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Victorian Law Reform Commission
Level 3, 333 Queen Street,
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By email only to: law.reform@lawreform.vic.gov.au

Sexual Offences: ‘Grab and Drag’

Dear Commissioner,

The Law Institute of Victoria (**‘LIV’**) welcomes the opportunity to provide feedback to the Victorian Law Reform Commission’s (**‘VLRC’**) consultation on *Improving the Response of the Justice System to Sexual Offences: ‘Grab and Drag’* (**‘the consultation’**). The views of the LIV inform our broader response to the VLRC’s initial consultation on *Improving the Response of the Justice System to Sexual Offences* (**attached**).

Creation of a new ‘grab and drag’ offence

The LIV queries the need for an additional offence where a person ‘grabs and drags’ another person, even if they do not intend or attempt any other act. Depending on the outcome, this will most commonly be a duplicitous assault/injury charge. While the particular case which prompted a petition and subsequent referral to the VLRC could be illustrative of this type of conduct, being a ‘precursor to serious sexual offending’,¹ the LIV submits that there is no need to enact a new offence to deal with ‘drag and grab’ type acts.

¹ Benita Kolovos, ‘Vic “Grab and Drag” Law Proposed’, *Canberra Times* (online, 26 November 2020) <<https://www.canberratimes.com.au/story/7030196/vic-grab-and-drag-law-proposed/?cs=14231>>; Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offending ‘Grab and Drag’* (Issues Paper 1, 2021) 3.

Despite the assertions that introducing this offence will ‘fill the void between unlawful assault and assault with intent to commit a sexual offence’,² the LIV considers that there already exists a plethora of offences covering failed sexual offending and disagrees with the need for this new offence. Offences already covering such conduct includes the introduction of the 2015 offence of intent to commit a sexual offence under the *Crimes Amendment (Sexual Offences and Other Matters) Act 2014* (Vic),³ in which the accused was charged in *Director of Public Prosecutions (Vic) v Williams*.⁴ This offence already carries serious maximum penalties equivalent to those proposed in the petition.⁵ That the threshold for this offence was not met, absent the requisite standard of proof that the accused beyond reasonable doubt intended that the complainant take part in a sexual act,⁶ does not warrant change to the existing offence (Option 2) or introduction of a new one (Option 1).

As acknowledged in the discussion paper, the LIV agrees with the notion that it would be difficult to design the fault element to exclude those who did not intend to commit a sexual offence. A grab and drag offence with an intent ‘fault element’ would overlap with the offence under section 42 of the *Crimes Act 1958* (Vic). The proposal for a ‘grab and drag’ offence risks presuming intention, contrary to general principles of criminal law. The LIV submits that to impute such an intention to commit a sexual offence, in the absence of words or conduct, will create numerous adverse consequences for all concerned.

The LIV queries how a higher penalty would adequately recognise risk of future sexual offending. The suggestion of a high penalty to recognise the risk of future sexual offending contemplates an attempted sexual assault where there is no requirement for the prosecution to prove such an intent. It is anticipated that the new offence would certainly capture people who use ‘grab and drag’ actions for non-sexual harm. Thus, the LIV supports Option 3 of the VLRC’s discussion paper,

² Ibid.

³ *Crimes Act 1958* (Vic), s 42.

⁴ *Director of Public Prosecutions (Vic) v Williams* (County Court of Victoria, Fox J, 18 November 2020)

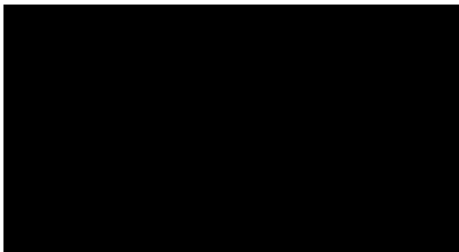
⁵ Emm Jones, ‘Keep Women Safe from Sexual Predators. Introduce a #GrabAndDrag law.’, *Change.Org* (Web Page) <<https://www.change.org/p/appeal-jackson-williams-sexual-assault-verdict>>.

⁶ *Director of Public Prosecutions (Vic) v Williams* (County Court of Victoria, Fox J, 18 November 2020) [87].

submitting that the single decision in *Williams* by judge-alone, does not warrant this legislative change.⁷

Should you wish to discuss further, please contact Senior Policy Lawyer Maurice Stuckey or Policy Officer Andy Kuoch, at CriminalLawSection@liv.asn.au.

Yours sincerely,



Tania Wolff
President

⁷ [Ibid.](#)