing*', and becomes fabric in the social compact re conduct. It's a straight-forward '*thing*' that can even be discussed in schools with students of all ages, and the concepts relate to myriad conduct.
- It applies to Sexual Offences or other offences involving 'grab and drag' and ilk actions, and would for example attend to all shortcomings in the example case [Williams], where any

power imbalance in that matter, if considered so, could have upped the ante in penalty accordingly [e.g. the act of grab and drag, irrespective of determination regarding e.g. sexual offending].

- It introduces a mind-set change to accord with more evolved social values/sentiment
- Can address and deter myriad domestic violence and like offending
- Can address and deter myriad gang violence and like offending
- It doesn't interfere with extant offences, or offending where there is no power imbalance.
- Offending leveraging '*power imbalance*' is rampant, and has no present/identifiable means of deterrent or factoring its impact into the offence.
- It is NOT a gender-discriminating thing
- Power imbalance deals with physical power and influence/etc power
- Not limited to those directly perpetrating – e.g. can be applied to those abetting
- It provides a straight forward *fix* to underlying problems/deficiencies rather than a growing patchwork of 'grab and drag'-esque solutions to what are actually far bigger/ more diverse problems at the neglect others and possibly even compromise of some.
- ...

Needs further consideration:

- Finer points of proposal's 1. 2. 3. above
- Whether or how an offender could engage power imbalance in undetectable/ unprovable manners, where extant subject offence penalties may be inadequate
- Mitigating circumstances where there is risk for example where e.g. large people could be inappropriately pegged as engaging power imbalance, say in aberrant/unintended conflict situations, where that characteristic [power balance] is merely incidental [notwithstanding the active/positive duty onus is on perpetrators to avoid circumstances where power imbalance could be asserted].
- Consideration of where this *lever* could be *gamed* by perpetrating or victim party/ies in respect of incidents, and their lawyers towards or during any prosecution, and prosecuting or adjudicating parties during prosecutions.
- Considerations regarding mandatory sentencing
- ...