



**Sexual Assault
Services Victoria**

Victorian Law Reform Commission Sexual Offences: 'Grab and Drag'

Submission
April 2021

For further information

Karen Hogan

Board Chair, Sexual Assault Services Victoria &

Manager- Gatehouse Centre, Royal Children's Hospital, Melbourne

[Redacted]

[Redacted]

Libby Eltringham

Policy Officer - Sexual Assault Services Victoria

[Redacted]

[Redacted]

sasvic.org.au

About Sexual Assault Services Victoria

Formerly CASA Forum, Sexual Assault Services Victoria (SAS Victoria) is the newly incorporated and expanded peak body for sexual assault services and harmful sexual behaviour services.

SAS Victoria shares a vision for a world free from sexual assault and violence. We know that sexual assault is both a consequence and reinforcer of the power disparity that exists largely between men, women and children. It also happens within families and in multiple other settings and types of relationships, including within the LGBTIQ+ community.

Sexual assault occurs along a continuum of violent behaviour, from uninvited sexual behaviour that makes the recipient feel uncomfortable, harassed, or afraid; unwanted touching or remarks; sexual harassment; coerced sexual activity; to rape with physical violence and threat to life.

We believe in the power to prevent sexual assault and violence with coordinated social, cultural and political action. This action exposes the gendered nature of sexual assault and challenges the context in which sexual assault is able to thrive.

We also believe in the possibility of recovery from sexual assault and family violence when systems are in place to provide timely and appropriate support. We advocate for services that address trauma and empower service users through a victims' rights model.

SAS Victoria aims to build a consistent, responsive, quality, coordinated service system, that promotes the rights and recovery of victim survivors of sexual assault and addresses the social and systemic factors that contribute to harmful sexual behaviours in children and young people impacted by violence and abuse.

Our work is based on our shared understanding of the causes, consequences and impact of sexual assault.

Our advocacy is founded on service user experiences.

We bring over 30 years of evidence-based practice knowledge, and practice-based evidence wisdom to the task of reforming system responses to sexual assault. We aim to help shape and guide systems to ensure service users are able to get the support they need when they need it.

Options regarding a 'Grab and Drag' offence

SAS Victoria welcomes the decision by the (former) Attorney General Jill Hennessy to request the VLRC to consider whether there should be a 'grab and drag' offence as part of its inquiry into the justice system's response to sexual harm.

The decision of Judge Mandy Fox in the matter of WILLIAMS in October 2020, to find a 23-year-old man not guilty of trying to sexually assault a woman that he had grabbed and dragged into an alleyway, pushing her to the ground, and then laying on top of her, led to outrage in the community and amongst our members about the verdict. Instead, Judge Fox found the accused guilty of common assault.

The Judge inquired into this assailant's possible intent, but concluded that while 'It may be tempting to reason that because his body is on top of hers for a period during the assault, with the front of his body against the front of her body, then there must be a sexual intention', she had no evidence of the man's intent and found it was possible he was trying to rob or assault the woman.

SAS Victoria understands that Judge Fox was applying existing law. The community outrage which resulted from the decision in the WILLIAMS case has demonstrated that the law is out of step with community expectations and furthermore fails to acknowledge the serious harm which may be caused by such acts.

While definitions vary across Australia, a 2020 Australian Institute of Health and Welfare Infocus Report on Sexual assault in Australia describes sexual assault as:

*... a type of sexual violence that involves **any physical contact, or intent of contact, of a sexual nature against a person's will, using physical force, intimidation or coercion** (ABS 2011; AIHW 2019a). It can be aggravated in nature (including rape, attempted rape, sexual assault with a weapon, indecent assault, penetration by objects, forced sexual activity that did not end in penetration, attempts to force a person into sexual activity) or non-aggravated in nature (such as indecent assault without aggravating circumstances or threat of sexual activity) (ABS 2011).¹*

In the WILLIAMS case, there was video evidence of the assailant pushing the victim to the ground and then laying on top of her - a position universally associated with sexual activity. He then put his hand over her mouth so she could not call for help. The prosecutor noted that it 'strained credibility' to suggest the attack was anything but sexually motivated.

This woman almost certainly feared she was about to be sexually assaulted. There remain questions about what this assailant might have gone on to do had he not been disturbed after only 37 seconds by an off-duty policeman.

The Judge did not have evidence of the assailant's intent because our current legal system does not require defendants to directly give evidence or be cross examined – processes that would have shed light on his intent. An inquisitorial system (in place in a number of European

¹ Australian Institute of Health and Welfare 2020. Sexual assault in Australia. Cat. no. FDV 5. Canberra: AIHW

countries) would entail a judge hearing from all key parties, including the accused in order to gain as accurate an understanding as possible of the events that had occurred.

We are concerned about what messages the decision in the WILLIAMS case conveys, given the role of the justice system to not only dispense judgements for individual cases, but to demonstrate the behavior that our community expects from its citizens.

As part of holding this assailant accountable for his actions, this victim was entitled to have the crime she experienced accurately named and acknowledged.

In preparing this response, SAS Victoria canvassed the views of member organisations to the VLRC Issues Paper on options regarding 'grab and drag' conduct.

SAS Victoria takes the view that there is a need for law reform to cover offences of this type that would address shortcomings as occurred in the WILLIAMS case. We do not support doing nothing (Option 3).

A note re language

The language of 'grab and drag' is not trauma informed and does not adequately capture the complexities of the involuntary movement of someone from public view. Nor does it acknowledge the 'freeze' response that may naturally occur when someone is 'grabbed'.

Nor does the word 'drag' necessarily capture the intent or the coercion involved in 'dragging' the victim, particularly if there is no physical resistance from the victim.

It might be useful to reference 'free agreement' language of consent in the law regarding involuntary movement/relocation.

Option 1: Create a new offence

SAS Victoria is concerned that creating a new 'grab and drag' offence may make the legal system more confusing.

In relation to Para 44, while there is evidence that strangulation is linked to more serious offences and/ or mortality rates, there is not that evidence regarding 'grab and drag' offences yet. There is a risk that creating a new offence on this basis may also be more confusing.

We do however acknowledge that there could be some benefits of creating a new offence. These include:

- a new law might improve options for VS to come forward; and more accurately guide sentencing;
- increased penalties for perpetrators which would be significant for VS;
- acknowledge that being taken from public view via 'grab and drag' actions is likely to incite fear of further harm, and acknowledge the experience of the VS; and
- it may send a strong message and contribute to public thinking and behaviour change more generally.

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

The deliberate removal of someone into an area out of public view can express intent to sexually harm. Acknowledging this takes account of the fact that the majority of sexual assaults do occur out of public view.

Considering the evidence about the gendered nature of sexual assault, the deliberate removal of a VS from public view is more consistent with intent to sexually harm, and importantly is likely to be perceived by victims as such. The connection to removal from public view for purposes of robbery denies this reality - that sexual assault is the more likely crime.

For this reason, SAS Victoria prefers Option 2 over the creation of a new offence.

As detailed in the Issues Paper, we support the inclusion of 'grab and drag' action as an example for the physical element of an existing offence such as Section 42 - Assault with intent to commit a sexual assault; and/ or Section 47- Abduction or detention for a sexual purpose.

The VS experience of the crime should inform any changes. It might be useful to compare this with a 'threat to kill' offence. Using that lens, the VS belief that they were going to die adds weight to that offence. With 'grab and drag' actions, the VS experience of the action is critical, if she was under the impression that the sequence of events may lead to a sexual assault (whether or not a sexual assault occurred). Her experience and belief in the likely outcome of the action deserves to be taken seriously and considered in sentencing.

To address the fault element in 'grab and drag' actions, we also support the proposal in Para 58 to 'presume intent' where physical elements are proven. Because *Intent* may only be able to be interrogated if the accused has a history or is able to be cross-examined themselves, it is important to acknowledge system inadequacy in this regard and address these inadequacies.

The actions that suggest intent to commit a sexual assault must be included as examples and make clear that in 'grab' and 'drag' actions, sexual assault is the more likely crime. Including these actions as examples can help to clarify and support the presumption of intent.

Wording might include 'grab and drag actions which suggest an intent to commit sexual assault, **including lying on top of the victim**'. Actions such as these are more likely to be read by victims as indicative of the threat of sexual assault than more straightforward restraint actions. The perspective of sexual assault victims in these circumstances should inform the crafting of these examples.

A note on penalties:

There is significant likelihood of a VS being traumatised in thinking they are about to be sexually assaulted, and risk of significant impact on their ability to resume regular activities. Penalties need to reflect the potential impact on the victim regardless of whether the sexual assault actually occurred.

SAS Victoria looks forward to further engagement with the VLRC as the process of sexual offences reform continues.