



25 January 2022

Department of Justice
GPO 825
Hobart TAS 7001
attn: Brooke Craven

via email: HaveYourSay@justice.tas.gov.au

To Brooke Craven,
Re: *Criminal Code Amendment Bill 2022 (Tas)*

The Tasmanian Aboriginal Legal Service (TALS) welcomes the opportunity to provide comment on the *Criminal Code Amendment Bill 2022 (Tas)*.

TALS is a community legal centre that specialises in criminal, civil and family law matters for Aboriginal people in Tasmania. We are a member-based, independent, not-for-profit, and incorporated organisation that advocates for law reform. Our goal is to halve Aboriginal Tasmanians' rate of negative contact with the justice system in a decade.

Proposed insertion of Section 2A(2A) "stealthing":

TALS agrees that a strong and clear criminal justice response to sexual offending is important. Creating a new offence does not change culture, but it does increase the chances of people being held accountable for their actions which in time may reduce the numbers of people who are victim of this offence.

Whilst we do not seek to comment specifically on the inclusion of stealthing into the legislation, we note that it should be coupled with education campaigns so that it is clear what the offence covers. There are varying definitions across the world of stealthing, including the removal of a condom without consent, tampering with a condom and the removal of a condom to purposefully infect someone with HIV. To change culture, there needs to be a clear message as to exactly what

constitutes the criminal act, given stealthing is a less descriptive term, the word can leave room for confusion.

Proposed new offence of 'Strangulation, &c.' in new Section 170B:

Strangulation is recognised as a key indicator of further harm in family violence situations, including murder. Intentional strangulation is already considered a very serious offence when it is dealt with in both the Magistrates Court and the Supreme Court. In almost all cases, Prosecutors provide research material to the Magistrate/Judge outlining the risks associated with strangulation.

We understand that this legislation would bring Tasmania into line with a majority of other states and territories, including New Zealand, that also have standalone offences of strangulation. We are also aware of existing case law from those jurisdictions both about the common/dictionary definitions of those terms applying, but also about matters of proof arising from them.

We note the comments of the Department of Justice in their correspondence to the effect that it is not intended to define the terms 'choking', 'suffocating' and 'strangling'. It is our view that not providing statutory definitions of those terms would render the offences more difficult to discern for prosecution, defence and the courts – and matters already litigated in other jurisdictions would likely arise. For example, questions about the extent of force required to be applied and the impact of such on the victim, ie. whether a noted impact on capacity to breath, or a total stoppage of the breath is required for any of the circumstances to be made out.

Given this, it is recommended that the terms be statutorily defined, leaning on the experience of other states and the decisions of courts from there on these terms.

We note circumstances may well arise where the bounds of this offence would otherwise be tested by conduct which is perhaps not intended to be included. An example of this would be where two people are grappling with one another in public but without blows being exchanged, where one grabs the other and 'scruffs' them by their shirt, causing a fleeting constriction on their neck. Another situation could involve an open-handed push, that

happens to land on and apply pressure to the neck, but which was otherwise not designed to choke, strangle, or suffocate a person.

Clarity as to what constitutes the offence, allows counsel to properly advise their clients and for victims to avoid unnecessary trials when the issue is whether the conduct amounts to the charge, rather than the conduct itself being in question.

Proposed alternative verdict for charge of Attempted Murder

It is accepted that strangulation is an appropriate inclusion as an alternate verdict to murder.

If you have any queries or would like to discuss our submission in greater detail, please do not hesitate to contact us.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'HPP' or similar initials, written in a cursive style.

Hannah Phillips
Acting State Manager
Tasmanian Aboriginal Legal Service
