

County Court of Victoria

Response to VLRC Issues Papers – Grab and Drag Response

The consideration of a new grab and drag offence was prompted by the matter of *DPP (Vic) v Williams* (County Court of Victoria, Fox J, 18 November 2020). It is not appropriate for the Court to enter an analysis of that decision; however, the Court intends to provide a submission by way of general comments.

The Court queries the utility of the introduction of a ‘grab and drag’ offence, or the amendment of existing offences to include grab and drag actions, including whether there is any justification for changing the law. There are several reasons for this.

Firstly, changing the law in response to a single incident or case is always fraught with issues. Criminal offences generally capture a broad range of conduct. That is, there are many different ways of committing a particular offence. The greater the seriousness of the offending conduct, the greater penalty the offence will generally attract as part of the sentencing process. Legislative reform narrowly defining new offences in response to single cases leads to a voluminous and unnecessarily complicated legal code. The community should be able to easily understand the law, so the situation where there are several offences covering the same conduct should be avoided.

Second, and related to the first point, the existing criminal law is adequate. As noted in the Issues Paper, “there are a number of indictable offences in the *Crimes Act 1958* and at common law that can apply to ‘attempts’ to rape or sexually assault, or ‘preparatory’ acts related to sexual harm.” One such offence is contained in s 42 of the *Crimes Act 1958* – assault with intent to commit a sexual offence. This offence does not lay dormant; since its introduction October 2015, there have been 217 charges of the offence and the SAC recorded 10 convictions for the offence between 2014 and June 2019. In response to the suggestion of a ‘general’ grab and drag offence (no sexual intent required), the Court would suggest that existing offences cover such conduct (e.g. assault, kidnapping and attempted kidnapping).

Third, what constitutes ‘grabbing and dragging’ is unclear. The issues paper says that, “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.” It is unclear whether the offence would also cover someone pushing another person during what might be an unremarkable scuffle or physical altercation. For this reason, the introduction of ‘one punch’ laws is not a good analogy. A punch or strike to a person’s head or neck that causes head or neck injury is much easier to define and understand than the concept of grabbing and dragging.

Fourth, in relation to the suggestion of a grab and drag offence that presumes sexual intent, the Court expresses concern in relation to the law presuming intent to establish criminal liability. Presuming intent is quite different to presuming that an act such as a punch or strike to a person's head or neck is 'dangerous'. It is also worth noting that it would be difficult to draft the offence to ensure that persons who did not intend to commit a sexual offence would not be incidentally captured by the offence.

Fifth, there does not appear to be any research or evidence to support the introduction of such an offence. The Court is not aware of any research that suggests sexual offending is more likely to occur after 'grab and drag' actions.

Existing offences capture the physical conduct of grabbing and dragging, and particular instances of these offences may vary in seriousness. For example, some common assaults are more serious than others, and the range of sentences available for this offence reflects the possible different levels of seriousness. A common assault involving an accused grabbing and dragging the victim into a secluded location may cause the victim greater fear for their safety and may be considered more serious than other types of common assaults. A judge exercises their discretion to impose a penalty that reflects the seriousness of the particular offending. Creating an offence that presumes the sexual intent of an accused undermines common law principles concerning the prosecution's obligation to prove *mens rea*. A presumed sexual intent would effectively render the proposed offence a strict liability offence. The Court has strong reservations about presuming *mens rea* in the context of indictable offences. Further, creating an offence for a policy reason that is not supported by credible research would not engender confidence in the law.