

Issues Paper I

Sexual Offences: 'Grab and Drag'



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Law Reform
Commission

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Sexual Offences: 'Grab and Drag'

Call for submissions

- 1 The Victorian Law Reform Commission has been asked to recommend ways to improve the justice system's response to sexual harm. On 12 October 2020 we released eight issues papers asking for feedback on what works well and what can be improved.
- 2 On 26 November 2020 the former Attorney-General, the Hon. Jill Hennessy MP, also asked the Commission to consider if there should be a 'grab and drag' offence. She noted community concerns that the laws and penalties that applied to assaults that may lead to sexual offending did not 'adequately reflect the gravity of such conduct'.¹
- 3 This request was prompted by the outcome in the case of *Director of Public Prosecutions (Vic) v Williams*,² summarised below. This issues paper asks for feedback on this proposed 'grab and drag' offence.
- 4 You can tell us your views by sending us a submission by 2 April 2021.
- 5 We will report on the 'grab and drag' offence, as well as the matters raised in our other issues papers, in a report to be published later this year.

How to make a submission

- 6 You can make a submission by:
 - emailing your submission to law.reform@lawreform.vic.gov.au
 - posting your submission to us at GPO Box 4637, Melbourne Vic 3001.
- 7 It is easier for us if you use email or mail, but you can also call us to tell us your ideas on (03) 8608 7800, 1300 666 557 (TTY) or 1300 666 555 (cost of a local call).

Introduction

- 8 This paper is for:
 - people who work in, or have experience of, the criminal justice system in relation to sexual harm
 - people who support or work with those who have experienced sexual harm
 - researchers and others interested in the subject
 - people who have experienced sexual harm.

- 9 In this issues paper we ask if the law in Victoria needs to change to better address ‘grab and drag’ conduct. ‘Grab and drag’ is an everyday term that refers to the act of physically restraining or seizing a person, and pulling or moving them, against their will. We use the term ‘grab and drag’ to describe this conduct.
- 10 In this paper, we set out the current law and ask for your views on three options for reform:
- Option 1: create a new ‘grab and drag’ offence
 - Option 2: change an existing offence to include ‘grab and drag’ actions
 - Option 3: make no changes to the law.

The *Williams* case

The accused grabbed a woman as she was walking down the street. He dragged her into an alley while she struggled. He covered her mouth and lay on top of her for around 20 seconds with his face near her face, until a passer-by stepped in.³

The accused was charged with ‘assault with intent to commit a sexual offence’ under section 42 of the *Crimes Act 1958* (Vic), and alternatively common assault.⁴ He was convicted for common assault but acquitted of the section 42 charge.⁵ The judge analysed CCTV footage of the assault and concluded that she could not be satisfied beyond reasonable doubt that the accused intended that the complainant take part in a sexual act.⁶

He was sentenced for common assault to a two-and-a-half-year community correction order and 200 hours of community work. The sentence took into account the 42 days he had already served.⁷

Response to the *Williams* case

At the time of writing, a petition calling for an appeal, and later for a new ‘grab and drag’ offence, had 107,623 electronic signatures. The petition expressed the view that the offending was of a sexual nature and that the sentence was too light.⁸ Prosecutors have decided not to appeal the sentence because it did not fall outside the range of available sentences for common assault.⁹

The then Attorney-General received ‘a range of representations in relation to a “grab and drag” offence’.¹⁰ The media has also covered the public response to this case.¹¹

A new ‘grab and drag’ offence was proposed to address the issue of women’s safety in public spaces, as ‘grab and drag’ conduct was said to be a precursor to serious sexual offending.¹² Advocates for a new offence have also argued it would make it easier to prosecute, convict and punish people who commit ‘grab and drag’ acts.

Current law: 'attempt' or 'preparatory' offences related to sexual harm

- 11 There are a number of indictable offences¹³ in the *Crimes Act 1958* (Vic) (Crimes Act) and at common law that can apply to 'attempts' to rape or sexually assault, or 'preparatory' acts related to sexual harm. Some of these are set out in Table 1.

Table 1: 'Attempt' or 'preparatory' offences related to sexual harm in Victoria under the *Crimes Act 1958* (Vic) and common law

Section	Offence	Maximum penalty
321N	Attempts, including attempted rape and sexual assault	Attempted rape: 20 years (level 3) ¹⁴ Attempted sexual assault: 5 years (level 6) ¹⁵
42	Assault with intent to commit a sexual offence	15 years (level 4) ¹⁶
47	Abduction and detention for a sexual purpose	10 years (level 4) ¹⁷
46	Administration of an intoxicating substance for a sexual purpose	10 years (level 5) ¹⁸
43	Threat to commit a sexual offence	5 years (level 6) ¹⁹
Common law	Common assault	5 years (level 6) ²⁰

- 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.
- 13 For example, for attempts under section 321N (attempted rape and sexual assault), the prosecution must prove that the accused both:
- intended to commit the offence and did not reasonably believe the victim would consent (the 'fault element'),²¹ and
 - attempted to commit the offence, meaning the conduct must be 'more than merely preparatory to the commission of the offence',²² (or 'nothing remains to be done but to commit the crime'²³) (the 'physical elements').

Assault with intent to commit a sexual offence (section 42)

- 14 For the offence under section 42, the prosecution must prove:
- A (the accused) intentionally applies force to another person (B)
 - B does not consent to the application of that force
 - at the time of applying that force A intends that B take part in a sexual act
 - A does not reasonably believe that B would consent to that sexual act.
- 15 The force applied can be direct or indirect.²⁴ B does not have to be aware of the force applied.²⁵
- 16 The Victorian Government introduced section 42 in 2015 as part of broader reforms to sexual offences.²⁶ This offence, along with 'threat to commit a sexual offence',²⁷ replaced the offences of 'assault with intent to commit rape' and 'threatening assault to commit rape'.²⁸

- 17 Section 42 is broader than the previous offences. It includes assault with intent to commit sexual assault, as well as rape.²⁹ The prosecution no longer needs to prove that the force resulted in physical harm.³⁰ The maximum penalty was also raised from 10 to 15 years imprisonment.³¹
- 18 While the physical element of the offence is one of general assault, ‘the “sexual” aspect of this offence is in the fault element’.³²
- 19 Since October 2015, there have been 217 charges of the offence under section 42. This includes 46 charges in 2019–20 and 48 in 2018–19.³³
- 20 This offence is usually charged together with charges for sexual assault, rape, attempted rape, and false imprisonment.³⁴ As in *Williams*, a person may be charged with common assault as well as under section 42.³⁵
- 21 Cases indicate that the offence is often charged where the conduct is overtly sexual.³⁶ For example, where an accused person states that they want to have sex with the complainant,³⁷ or removes clothing from the complainant.³⁸
- 22 Between 2014 and June 2019, the Sentencing Advisory Council recorded 10 convictions for this offence, and in nine cases the person was sentenced to imprisonment.³⁹ There are often far fewer convictions than charges in the criminal justice system, as charges may not be progressed or are resolved before a trial.⁴⁰

Application of section 42 in *Williams*

- 23 The accused in *Williams* was acquitted of the section 42 offence. The case turned on whether the accused had intended that the complainant take part in a sexual act (when applying force).⁴¹ The judge observed that, because the accused did not give evidence about what he was thinking at that time, any finding of sexual intent had to be inferred from other proven facts.⁴²
- 24 The judge’s reasons included that:
- where a person drags another out of public view, this is consistent not only with an intent to sexually assault them, but also to steal their belongings or assault them⁴³
 - the accused did not say or do anything consistent with sexual assault during the assault.⁴⁴
- 25 The judge noted that:
- 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.⁴⁵
- 26 However, the judge observed the accused could have been using his weight to restrain her and stop her from screaming, so he could commit crimes other than sexual assault.⁴⁶ The judge stated that:
- [the accused] does not attempt to kiss the complainant. He does not try to grab her breasts or vaginal area, or place his hand near those areas. He does not attempt to remove her clothing, or pull at her clothing, or attempt to undo or remove his clothing ... what is significant when considering the question of intention is not that the accused did not succeed in doing these things, it is that he did not try.⁴⁷

27 The judge found that the burden of proof had not been met, because other inferences beyond sexual intent were reasonably open on the evidence.⁴⁸ In reaching this conclusion, the judge examined the CCTV footage, considered the accused's record of interview with the police, and responded to the prosecution's arguments.⁴⁹ She noted:

In this trial I have clear evidence of an intentional and violent assault. It may be that the accused was intending to sexually touch or sexually penetrate the complainant, but was interrupted, or met with a level of resistance he did not expect, so abandoned his plan. However other inferences are reasonably open on the evidence. It may be that he was intending to rob the complainant and similarly was met with resistance or interrupted. I find it less likely that he had no intention beyond physically assaulting the complainant, but it is the question of what that additional intention was that causes me difficulty and ultimately doubt.⁵⁰

28 The judge concluded that she could not be satisfied of sexual intent beyond reasonable doubt.

Approaches in other Australian states and territories

29 Some Australian states and territories have a similar offence to section 42. These are set out in Table 2.

Table 2: Assault with intent to commit sexual offences in Australian jurisdictions

Jurisdiction	Offence	Maximum penalty
New South Wales	Assault with intent to have sexual intercourse ⁵¹	20 years ⁵²
Victoria	Assault with intent to commit a sexual offence (section 42)	15 years ⁵³
Queensland	Assault with intent to commit rape ⁵⁴	14 years ⁵⁵
Australian Capital Territory	Sexual assault in the third degree ⁵⁶	12 years ⁵⁷

30 The offences in Queensland, New South Wales and the Australian Capital Territory only include intent to rape. In New South Wales, a person must suffer actual bodily harm.⁵⁸ Threats are included in the offence in both New South Wales and the Australian Capital Territory.⁵⁹ These offences focus on the violence in sexual assault, rather than on sexual contact and consent.⁶⁰

31 Section 42 applies to all 'sexual offences' as defined under the Crimes Act. It does not require harm and does not include threats.

Reform options

32 Section 42 is designed to capture sexual conduct that falls short of an attempted sexual offence. It can be used to address 'grab and drag' actions. However, public responses to the *Williams* case point to a possible gap in the law between common assault and section 42. It may be that the law should be changed to capture 'grab and drag' actions and allow for a high sentence, where it would be difficult to prove that the accused demonstrated sexual intent.

33 If you think that the *Williams* case shows a gap in the law, you may think the law should be changed to create a new 'grab and drag' offence (Option 1) or that an existing offence should be changed to include 'grab and drag' actions (Option 2).

- 34 Or you might think that section 42 already captures sexual conduct that falls short of an attempted sexual offence, including ‘grab and drag’ actions. In that case, you might think there is no need for law reform in this area (Option 3).

Option 1: Create a new offence

- 35 A new ‘grab and drag’ offence is one option for reform. Possible arguments in favour of a new offence include:

- Criminalising certain conduct may be justified if it is serious and harmful enough for the public to recognise it as a wrong.⁶¹
- The criminal law also aims to prevent harm⁶² and keep the public safe.⁶³ A new offence could deter ‘grab and drag’ acts,⁶⁴ and may better protect people.
- The response to the *Williams* case suggests that the community expects that ‘grab and drag’ conduct should receive a strong criminal justice response.
- Section 42 may not do enough to capture ‘grab and drag’ acts that lead toward a sexual assault, without clear evidence of sexual intent.

- 36 Possible arguments against a new offence include:

- An offence that addresses possible ‘future harm’ (unrealised harm, or harm that may not come about) could capture people who do not intend to go on to offend as expected. It may also require ‘deeming’ intent (discussed below). This could lead to unjust convictions and punishment.
- The existing sexual offences already capture this conduct, and a new offence may not lead to more convictions or high sentences.
- It may be hard to design a new offence that is different enough from existing offences (discussed below).
- It can make the law more complex when there are several offences that cover the same conduct. For example, it could make it difficult for juries to decide which offence should apply on the facts.

- 37 It is unclear if ‘grab and drag’ conduct suggests sexual offending is more likely to occur. There has been significant research on women’s experiences of sexual violence and sexual harassment in public spaces, and ways to improve women’s safety.⁶⁵ Australian crime statistics show that women are often targets for abduction, including for the purpose of committing sexual acts.⁶⁶ However, the Commission is not aware of research that suggests that sexual offending is more likely after ‘grab and drag’ actions in public spaces that do not amount to abductions.

Structure of a new offence

- 38 A new offence could either be a general ‘grab and drag’ offence, or a ‘grab and drag’ offence that relates to sexual harm.

General ‘grab and drag’ offence

- 39 A general ‘grab and drag’ offence could apply whenever someone ‘grabs and drags’ a person, even if they did not intend or attempt any other act.
- 40 One possible argument for this new offence is that it would recognise that someone who is physically restrained is much more likely to fear for their safety and fear further harm. An example of an offence that addresses a victim’s apprehension or fear about their safety is stalking under section 21A of the Crimes Act.

- 41 Another possible argument is that moving a victim to a less public space increases the risk to a victim and makes it harder for bystanders to intervene.
- 42 For these reasons, 'grab and drag' conduct may be considered more serious than common assault, and this could be reflected in a higher penalty. It could also cover conduct that would fall short of the offence of 'abduction or detention for a sexual purpose', which involves the victim being detained or 'taken away'.
- 43 There are, however, challenges to creating a general 'grab and drag' offence. It may be difficult to spell out how the physical elements of the proposed offence would differ from other existing offences, such as common assault.⁶⁷ It might also be difficult to decide, on the facts of each case, whether conduct falls within the offence. A new offence may make the law more complex because there would be several offences that cover the same conduct.

'Grab and drag' offence related to sexual harm

- 44 Another approach would be to create a 'grab and drag' offence that is related to sexual harm. For example, this could be:
- A 'grab and drag' offence with an 'intent' fault element⁶⁸ linked to 'grab and drag' conduct, but with a high penalty to recognise the risk of future sexual offending. This would be similar to the offence of strangulation,⁶⁹ which has a high penalty to recognise the seriousness of that conduct and its connection to family violence.⁷⁰
 - A 'grab and drag' offence that sets out that, if a person does the act of 'grabbing and dragging' (as defined in legislation), it is presumed that the person intended to commit a sexual offence, but without capturing people who use 'grab and drag' actions for non-sexual harm.⁷¹
- 45 There are drawbacks to these approaches. For example, it would be difficult to design the fault element to exclude people who did not intend to commit a sexual offence. This could be unjust to people who did not have any sexual intent during the assault, but were punished under the 'grab and drag' offence.
- 46 This new offence could also overlap with the offence under section 42. As mentioned earlier, it can make the law more complex if there are several offences that cover the same conduct.
- 47 Another problem is that presuming intent undermines a basic principle of criminal law that people should only be punished if they are blameworthy and have chosen to commit the acts set out in the offence.⁷² It may also conflict with the basic principle that requires the prosecution to prove guilt beyond reasonable doubt.⁷³
- 48 Further, a fundamental principle of the criminal justice system is that people accused of crimes are innocent until they are proven guilty. This human right is protected by Victoria's *Charter of Human Rights and Responsibilities* (the Charter).⁷⁴ There needs to be strong justification under the Charter to limit human rights, and the Charter sets out certain factors that must be considered for a right to be lawfully and reasonably limited.⁷⁵
- 49 It is likely to be difficult to define in legislation when the law 'presumes' sexual intent. For example, the offence may need to set out physical acts or circumstances that must be satisfied before sexual intent is presumed.
- 50 Alternatively, the offence may need to specify acts or circumstances that are 'taken to be' proof of an intended sexual act.
- 51 This is similar to the offence of 'single punch' manslaughter, where the law says that a punch or strike to a person's head or neck that causes head or neck injury 'is taken to be' a 'dangerous act' for the purposes of the crime of manslaughter by an unlawful and dangerous act.⁷⁶

- 52 The offence may also need to distinguish between the types of sexual offences that may have been intended in each case.

Further considerations for a new offence

- 53 If you support a new offence, we are also interested in your views on:
- how this should relate to existing sexual offences (for example, should it act as an alternative charge to section 42 where sexual intent cannot be proven on the facts?)
 - the penalty that should apply (for example, some have suggested a maximum sentence of 15 years,⁷⁷ which is the same as that under section 42)
 - the name for the new offence, so that it captures the seriousness of the conduct.

Questions

- 1 Should there be a new offence of 'grab and drag'? If so,
- (a) Why should this be a separate offence?
 - (b) What should be the elements of this offence?
 - (c) What should be the maximum penalty?
 - (d) What should this offence be named?

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

- 54 Another option is to change existing offences in the legislation to expressly include the 'grab and drag' action.
- 55 For example, the 'grab and drag' action could be included as an example for the physical element of an existing offence such as section 42 or 'abduction and detention for a sexual purpose'.⁷⁸
- 56 Other offences use examples in this way. 'Single punch' manslaughter includes the following example:
- If a person punches another person to the head, and that other person falls, hits their head on the road, and dies from the injury resulting from their head hitting the road, the punch may be the cause of their death.⁷⁹
- 57 This option may not, however, address facts similar to the case of *Williams*. In that case, the judge found that sexual intent could not be proven beyond a reasonable doubt. This option would not change the fault element of section 42. For the offence of 'abduction and detention for a sexual purpose', the prosecution must still prove that the accused intended the victim would take part in a sexual act with the accused or other person.⁸⁰
- 58 Another way to address the 'grab and drag' action in existing offences could be to 'presume intent' in an existing offence if certain physical elements could be proven. This would be similar to creating a new offence with 'presumed intent' under Option 1. It would have some of the same drawbacks, as discussed under Option 1, but without the disadvantages of creating a new offence.
- 59 We are interested in hearing if there are other ways existing offences could be adapted to better include 'grab and drag' actions.

Question

- 2 Should existing offences be changed to better address 'grab and drag' actions? If so, how?

Option 3: No change to the law

- 60 You may think that the offences in the Crimes Act already cover 'grab and drag' actions and criminalise attempted sexual assaults. You may think that there is not enough evidence to show that there is a gap in the law.
- 61 In *Williams*, the judge concluded that there was not enough evidence of sexual intent to prove the offence beyond reasonable doubt. You may think that this is a reasonable conclusion on the facts. Or you may disagree with the conclusion but think that this single case does not mean the law needs to change, as other judges can still come to a different conclusion than the judge did in *Williams*.
- 62 It has been suggested that a new 'grab and drag' offence can be justified in a similar way to the offence of strangulation. However, you may disagree with this. As mentioned earlier, there is significant evidence that strangulation is common in family violence cases and often leads to further harm.⁸¹ However, the Commission is not aware of similar evidence in relation to 'grab and drag' conduct.
- 63 Further, you may think that the other options in this paper would not have changed the outcome of the *Williams* case, or that the other options may be difficult to implement.
- 64 Finally, some of the public response to this case focused on the apparent leniency of the sentence. As sentencing depends upon many factors, including current sentencing practices and the facts of each case, changing the law to create a new offence or amend existing offences may not address concerns about sentencing.

Questions

- 3 Is there a need to change the law to deal with 'grab and drag' actions?
- 4 Do you have any other ideas about how to deal with 'grab and drag' actions?

Endnotes

- 1 Letter from Attorney-General (Vic) to Victorian Law Reform Commission, 26 November 2020.
- 2 (County Court of Victoria, Fox J, 18 November 2020).
- 3 *DPP (Vic) v Williams* (County Court of Victoria, Fox J, 18 November 2020) [73].
- 4 *DPP (Vic) v Williams* (County Court of Victoria, Fox J, 18 November 2020) [87]–[89]. Assault is a common law indictable offence in Victoria. The offence incorporates assault involving the application of force by the defendant to the complainant, and assault causing a complainant to apprehend violence: *R v Pritchard* [1999] NSWCCA 182, (1999) 107 A Crim R 88; *R v Patton* [1998] 1 VR 7; *Fagan v Commissioner of Metropolitan Police* [1969] 1 QB 439; Judicial College of Victoria, '7.4.8 Common Law Assault', *Victorian Criminal Charge Book* (Online Manual) <<https://www.judicialcollege.vic.edu.au/eManuals/CCB/4957.htm>>.
- 5 *DPP (Vic) v Williams* [2020] VCC 1235, [43]. The case was heard by a judge alone due to coronavirus (COVID-19) measures, following an application finding that it would be in the interests of justice to do so. Cases involving serious indictable offences are normally heard before a jury.
- 6 *DPP (Vic) v Williams* (County Court of Victoria, Fox J, 18 November 2020) [87].
- 7 When determining the sentence, the judge considered many factors, including: that this was a serious example of common assault; the defendant was aged 19 at the time, had a borderline IQ of 71 and no prior convictions; he had shown genuine remorse; he and his family had been subject to racial abuse, death threats and vigilante behaviour by the public; and as a youthful offender, punishment based on rehabilitation is important to avoid further offending: *DPP (Vic) v Williams Sentencing Remarks* (County Court of Victoria, Fox J, 18 November 2020, [9]–[36].
- 8 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>>.
- 9 Simone Fox Koob and David Estcourt, 'Prosecutors Won't Appeal Sentence of Man Who Dragged Woman into Alleyway', *The Age* (online, 16 December 2020) <<https://www.theage.com.au/national/victoria/prosecutors-won-t-appeal-sentence-of-man-who-dragged-woman-into-alleyway-20201216-p56nwn.html>>.
- 10 Letter from Attorney-General (Vic) to Victorian Law Reform Commission, 26 November 2020.
- 11 See eg, 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>>; Simone Fox Koob and David Estcourt, 'Prosecutors Won't Appeal Sentence of Man Who Dragged Woman into Alleyway', *The Age* (online, 16 December 2020) <<https://www.theage.com.au/national/victoria/prosecutors-won-t-appeal-sentence-of-man-who-dragged-woman-into-alleyway-20201216-p56nwn.html>>; Frances Vinal, 'Call to Introduce "Grab and Drag" Laws after Jackson Williams Case', *The Australian* (online, 26 November 2020) <<https://www.theaustralian.com.au/breaking-news/call-to-introduce-grab-and-drag-laws-after-jackson-williams-case/news-story/7dd38ae0c6df2e7ba03421bc64d13e8c>>.
- 12 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>>.
- 13 Indictable offences are serious crimes mostly tried in the County Court of Victoria: *County Court Act 1958* (Vic) s 36A.
- 14 *Crimes Act 1958* (Vic) s 321P.
- 15 *Ibid*.
- 16 *Ibid* s 42(4).
- 17 *Ibid* s 47(2).
- 18 *Ibid* s 46(2).
- 19 *Ibid* s 43(3).
- 20 *Ibid* s 320. This offence has its basis in common law: see above n 4. Note that when the assault occurs in certain aggravating circumstances where the victim is a police officer or protective services officer on duty, the penalty may be 10 or 15 years maximum (level 5 or 4): s 320A.
- 21 *Crimes Act 1958* (Vic) s 321N(1)(a).
- 22 *Crimes Act 1958* (Vic) s 321N.
- 23 Department of Justice (Vic), *Review of Sexual Offences* (Consultation Paper, September 2013) 61 [4.4] <<http://www.justice.vic.gov.au/review-of-sexual-offences-consultation-paper>>, citing *R v Worland* [1964] VR 607, [610]–[611].
- 24 *Crimes Act 1958* (Vic) s 42(4).
- 25 *Ibid* s 42(3).
- 26 *Crimes Amendment (Sexual Offences and Other Matters) Act 2014* (Vic); Department of Justice (Vic), *Review of Sexual Offences* (Consultation Paper, September 2013) <<http://www.justice.vic.gov.au/review-of-sexual-offences-consultation-paper>>.
- 27 *Crimes Act 1958* (Vic) s 43.
- 28 Criminal Law Review, Department of Justice and Regulation (Vic), *Victoria's New Sexual Offence Laws: An Introduction* (Report, June 2015) 8 [3.5] <<https://www.justice.vic.gov.au/victorias-new-sexual-offence-laws-an-introduction>>.
- 29 Explanatory Memorandum, Crimes Amendment (Sexual Offences and Other Matters) Bill 2014 (Vic) 13.
- 30 Department of Justice (Vic), *Review of Sexual Offences* (Consultation Paper, September 2013) 63 [4.4.3] <<http://www.justice.vic.gov.au/review-of-sexual-offences-consultation-paper>>.
- 31 Explanatory Memorandum, Crimes Amendment (Sexual Offences and Other Matters) Bill 2014 (Vic) 13.
- 32 Department of Justice (Vic), *Review of Sexual Offences* (Consultation Paper, September 2013) 62 [4.4.2] <<http://www.justice.vic.gov.au/review-of-sexual-offences-consultation-paper>>.
- 33 Email from Crime Statistics Agency to Victorian Law Reform Commission, 5 January 2021.
- 34 *Ibid*.
- 35 *DPP (Vic) v Williams* (County Court of Victoria, Fox J, 18 November 2020) [5]. For the offence of common assault involving the application of force (as opposed to apprehended force), there are three elements: the accused applied force to the complainant's body; the application of force was intentional or reckless; and the application of force was without lawful justification or excuse: *Fagan v Commissioner of Metropolitan Police* (1969) 1 QB 439; Judicial College of Victoria, '7.4.8 Common Law Assault', *Victorian Criminal Charge Book* (Online Manual) <<https://www.judicialcollege.vic.edu.au/eManuals/CCB/4957.htm>>.
- 36 For eg, *DPP (Vic) v Douglass (a pseudonym)* [2018] VCC 242; *DPP (Vic) v Drake* [2019] VSCA 293; *DPP (Vic) v Patil (a pseudonym)* [2019] VCC 1674; *Murphy v The Queen* [2019] VSCA 189; *AS v The Queen* [2019] VSC 260.
- 37 See eg, *Murphy v The Queen* [2019] VSCA 189; *DPP (Vic) v Douglass (a pseudonym)* [2018] VCC 242, [15].
- 38 See eg, *AS v The Queen* [2019] VSC 260, [10].
- 39 Sentencing Advisory Council, *Assault with Intent to Commit a Sexual Offence* (Web Page) <https://www.sentencingcouncil.vic.gov.au/sacstat/higher_courts/HC_6231_42_1.html>.
- 40 See generally Melanie Millsteed and Cleave McDonald, 'Attrition of Sexual Offence Incidents across the Victorian Criminal Justice System' (Research Paper, Crime Statistics Agency Victoria, 2017) <<http://www.crimestatistics.vic.gov.au/research-and-evaluation/publications/attrition-of-sexual-offence-incident-across-the-victorian>>.
- 41 *DPP (Vic) v Williams* (County Court of Victoria, Fox J, 18 November 2020), [12].
- 42 *Ibid* [77].
- 43 *Ibid* [82].
- 44 *Ibid* [85].
- 45 *Ibid*.
- 46 *Ibid*.
- 47 *Ibid*.
- 48 *Ibid* [86].
- 49 *Ibid* [23]–[56].
- 50 *Ibid* [86].
- 51 *Crimes Act 1900* (NSW) s 61K.

- 52 Ibid.
- 53 *Crimes Act 1958* (Vic) s 42(4).
- 54 *Criminal Code 1899* (Qld) s 351.
- 55 Ibid.
- 56 *Crimes Act 1900* (ACT) s 53.
- 57 Ibid.
- 58 *Crimes Act 1900* (NSW) s 61K(a).
- 59 Ibid s 61KB; *Crimes Act 1900* (ACT) s 53(1).
- 60 Australian Law Reform Commission, *Family Violence—A National Legal Response* (Report No 114, 11 November 2010) 1134 [25.22] <<https://www.alrc.gov.au/publication/family-violence-a-national-legal-response-alrc-report-114/>>, citing Westlaw AU, *The Laws of Australia* (online at 15 February 2021) 10 Criminal Offences, '10.3 Sexual Offences' [10.3.780].
- 61 Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (Oxford University Press, 7th ed, 2013) 22.
- 62 Ibid 38.
- 63 See discussion of critiques in Andrew Cornford, 'Preventive Criminalization' (2015) 18(1) *New Criminal Law Review* 1, 6–8.
- 64 Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (Oxford University Press, 7th ed, 2013) 22.
- 65 See eg, Yasminah Beebeejaun, 'Gender, Urban Space, and the Right to Everyday Life' (2017) 39(3) *Journal of Urban Affairs* 323; Dr Bianca Fileborn, 'Online Activism and Street Harassment: Digital Justice or Shouting into the Ether?' (2014) 2(1) *Griffith Journal of Law & Human Dignity* <<https://griffithlawjournal.org/index.php/gjlhd/article/view/569>>; Plan International, *Unsafe in the City: The Everyday Experiences of Girls and Young Women* (Report, 8 July 2018) <<https://www.plan.org.au/publications/unsafe-in-the-city-the-everyday-experiences-of-girls-and-young-women/>>; Beth Livingston, *Hollaback! International Street Harassment Survey Project—Australia* (Cornell International Survey on Street Harassment, 2015) <<https://www.ihollaback.org/cornell-international-survey-on-street-harassment/>>.
- 66 See generally Australian Bureau of Statistics, *Recorded Crime—Victims, Australia, 2014—Kidnapping and Abduction* (Catalogue No 4510.0, 22 July 2015) <<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4510.0~2014~Main%20Features~Kidnapping%20and%20Abduction~11>>; Australian Institute of Criminology, Australian Government, *Kidnapping and Abduction* (Crime Facts Info No 103, 2 August 2005) <<https://www.aic.gov.au/publications/cfi/cfi103>>; Jacqueline Fitzgerald and Julie People, 'Victims of Abduction: Patterns and Case Studies' (Crime and Justice Bulletin—Contemporary Issues in Crime and Justice No 94, NSW Bureau of Crime Statistics and Research, 2006).
- 67 See above n 4.
- 68 Crimes generally have a fault element, which is a subjective intention to commit the offence, or a recklessness/negligence with regard to outcome: Westlaw AU, *The Laws of Australia* (online at 15 February 2021) 9 Criminal Law Principles, '9.1 The Criminal Laws' [9.1.1850].
- 69 Versions of a strangulation offence exist in Queensland, New South Wales, Western Australia, South Australia and the Northern Territory: *Criminal Code 1899* (Qld) s 315A; *Crimes Act 1900* (NSW) s 37; *Criminal Code Act Compilation Act 1913* (WA) s 298; *Criminal Law Consolidation Act 1935* (SA) s 20A; *Criminal Code Act 1983* (NT) s 186AA.
- 70 NSW Parliamentary Research Service, *NSW's Strangulation Offence: Time for Further Reform* (Issues Backgrounder No 3, September 2018) 2–4 <<https://www.parliament.nsw.gov.au/researchpapers/Pages/NSWs-strangulation-offence-Time-for-further-reform.aspx>>.
- 71 Some Victorian laws include higher sentences for specific forms of offending, regardless of intent, because of the dangerousness of the conduct. For example, 'culpable driving causing death' and 'unintentional killing in the furtherance of a crime of violence'. For the latter, a person is 'liable to be convicted of murder as though he has killed that person intentionally': *Crimes Act 1958* (Vic) ss 3A, 318.
- 72 See above n 68.
- 73 *X7 v Australian Crime Commission* [2013] HCA 29, 248 CLR 92, [42] (French CJ and Crennan J), [99] (Hayne and Bell JJ), [160] (Keifel J); *Azzopardi v The Queen* [2001] HCA 25, 205 CLR 50, [34], [38], [64] (Gaudron, Gummow, Kirby and Hayne JJ).
- 74 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 25(1).
- 75 Ibid s 7(2).
- 76 *Crimes Act 1958* (Vic) s 4A.
- 77 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>>; 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>>.
- 78 *Crimes Act 1958* (Vic) s 47. One of the elements that must be proven by the prosecution for this offence is that the accused 'takes away or detains' the victim, or causes them to be taken away or detained.
- 79 Ibid s 4A.
- 80 Ibid s 47.
- 81 NSW Parliamentary Research Service, *NSW's Strangulation Offence: Time for Further Reform* (Issues Backgrounder No 3, September 2018) 2–4.