

# Victorian Law Reform Commission (VLRC)

## Improving the Response of the Justice System to Sexual Offences



### Response to Issues Paper I

#### *Sexual Offences: 'Grab and Drag'*

#### 1. 'Grab and drag' behaviour in the context of sexual and other serious offending

Victoria Police considers reform to respond to gaps in addressing the serious nature of 'grab and drag' actions on victim-survivors to be both necessary, and appropriate.

Offending behaviour, including patterns of offending which incorporate 'grab and drag' actions (as defined in general terms at **Issues Paper I, paragraph 9**), have serious and devastating impacts on victim-survivors, and undermine the community's perception of safety.

While Victoria Police does not intend to comment on specific details in relation to *Director of Public Prosecutions (Vic) v Williams*, it acknowledges that this type of offending behaviour, typically perpetrated by male offenders towards female victims is serious in nature.

Often, this type of behaviour provides a predicative marker of an escalating pattern of behaviour by an offender, that may lead to further serious offending, including but not limited to sexual offending, and homicide.

Victoria Police considers this type of behaviour to be overtly predatory in nature.

As canvassed in **Issues Paper I**, offending behaviour (which may already be inclusive of 'grab and drag' actions in the course of the offence) where the offending is overtly sexual in nature and sufficiently demonstrates an intent to sexually offend, is already contemplated by a range of sexual offences, such as assault with intent to commit a sexual offence (s 42) and abduction or detention for a sexual purpose (s 47).

Regardless of whether an offender announces to their victim their intention to commit a sexual act, or can be proven to hold sexual motivation for their attack, the trauma inflicted on a victim from being subjected to the intentional application of physical force by an offender – intended to restrain, move, drag, abduct or detain them and to deprive their liberty – is significant.

Noting the predatory and deliberate nature of 'grab and drag' attacks, it is reasonable to argue that offenders carrying out attacks of this nature are acting with the knowledge that their actions would be likely to cause a particular harm to their victim (be it physically, sexually or mentally), or that the physical nature of the attack would reasonably cause the victim to fear for their life, or fear that they would be the victim of a further indictable offence (or offences), including sexual offences.

#### 2. Reform options

Noting the above, Victoria Police has considered in detail the merits of the three reform options proposed by the Victorian Law Reform Commission, for addressing 'grab and drag' offending. These options include:

- Option 1: *Create a new 'grab and drag' offence*
- Option 2: *Change an existing offence to include 'grab and drag' options*
- Option 3: *Make no changes to the law.*

[REDACTED]

Noting Victoria Police's view that reform to address 'grab and drag' actions is both necessary and appropriate, Victoria Police has considered **Options 1 and 2** in detail; in particular the possible utility and practical application of each option at charge and prosecution stage. In the spirit of this reference, Victoria Police has considered above all, which option would be most beneficial to improving the criminal justice system's response for victim-survivors of this type offending.

Victoria Police considers that the primary objective of any reform to address 'grab and drag' actions should be to ensure that the criminal justice response:

- is proportionate to the impact of the harm inflicted on victims;
- provides an adequate sanction that is just in the circumstances; and
- condemns the offending behaviour itself, to a level that is in line with what the community would reasonably expect.

As noted in Victoria Police's response to **Issues Paper E, Question 6**, it is often the views of victim-survivors and the community that, in general terms, sentences handed down for sexual offences are often lower than what the community would reasonably expect.

Victoria Police has signalled throughout its submissions to this reference, its support for a detailed legislative review of sexual offences, inclusive of sentencing.

Victoria Police considers that a new, standalone 'grab and drag' offence (**Option 1**), as canvassed in **Issues Paper I**, would be potentially problematic from a charge perspective; noting that establishment of the offence would lead to possible duplications or overlap in applicable offences, when considering the appropriate charges.

In addition, the undefined nature of 'grab and drag' actions may make it difficult to operate as a standalone offence, in a way that does not limit its application to a very narrow set of behaviours.

Ultimately, Victoria Police considers that reform to address 'grab and drag' actions may be best approached via expanding upon the available aggravating circumstances (currently defined at s 320A of the *Crimes Act 1958*) (the Act), which can apply to the common law offence of common assault (as referred to at s 320 of the Act).

Victoria Police offers the VLRC the following high-level proposal for how the additional aggravating circumstances could be structured, which in considering the views of investigators and prosecutors, Victoria Police has identified would be suitable at both charge and prosecution stage.

### 3. Victoria Police proposal

As outlined above, Victoria Police proposes the establishment of new aggravating circumstances (as currently defined at s 320A of the Act), that can be applied to the common law offence of common assault. Victoria Police proposes establishing additional aggravating circumstances, consistent with offending behaviour characterised by the VLRC as involving 'grab and drag' actions.

This approach would provide police the option to assess the 'grab and drag' behaviour, which would be responsive to its seriousness without being reliant on other offences, in particular sexual offences which carry the requirement to prove intent.

#### Defining 'grab and drag behaviour' in law

Victoria Police recommends that if considering how 'grab and drag' actions are defined in law, that the description of the aggravating circumstances themselves, or alternatively any statutory guidance provided for their application, are kept sufficiently broad to capture actions where an offender **has used physical force** to (for example) **restrain, move, drag, abduct or detain** their victim, or, has **attempted** to use physical force to take such action.

Considering the policy intent of addressing 'grab and drag' actions is to properly contemplate the trauma these actions inflict (regardless of whether the offender's intention was to sexually offend, or whether that intent can be proven), Victoria Police proposes the scope of the aggravating

circumstances should again be sufficiently broad to ensure that where 'grab and drag' actions **cause a victim to fear for their life, or fear that they would be the victim of further indicatable offences, including sexual offences**, the appropriate sanctions can and must apply.

The proposed circumstances should not be limited to actions occurring in a public place.

Victoria Police acknowledges that this proposal would have broader application than sexual offences. That fact in itself would provide utility to police, and to victim-survivors, where intent is difficult to prove but also, in many cases, immaterial to the trauma which has been inflicted.

#### Physical / force element

Victoria Police proposes that the following physical / force elements be considered by the VLRC as an appropriate basis for aggravating circumstances:

- [the offender] intentionally applies force without consent<sup>1</sup> **and**
- [the force applied by the offender, to the victim] may be applied directly or indirectly to the body of, or to clothing or equipment worn by the victim<sup>2</sup>.

#### Intent element

Victoria police proposes that the following intent elements be considered by the VLRC as an appropriate basis for capturing the motivation and culpability of the offender's actions:

- [the offender] intended to physically, sexually or mentally harm the victim **or**
- [the offender] acted knowing his or her actions would be likely to:
  - physically, sexually or mentally harm the victim **or**
  - cause the victim to fear for their life **or**
  - fear that they would be the victim of a further indictable offence or offences, including sexual offences.

#### Practical application

Under this proposal, the prosecution would be required to prove:

- **A** (the accused) intentionally applied force to another person (**B**)
- **B** does not consent to the application of that force
- At the time of applying that force, **A** acted knowing that **A**'s actions would be likely to either:
  - physically, sexually or mentally harm **B** **or**
  - cause **B** to fear for their life **or**
  - cause **B** to fear that they would be the victim of a further indictable offence or offences, including sexual offences.

#### Parity

Noting that the current maximum term of imprisonment for common assault<sup>3</sup>, and similarly false imprisonment<sup>4</sup>, is 5 years<sup>5</sup>, Victoria Police considers parity with other Level 4 offences (carrying a maximum term of 15 years imprisonment) would provide an appropriate sanction that is just in the circumstances, and in line with what the community would reasonably expect.

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<sup>1</sup> Mirroring the operation of s 42(1)(a) and (b)

<sup>2</sup> Mirroring the operation of s 42(4)(a) and (b)

<sup>3</sup> s 320

<sup>4</sup> s 24(2)

<sup>5</sup> Notwithstanding s320, s320A directs that the maximum term of imprisonment for common assault increases in circumstances where, at the time of the assault, the offender (amongst other things) an offensive weapon [s321A(1)], or firearm [s321A(2)] available and the victim is a police or protective services officer [2320A(1)].