
Comments on the Criminal Code Amendment (Sexual Assault) Bill 2017

Sexual Assault Support Service Inc. (SASS) Submission

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Recover Reclaim Rejoice

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Introduction

The Sexual Assault Support Service (SASS) is a community-based service committed to providing high quality support and information services to survivors of sexual assault in Southern Tasmania, their carers and support people, professionals, and the general public. SASS delivers a 24 hour sexual assault crisis response program; 24 hour phone support and counselling service to people affected by sexual abuse; and face to face information, support, counselling, and referral services for anyone affected by sexual abuse.

SASS welcomes the opportunity to comment on the Criminal Code Amendment (Sexual Assault) Bill 2017.

Expansion of the crime of rape

SASS endorses the proposed amendments to repeal the offence of aggravated sexual assault, and instead broaden the types of penetrative assaults that can be captured by the crime of rape. This amendment would mark a significant, positive change from historically gendered and restrictive definitions of sexual intercourse and assault.

Inclusion of an objectives clause and a statement of guiding principles

SASS proposes the inclusion within the *Criminal Code Act 1924* (Tas) of an 'objectives clause' that states the following:

The objectives of the sexual offences provisions are:

- a) to uphold the fundamental right of every person to make decisions about his or her sexual behaviour and to choose not to engage in sexual activity; and
- b) to protect children and persons with a cognitive impairment from sexual exploitation.

SASS also recommends the inclusion of a 'statement of guiding principles', such as:

- (a) There is a high incidence of sexual violence within society.
- (b) Sexual offences are significantly under-reported.
- (c) Sexual violence constitutes a form of family violence.

- (d) A significant number of sexual offences are committed against women, children and other vulnerable persons, including those from Indigenous and culturally and linguistically diverse backgrounds, and persons with a cognitive impairment.
- (e) Sexual offenders are commonly known to their victims.
- (f) Sexual offences often occur in circumstances where there are unlikely to be any physical signs of an offence having occurred.

Both the 'objectives clause' and the 'guiding principles' reflect those in the Victorian *Crimes Act 1958*, and those recommended by the Australian Law Reform Commission (ALRC) in its 2010 report on family violence.¹

In their report, the ALRC stated that the aim of guiding principles is to "guide legislative interpretation and to educate those applying or engaging with the law."² Their adoption in Victoria was preceded by a recommendation of the Victorian Law Reform Commission, which noted that,

The criminal law has both a regulatory and an educative function. It should emphasise that people have a right to make decisions about their sexual activity and to choose not to engage in sexual activity. The interpretation clause will ensure that the provisions of sexual offences laws are interpreted consistently with the goals of the legislation.³

There is also precedent for the use of guiding principles in the family violence protection order legislation of some Australian states.⁴ The ALRC recommended that all state and territory legislation sexual offences, criminal procedure and evidence legislation should provide for guiding principles, to which courts should have regard when interpreting sexual offence provisions. In recommending this, the ALRC stated that,

Statements of objectives and guiding principles can perform an important symbolic and educative role in the application and interpretation of the law, as well as in the general community. While much more is required to change culture, such statements provide an important opportunity for governments and legal players to articulate their understanding of sexual violence and provide a benchmark against which to assess the implementation of the law and procedure.⁵

The inclusion of an objectives clause and guiding principles concerning sexual assault provisions in the *Criminal Code Act 1924* (Tas) would bring multiple benefits, including:

- providing an aid to judicial and practitioner interpretation;
- serving an educational function in dispelling myths surrounding sexual assault; and
- articulating a clear policy message regarding the nature and context of sexual assault.

¹ Australian Law Reform Commission (2010). *Family Violence - A National Legal Response*. (ALRC Report 114). Australian Government, Canberra, pp. 66-67

² *Ibid*, p. 295.

³ Victorian Law Reform Commission (2003). *Sexual Offences: Interim Report*, 8.88.

⁴ See *Family Violence Protection Act 2008 (Vic)* preamble; and *Crimes (Domestic and Personal Violence) Act 2007 (NSW)* s 9(1).

⁵ Australian Law Reform Commission (2010), p. 66.