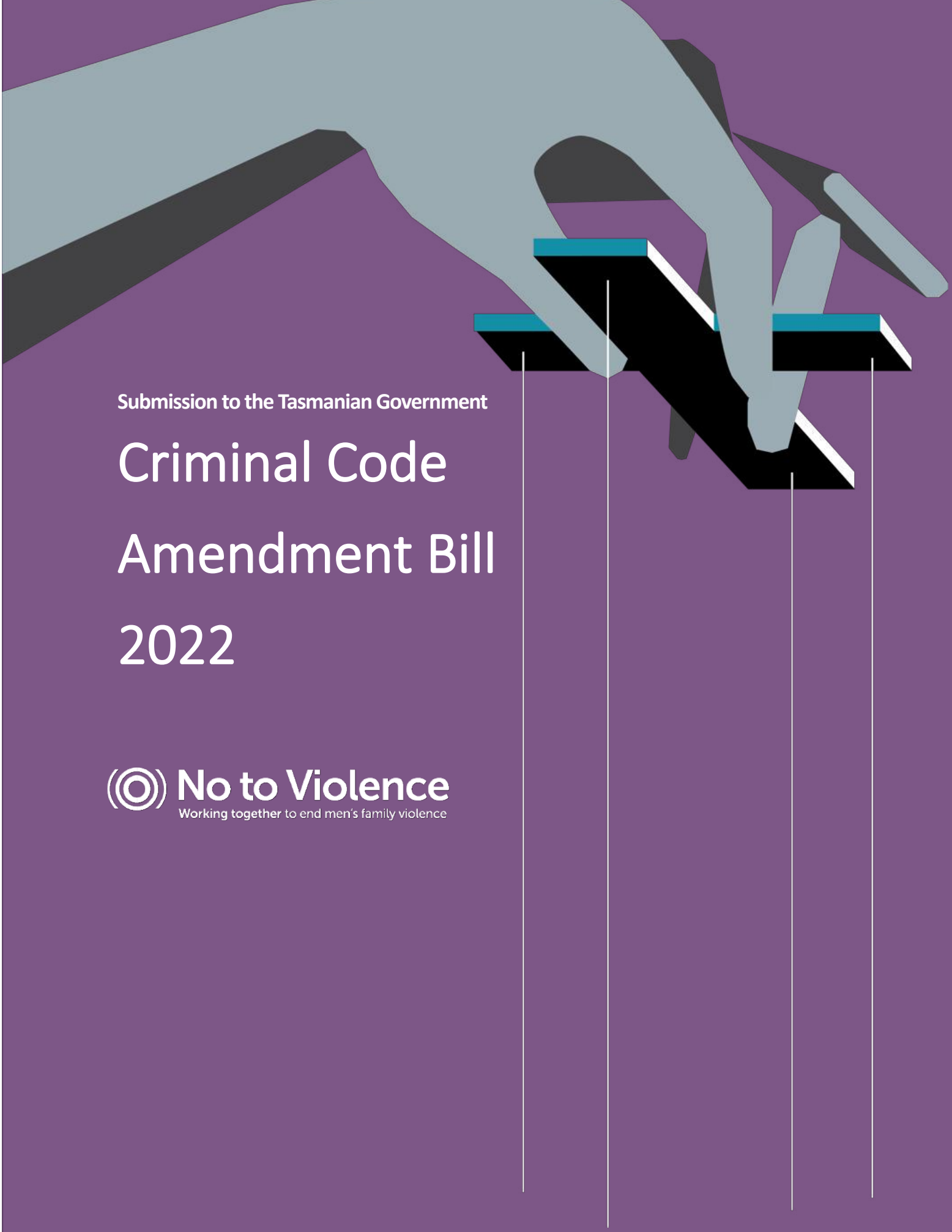

Submission to the Tasmanian Government

Criminal Code Amendment Bill 2022

No to Violence
Working together to end men's family violence

Acknowledgment of Country

No to Violence acknowledges First Nations Peoples across these lands; the Traditional Custodians of the lands and waters. We pay respect to all Elders, past, present, and emerging. We acknowledge a deep connection with country which has existed over 60,000 years. We acknowledge that sovereignty was never ceded, and this was and always will be First Nation's land.

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About No to Violence

No to Violence is Australia's largest peak body representing organisations and individuals working with men to end family violence. We are guided by the values of accountability, gender equity, leadership and change.

No to Violence provides support and advocacy for the work of specialist men's family violence interventions carried out by organisations and individuals. The work undertaken by specialist men's family violence services is diverse and includes but is not limited to Men's Behaviour Change Programs (MBCP), case management, individual counselling, policy development and advocacy, research and evaluation, and workforce development and capability building.

No to Violence also provides a range of training for the specialist men's family violence workforce including a graduate certificate in partnership with Swinburne University, as well as professional development for all workforces who come into contact, directly and indirectly, with men using family violence.

No to Violence is a leading national voice and plays a central role in the development of evidence, policy, and advocacy to support the work of specialist men's family violence nationally. In Victoria, New South Wales, South Australia, and Tasmania we also provide directly contracted services and work closely with police to enhance referrals for men.

About Our Members

No to Violence represents 185 members Australia-wide. Our membership structure is inclusive of individuals and organisations ranging from specialist services to individuals and groups who have an interest in preventing and responding to men's family violence.

Process of developing submission

In January 2022, No to Violence consulted with our Tasmanian member and allied organisations as well as expert stakeholders including academics and Tasmanian organisations working with victim-survivors. These discussions, knowledge and experiences have strongly informed the development of this submission. We thank all those involved for their generosity, respect, and conversation.

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Summary of recommendations

The new offence of "Strangulation, & c"

At No to Violence, we strongly recommend that the new offence should:

1. Include a clear, simple definition of non-fatal strangulation in the Tasmanian legislation. The definition should focus on the behaviour of the perpetrator that impedes breathing or blood circulation or both.
2. Provide context, examples, and definitions of the actions covered by the new offence, within the legislation.
3. Ensure the acts of holding a person by the neck or in a headlock and pushing on the neck are covered in the new legislation.
4. Account for the fact that consent to non-fatal strangulation in a domestic and family violence context is impossible, within the legislation.
5. In cases of non-fatal strangulation outside a domestic and family violence context, assess affirmation of consent rather than evidence of physical force or resistance. Parties should only be deemed consenting when evidence of free mutual agreement can be established.
6. To address the overincarceration of Aboriginal Tasmanians, continue to reform police practices and procedures, as well as police culture, together with a greater commitment to the development of collaborative projects (such as justice reform initiatives).
7. Conduct a consultation process with Aboriginal and Torres Strait Islander groups in Tasmania to inform the legislative changes and implementation phase.
8. Include a reflection on the views of legal experts in relation to what maximum penalty they would recommend as proportionate and appropriate.
9. Be enacted alongside training of relevant workforces, perpetrator treatment programs for offenders, funding for frontline services and awareness-building campaigns in the legislation implementation package.
10. Allow time to plan the implementation package prior to the new legislation coming into effect.
11. Be implemented alongside training for relevant workforces, e.g.:
    a. Refer to resources and training programs offered by the Australian Institute for Strangulation Prevention (Queensland) and the Training Institute on Strangulation Prevention (USA).
    b. Train frontline workers including medical staff to screen for non-fatal strangulation and to use alternative light sources to document visible injuries.

c. Provide police and prosecutors with specific training on the risks and seriousness of non-fatal strangulation behaviour. No to Violence can assist in this training.

12. Be enacted alongside the offer of evidence-based treatment programs to perpetrators to address their violent behaviours.
13. Recognise the need for funding for further development, implementation, and evaluation of perpetrator intervention programs so the root causes of DFV and NFS can be optimally addressed in Tasmania.
14. Be accompanied by increased funding for frontline victim-survivor and perpetrator programs to manage the increased demand that will result from the introduction of the new legislation.
15. At No to Violence we recognise the need to implement awareness-building campaigns alongside the new legislation: for the professionals most likely to come into contact with victim-survivors and perpetrators of non-fatal strangulation (e.g. nurses); girls and women at most risk of being victimised; boys and men most at risk of perpetrating non-fatal strangulation; and the general public. Our communications team can advise the design of this.

New sub-subsection in s2A (Consent)

We suggest the following:

16. Retain the use of gender-neutral language within the proposed definition of stealthing, to ensure this definition remains applicable to LGBTIQA+ victim-survivors and/or perpetrators.
17. Consider implementing a standalone offence for stealthing to ensure victim-survivors of stealthing have greater access to justice and improved legal recognition of their experiences.
18. Retain the use of the word “condom” rather than using the more general phrasing of “contraceptive device” to avoid potential repercussions that would disproportionately impact users of oral contraceptives
19. Replace the word “tamper” with “purposely damages” to ensure the enforceability of the amendment in circumstances where a condom has specifically been broken or otherwise damaged by the perpetrator to engage in stealthing.
20. Engage in further consultation with lawyers and criminal law experts on the inclusion of the word “intentionality”, to explore whether the use of the term is necessary and/or possible replacements that may better protect the interests of victim-survivors.
21. Undertake extensive and ongoing consultation with Aboriginal organisations, victim-survivors and other stakeholders to ensure the amendment is implemented in ways that minimise potential adverse impacts on Aboriginal and Torres Strait Islander communities.

22. Increase funding of Aboriginal community-controlled organisations to provide community education and specific support for Aboriginal Tasmanians impacted by stealthing and/or its criminalisation.
23. Direct increased and sustainable fundings towards Tasmanian Aboriginal specialist services, to ensure Aboriginal victim-survivors and perpetrators are provided with:
    a. Tailored legal advice that increases their understanding of judicial processes.
    b. Increase access to individual advocacy and support.
24. Ensure the implementation of this stealthing legislation is informed by in-depth consultations with experts, stakeholders, frontline services, people with lived experience, and representatives of specific marginalised groups impacted by said legislation (e.g. Aboriginal and Torres Strait Islander peoples, migrant and refugee communities, LGBTIQA+ communities, young people).
25. Ensure that workers and bodies involved in the enforcement of this amendment, especially within law enforcement and the judiciary, receive specialised training on rape and sexual assault, including what stealthing is and appropriate responses, and trauma-informed informed responses to witness testimony.
26. Ensure health and medical professionals receive training that:
    c. Supports their ability to refer victim-survivors to appropriate services, e.g. sexual health, mental health.
    d. Increases their knowledge and awareness of family and sexual violence services so non-medical referrals are provided as needed.
27. Fund and develop similar initiatives to the Health Justice Partnership to improve the health and legal outcomes of people experiencing stealthing who come from a background of intersecting disadvantage and/or other complexities.
28. Increase funding to existing sexual violence services directed at providing additional staff and the expansion of services to help support potential increased demand caused by criminalising stealthing.
29. Ensure all frontline sexual assault services are offered resourcing for additional professional development and training aimed at improving their understanding of and responses to stealthing.
30. Implement public awareness campaigns that raise awareness of what stealthing is and how it violates a person's consent.
    a. Ensure versions of that versions of campaign materials are made available in Simple English and languages other than English, to ensure they are accessible for people with a limited understanding of English and people living with cognitive impairment.

31. Increase funding towards existing primary prevention services aimed at children, young people, and their community supports, to support their understanding of sexual violence and relationships.
32. Direct funding towards the monitoring and evaluation of existing primary prevention efforts, to support the goal of building a stronger evidence base around the primary prevention of sexual violence in Australian settings.
33. Launch a review of existing sex education programs to determine whether they are effectively teaching young people about consent, from a framework of “enthusiastic consent” rather than “affirmative consent”.
34. Ensure that existing and future sex education aimed at young people operate from a central definition of enthusiastic consent.

Introduction

Thank you for the opportunity to provide feedback on the proposed amendments to the Tasmanian Criminal Code. The amendments include creating a new offence of choking, suffocation or strangulation and adding to the definition of consent regarding behaviour colloquially known as 'stealthing'. No to Violence's position in relation to these amendments is outlined below.

The new offence of "Strangulation, & c"

Background to strangulation in Australia

While Australia lacks a nation-wide survey on the prevalence of non-fatal strangulation (NFS), global studies have found between 3 and 10% of women report having been strangled by an intimate partner, with the prevalence of NFS in the past year ranging from 0.4 to 2.4%.[1]

Findings from Australian studies into NFS include the following, as summarised by Edwards and Douglas (2021)[2]:

- A study involving 1064 women attending a sexual assault service in Western Australia between 2009 and 2015 identified that 7.4% of sexual assault cases involved NFS, and this rose to 33.9% when analysis was limited to cases where the victim was aged 30–39 years and had been sexually assaulted by an intimate partner.
- Douglas and Fitzgerald's analysis of protection order (n = 656) applications submitted to a Queensland court over two years (2008–2009 and 2009–2010) found that 12% of women who applied for a protection order alleged at least one incident of NFS in their reasons for seeking a protection order.
- In a more recent qualitative study involving interviews with 65 Queensland women who had experienced intimate partner violence and engaged with the legal system, Douglas and Fitzgerald found that 36% of women (n=24) had experienced NFS during their intimate relationship.
- In a study of women presenting at an emergency department in Brisbane, Australia in 2017, 26% reported NFS.

The above data demonstrate that while NFS may be perpetrated against adults and children in a variety of contexts, it is consistently common in relationships characterised by intimate partner violence.

[1] Sorenson, S.B., Joshi, M. and Sivitz, E. (2014). A Systematic Review of the Epidemiology of Nonfatal Strangulation, a Human Rights and Health Concern. American Journal of Public Health, [online] 104(11), pp.e54–e61. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4202982/ [Accessed 2 Jan. 2022].

[2] Edwards, S. S. M. & Douglas, H. (2021). The criminalisation of a dangerous form of coercive control: Non-fatal strangulation in 9ustral and wales and 9ustralia. Journal of International and Comparative Law, 8 (1), pp.87-120.

Positives of the proposed amendments

Giving voice to experiences of victim-survivors

The proposed amendment to add a standalone offence for NFS validates and gives voice to the experience of Tasmanian victim-survivors [3]who have advocated for this legislative intervention over many years as a means of acknowledging the seriousness of this crime.[4] In writing this submission, we acknowledge the efforts and bravery of Tasmanian victim-survivors, together with grassroots organisations, whose efforts have led to this point. We applaud the Tasmanian Government and broadly support the proposal to add a standalone offence of strangulation to the Tasmanian Criminal Code.

Consistency with other jurisdictions

Introducing a standalone offence for NFS will bring Tasmania in line with most jurisdictions in Australia, as well as many jurisdictions overseas, where standalone offences have been introduced in the past decade.[1-2]

Raising awareness about the offence

While some argue that a standalone offence for NFS is unnecessary because it can be subsumed within other elements of a Criminal Code, we believe a standalone offence is vital to raising awareness of the seriousness of this act within the community, police force, judicial system, and domestic and family violence sector.

The seriousness of NFS is not widely understood. NFS is dangerous for two primary reasons: first, it can cause a range of short and long-term health issues, including loss of or change in voice; difficulty swallowing or breathing; bruising around the neck; petechial haemorrhage; injury to the brain through hypoxia resulting in unconsciousness, headaches, depression and anxiety; and problems with memory and concentration. [5] [6] Secondly, NFS is a strong predictive factor for future harm and death/ homicide. For example, one study found that victims of NFS perpetrated by their partner or former partner were seven times more likely to be a victim of homicide or very serious harm in the future.[7]

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[3]

[4] See for example Alexandra Humphries, 'Victims describe devastating effects of strangulation in bid for new law to deter choking and suffocation' ABC News, 27 August 2020 https://www.abc.net.au/news/2020-08-27/women-push-for-choking-strangulation-to-become-offence-tasmania/12596540.

[5] Andi Foley, "Strangulation: Know the Symptoms, Save a Life" (2015) 41 Journal of Emergency Nursing 89.

[6] Maya Oppenheim, "Strangulation in Sex Can Increase Risk of Stroke and Brain Injuries, Distressing Study Finds" The Independent (5 June 2020), available at https://www.independent.co.uk/ news/uk/home-news/strangulation-rough-sex-domestic-abuse-bill-study-a9548936.html (visited 2 January 2022).

[7] Glass, N., Laughon, K., Campbell, J., Block, C.R., Hanson, G., Sharps, P.W. and Taliaferro, E. (2008). Non-fatal Strangulation is an Important Risk Factor for Homicide of Women. The Journal of Emergency Medicine, 35(3), pp.329–335.

The injuries associated with NFS are often invisible, leading NFS to be described as a hidden epidemic. A review of 300 NFS cases found that only 50% of strangulation survivors had any visible injuries and only 15% of those with visible injuries had an injury that was severe or clear enough to be photographed for evidential purposes. Subsequent studies have similarly identified that it is common for victims of NFS to have no visible injuries. We know that victims under-report experiences of intimate partner violence, and where there are no visible signs of NFS, victims may be even less likely to report. It is crucial that potential victims and perpetrators understand the seriousness of NFS—making NFS a standalone criminal offence increases the likelihood that it will be taken seriously when it is reported.

Douglas and Fitzgerald[8] suggest that Australian police and prosecutors may be reluctant to pursue prosecution for NFS, and that juries may be hesitant to convict where there is no visible injury, despite NFS offences not typically requiring evidence of an injury. Further, medical experts often fail to investigate the possibility that there are internal injuries when a patient reports having been a victim of NFS[2], pointing to the need to raise awareness amongst General Practitioners, the Accident and Emergency workforce and the medical workforce more broadly.

No to Violence believes creating standalone legislation for NFS will increase awareness about this offence with the general public and specialist workforces, in turn enhancing the safety of Tasmanians *so long as the legislation is implemented with a package of appropriate education, training and public campaigns* (as will be discussed in a later section).

Opportunities to work with more perpetrators and people at-risk of perpetration

Introducing legislation for NFS together with a package of appropriate education, training and public campaigns, will bring a greater number of domestic and family violence (DFV) perpetrators into view and enable them to get the support they need, be it through evidence-based rehabilitation in Men's Behaviour Change Programs or individual counselling. Holding perpetrators accountable while enabling them to change their behaviours is No to Violence's priority; supporting men who use violence to change their behaviour is a goal that will keep our sector, community, and victim-survivors safer. The legislation and associated implementation package will also provide an opportunity to reach people at-risk of becoming perpetrators or people early in their journey of perpetration, and therefore an opportunity for early intervention programs which can stop behavioural escalation.

Distinction between contexts

No to Violence supports the proposed amendments inasmuch as they distinguish between NFS that occurs in a DFV context (adding the new s170B strangulation offence as an alternative to section 170A Persistent family violence by amending existing s337A), and NFS that occurs in other contexts. We support this distinction for two reasons. First, in some states NFS legislation *only* covers domestic and family violence contexts (NT, Queensland, SA), and this can lead to a less serious offence of assault

[8] Douglas, H. and Fitzgerald, R. (2021). Proving non-fatal strangulation in family violence cases: A case study on the criminalisation of family violence. The International Journal of Evidence & Proof, 25(4), pp.350–370.

being charged in cases of NFS where the victim is a stranger to the accused. Charges of assault do not capture the seriousness of NFS.

Second and more importantly, we call for this distinction to clarify the issue of consent. A person who is being victimised in the context of a coercive controlling relationship cannot consent to NFS; a person who is in a relationship or engaging in a sexual encounter that is not characterised by coercive control *can* consent to NFS. We do not believe the issue of consent has been adequately managed in the proposed amendments and comment further on this issue in the following section.

In concluding this section, No to Violence positions ourselves in support of the standalone offence for NFS. The following sections outline our response to the proposed Tasmanian amendment, including suggestions for improvement, and guidance regarding its implementation.

Negatives of the proposed amendments

Lack of definition

A key issue in the application of NFS offences in Australia has been the definition of NFS. A lack of clear definition has led to different interpretations by trial judges within jurisdictions, with varying consequences[2].We recommend that a clear, simple definition that focuses on the behaviour of the perpetrator that impedes breathing or blood circulation or both, is included in the legislation. For example, the NFS offence introduced in WA in 2020 states:[9]

> *A person commits a crime if the person unlawfully impedes another person's normal breathing, blood circulation, or both, by manually, or by using any other aid— (a) blocking (completely or partially) another person's nose, mouth, or both; or (b) applying pressure on, or to, another person's neck.*

Recommendation

1. A clear, simple definition of non-fatal strangulation such as the definition included in the West Australian legislation should be included in the new legislation. The definition should focus on the behaviour of the perpetrator that impedes breathing or blood circulation or both.

Lack of examples and definitions of actions

In addition, to avoid ambiguity the new offence must provide context, examples, and definitions of the actions that are included. Leaving terms undefined risks wide margins of interpretation. Such variance may result in different stakeholders implementing policies and practices that do not align with or support other parts of the system or the broader aims of the legislation. Clear definitions and

[9] Criminal Code Compilation Act 1913 (WA) s.298.

examples should enable all parts of the judiciary and extrajudicial stakeholders to adequately interpret the legislation so long as guidance, training, and supervision are also included as part of the implementation process.

We support the fact that unlawful choking, suffocating and strangling should be covered by this new offence, and would add the act of holding a person by the neck or in a headlock and pushing on the neck, as gleaned from lessons learnt in other states in applying similar legislation.

Recommendation

2. The new offence must provide context, examples, and definitions of the actions that are included, as in the New Zealand non-fatal strangulation legislation.
3. Ensure the acts of holding a person by the neck or in a headlock and pushing on the neck are covered in the new legislation.

Issues of consent

We believe the issue of consent needs to be given careful thought in the proposed amendments. As noted previously, No to Violence contends that consent to NFS in the context of a coercive controlling relationship is an oxymoron, and consequently, evaluating whether a victim has consented to a particular behaviour in this context is fatuous.

In cases in which a perpetrator is subjecting a victim to ongoing DFV, explicit and implicit behaviours of coercion and control become normative. In such circumstances, a perpetrator may view a victim as freely consenting to a particular act that he desires, because he and the victim do not share equal power and the relationship has come to be characterised by control of one party over another. It is also possible that a victim may acquiesce to the desires of a perpetrator as a means of avoiding further violence. Because of both possibilities, a lack of consent should be the assumption of NFS that occurs in the broader context of DFV. Additionally, assessing the self-reported beliefs of an accused about the consent or lack of consent of a victim in the context of DFV are likely to elicit responses that are influenced by cognitive distortions, dissonance, and defensiveness.[10][11]Under s.36 of the Crimes Act 1958 “consent” is defined to mean “free agreement”. In the context of DFV it is impossible for a victim survivor to agree to any (presumably sexual) act, let alone one that involves strangulation. We believe that the definition of consent contained in the Crimes Act ought to apply to the proposed NFS legislation. Furthermore, we believe that “affirmative consent” principles, in which unequivocal agreement to engage in a particular act is given by both (equal) parties is essential when assessing

[10] Ward, T. and A. Casey, Extending the mind into the world: A new theory of cognitive distortions in sex offenders. Aggression and Violent Behavior, 2010. 15(1): p. 49-58.
[11] Chambers, J.C., et al., Treatment readiness in violent offenders: The influence of cognitive factors on engagement in violence programs. Aggression and Violent Behavior, 2008. 13(4): p. 276-284.

whether consent has been given.[12] Again, in the context of DFV, such affirmative consent is impossible.

Though consent cannot be given or obtained in DFV cases, questions are still likely to remain about the intent of the perpetrator and further investigation will be required to establish if the act of NFS has occurred intentionally or recklessly.

In cases where NFS occurs outside of a broader pattern of DFV, we believe that the communicative and affirmative standard of consent ought to be applied, and we urge the department to provide guidance that eschews notions of "resistance and force" that have characterised, for example, rape definitions in the past.[13] When assessing whether an accused had a reasonable belief that the other party was consenting, affirmation of consent should be assessed, rather than evidence of physical force or resistance. The lack of physical resistance from the other party or lack of physical force from the accused should not be used as evidence of consent. Parties should only be deemed to be consenting when evidence of free mutual agreement can be established.

When considering cases that occur outside of a DFV context, questions of consent and intent are both pertinent. It is important that instances of restricting air to another person's airway within consensual activities such as a sexual encounter or sporting activity such as martial arts, sit outside of this offence, irrespective of injuries sustained.

If wording such as "without the person's consent" were added to the standalone strangulation offence, Tasmania's new legislation would come into line with NT, NSW, Qld and SA. In these jurisdictions the offence requires the prosecution prove that the victim did not consent to NFS. However, this addition may bring unintended consequences in a domestic and family violence context with elements of coercive control, since, as already noted, the victim's ability to give or not give informed consent is highly impeded, and it might be difficult to prove a lack of consent. One solution may be to include "without the person's consent" for the standalone act but remove it in the areas of legislative amendments pertaining to persistent family violence.

Recommendations

4. Consent to non-fatal strangulation in a domestic and family violence context is impossible. This should be accounted for in the new legislation.
5. In cases of non-fatal strangulation outside a domestic and family violence context, affirmation of consent should be assessed rather than evidence of physical force or resistance. Parties should only be deemed consenting when evidence of free mutual agreement can be established

[12] Goldsworthy, T., Yes means yes: moving to a different model of consent for sexual interactions. The Conversation, 2019.
[13] Burgin, R., Persistent Narratives of Force and Resistance: Affirmative Consent as Law Reform. The British Journal of Criminology, 2019. 59(2): p. 296-314.

Disproportionate impact of legislation on Aboriginal and Torres Strait Islanders

It is likely this legislation will have a disproportionate impact on Aboriginal families and other marginalised groups. Research shows that the introduction of similar legislation in other Australian jurisdictions has resulted in higher rates of incarceration of marginalised groups such as Aboriginal and Torres Strait Islander people.[14] No to Violence and allies are concerned that marginalised groups will not be well represented in this submission process and that the legislative changes may result in further overrepresentation of Aboriginal and Torres Strait Islanders in prisons. Alongside our TasCOSS allies, we recommend the ongoing reform of police practices and procedures, as well as police culture, together with a greater commitment to the development of collaborative projects (such as justice reform initiatives),[15] to address the overincarceration of Aboriginal Tasmanians whilst still supporting victim survivors. Further, we recommend a specific consultation process be conducted with Tasmanian Aboriginal and Torres Strait Islanders to inform the legislative changes and implementation phase.

Recommendations

6. We recommend the ongoing reform of police practices and procedures, as well as police culture, together with a greater commitment to the development of collaborative projects (such as justice reform initiatives), to address the overincarceration of Aboriginal Tasmanians whilst still supporting victim survivors.
7. A consultation process should be conducted with Aboriginal and Torres Strait Islander groups in Tasmania to inform the legislative changes and implementation phase.

Proposed maximum penalty

Finally, the proposed maximum penalty for the offence is significantly higher than the maximum penalty in other Australian jurisdictions.[16] No to Violence acknowledges that the proposed maximum penalty is consistent with Tasmania's current maximum penalty for the indictable charge of assault (the most common charge currently laid for this conduct), and understand the need to avoid perverse legal outcomes contrary to the stated intention of the proposed amendments. We also recognise this intention is grounded in the desire to recognise the seriousness of this offending and conduct. However, we still recommend the Tasmanian Government be guided and informed by the views of legal experts

[14] Heather Douglas, 'Victoria's commitment to a non-fatal strangulation offence will make a difference to vulnerable women', The Conversation (3 July 2019) https://theconversation.com/victorias-commitment-to-a-non-fatal-strangulation-offence-will-make-a-difference-to-vulnerable-women-119743.

[15] For example, Australian Law Reform Commission, 'Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (December 2017) 472-482.

[16] The proposal in Tasmania is a maximum penalty of 21 years, compared with 7 years in Queensland (Criminal Code 1899 (Qld) s315A), 7 years in South Australia (Criminal Law Consolidation Act 1935 (SA) s 20A), 10 years in NSW (Crimes Act 1900 (NSW) s37(2), and 10 years in the ACT (Crimes Act 1900 (ACT) s 27(3)(a) – although note in circumstances of aggravation this can be increased to 15 years under Crimes Act 1900 (ACT) s 27(4), in circumstances where a person intends to commit an indictable offence, intends to prevent or hinder their lawful apprehension or intends to prevent/hinder a police officer).

in relation to this issue and what maximum penalty they would recommend as proportionate and appropriate.

Recommendation

8. The Tasmanian Government should be guided and informed by the views of legal experts in relation to what maximum penalty they would recommend as proportionate and appropriate.

Guidance regarding implementation

No to Violence cautions that relying on the introduction and implementation of new legislation will not in and of itself bring sufficient change. We advise the Tasmanian Government to consider the need for change management strategies in the implementation of the proposed legislation and consider the challenges of implementing legislation over various sectors that play different and sometimes conflicting roles in the judicial and extrajudicial landscape of Tasmania. Below, we make recommendations regarding training of relevant workforces, perpetrator treatment programs for offenders, funding for frontline services, and awareness-building campaigns. We advise the Tasmanian Government includes in the implementation timeframe an adequate period for planning these activities *prior to* the new legislation coming into effect.

Recommendations

9. The legislation implementation package must include training of relevant workforces, perpetrator treatment programs for offenders, funding for frontline services and awareness-building campaigns.
10. Time to plan the implementation package prior to the new legislation coming into effect is vital.

Training for relevant workforces

Implementation must include training on the risks and seriousness of NFS and DFV for relevant workforces including judges and juries, police, health professionals, and the domestic and family violence workforce. We suggest reviewing the many resources and training programs offered by the Australian Institute for Strangulation Prevention (Queensland) and the Training Institute on Strangulation Prevention (USA) prior to designing any new interventions.

Any presentation of NFS to frontline workers such as police or DV support workers should result in the victim going for medical assessment (Prof Heather Douglas, pers. Communication, February 2022), since hidden and serious injury can result. Frontline workers must be trained to screen for NFS, and

medical staff need to know how to assess signs and symptoms of NFS, visible and hidden. Medical experts often fail to investigate the possibility that there are internal injuries when a patient reports having been a victim of NFS[17], pointing to the need to educate General Practitioners, the Accident and Emergency workforce and the medical workforce more broadly.[18]

Where there are visible signs of strangulation, signs can fade quickly and it is important that they be photographed clearly for evidential purposes. Further, there is significant evidence that medical practitioners do not detect bruising and other injuries consistently across skin tones and pigments, meaning that people with darker skin tones may not have their injuries accurately recorded. Research shows that using an alternative light source enables practitioners to more consistently identify and classify injuries like bruising from NFS, across all skin tones.[19] We recommend the use of alternative light sources be considered by front line workers in instances of NFS.

The implementation package must include training of the perpetrator intervention and VICTIM-SURVIVORS workforces around NFS, and questions about NFS must be included in all screening of perpetrators and VICTIM-SURVIVORS. For frontline workers, perpetrators using NFS behaviour should be triaged as "high-risk" akin to someone who uses a gun or knife, and this needs to be embedded in policy and practice.

As mentioned previously, police and prosecutors may be reluctant to pursue prosecution of NFS, and juries may be hesitant to convict where there is no visible injury, despite NFS offences not typically requiring evidence of an injury. Specialist training is clearly needed in these contexts.

There is a significant need to ensure that policy, guidelines, and practice correctly situate the majority of NFS within the context of DFV. Without the ability to recognise and understand NFS as part of a pattern of abusive behaviour, there is a risk that an incident-based approach will fail to correctly identify and assess the very high level of risk that NFS presents.

Minimising this risk necessitates training police on the seriousness and implications of NFS without minimising other forms of DFV. This is important for two main reasons: firstly, earlier intervention with offenders of DFV is likely to reduce the cumulative harm perpetrated against victim survivors; and secondly, earlier intervention before patterns of violence and abuse have taken hold is likely to result in more effective and less intensive behaviour change and rehabilitation interventions with perpetrators.[20]

[17] Strack G and Gwinn C (2011) On the edge of homicide: Strangulation as a prelude. Criminal Justice 26(3): 1–5.
[18] Patch M, Anderson J and Campbell J (2018) Injuries of women surviving intimate partner strangulation and subsequent emergency health care seeking: An integrative evidence review. Journal of Emergency Nursing 44(4): 384–394
[19] Holbrook, D. S. and Jackson, M. C. (2013) 'Use of an alternative light source to assess strangulation victims', Journal of Forensic Nursing, 9(3), pp. 140–145. doi: 10.1097/JFN.0b013e31829beb1e.
[20] Hegarty, K., et al., Final Report: Promoting early intervention with men's use of violence in relationships through primary care (PEARL study), APHCRI, Editor. 2016: Canberra.

It is therefore imperative that new legislation be supported through appropriate training. As noted elsewhere, No to Violence is experienced in training various workforces on general and specific issues related to the perpetration of DFV. Key stakeholders—like frontline responders and the police—must recognise the signs of strangulation and understand how to engage both VICTIM-SURVIVORS and perpetrators in safe, trauma, gender, and violence informed conversations that explore such behaviours.

Recommendations

11. Implementation of the offence should only occur alongside training for relevant workforces:
    a. Refer to resources and training programs offered by the Australian Institute for Strangulation Prevention (Queensland) and the Training Institute on Strangulation Prevention (USA).
    b. Perpetrators who use non-fatal strangulation behaviour should be screened as high risk.
    c. Frontline workers including medical staff must be trained to screen for non-fatal strangulation and should use alternative light sources to document visible injuries.
    d. Police and prosecutors need specific training on the risks and seriousness of non-fatal strangulation behaviour.

Perpetrator treatment programs for offenders

Imprisonment or indeed any type of criminal sanction, cannot be relied upon to change the violent and abusive behaviour of DFV perpetrators, this change occurs in evidence-based treatment programs.[21] Behavioural change of DFV perpetrators remains a priority of No to Violence in particular, but a goal that the whole sector, community, and most importantly, existent and potential victim-survivors stand to benefit from. Further development, investment, and evaluation of intervention programs is required if the root causes of FV and NFS are to be addressed by the Tasmanian government.

[21] Day, A. (2019). Crime and punishment and rehabilitation: a smarter approach. [online] The Conversation. Available at: https://theconversation.com/crime-and-punishment-and-rehabilitation-a-smarter-approach-41960.

Recommendations

12. Perpetrators must be offered evidence-based treatment programs.
13. Provide funding for further development, implementation, and evaluation of perpetrator intervention programs so the root causes of DFV and NFS can be optimally addressed in Tasmania.

Increased funding for frontline services

While the implementation package requires specific funding, No to Violence emphasises the need for increased funding for frontline victim-survivors and perpetrator services in order to manage the increased demand that will result from the introduction of the new legislation.

Recommendation

14. Increased funding for frontline victim-survivor and perpetrator programs will be required in order to manage the increased demand that will result from the introduction of the new legislation

Awareness-building campaigns

No to Violence proposes the Tasmanian government develop a set of four public health/primary prevention campaigns which seek to address 1) the professionals most likely to come into contact with victim-survivors and perpetrators of NFS (e.g. Nurses); 2) girls and women at most risk of being victimised; 3) boys and men most at risk of perpetrating NFS; and 4) the general public. We believe this approach will enable the Tasmanian government to engage with key audiences.

No to Violence currently delivers online training to specialist and non-specialist workforces in recognising and responding to signs of DFV (including NFS). We are also experts in engaging perpetrators in difficult conversations exploring violence and abuse and are therefore well-placed to assist in helping develop messaging and campaign strategies, particularly for campaigns directed at professionals, and boys and men.

We know that victims under-report experiences of intimate partner violence, and where there are no visible signs of NFS, victim-survivors may be even less likely to report. Running a targeted campaign for women and girls about the seriousness of NFS, including that it is a reportable, punishable criminal offence regardless of whether it leaves visible injuries, is crucial in enabling current and potential victims to come forward. The campaign also needs to inform women and girls what to do if they have experienced NFS or are at risk of this.

There is systemic discounting of the experiences and voices of women who have experienced DFV. A community focused advocacy campaign will move to counteract this systemic disbelief as well as provide information about the serious nature of NFS and what to do if you are a perpetrator, victim-survivors or bystander of such behaviour.

A campaign targeting perpetrators or men at risk of perpetrating NFS needs to focus on the seriousness and criminality of this offence including the fact that it can be a precursor to homicide and highlight where men can go for help and advice.

Educating frontline responders and the DFV sector, girls and women, boys and men as well as the general community to increase awareness about the seriousness of NFS is an important part of the implementation package for this new legislation.

Recommendation

15. Awareness-building campaigns should be implemented alongside the new legislation: for the professionals most likely to come into contact with victim-survivors and perpetrators of non-fatal strangulation (e.g. nurses); girls and women at most risk of being victimised; boys and men most at risk of perpetrating non-fatal strangulation; and the general public.

New sub-subsection in s2A (Consent)

No to Violence commends the Tasmanian government on its effort to criminalise stealthing through adding the definition to section 2A, as an addition to the Criminal Code Act 1924's definition of consent. Criminalising stealthing not only provides an important form of redress to victim-survivors who have experienced this act, but it also legitimises and validates experiences of a form of sexual violence that is poorly understood, often minimised, and frequently underreported.

Background to stealthing in Australia

Prevalence and nature

While statistics on the prevalence of stealthing in Australia are limited, a 2018 study from a Melbourne clinic that surveyed 1189 women and 1063 men who have sex with men (MSM) over three months established that 32% of women (1 in 3) and 19% of MSM (1 in 5) surveyed had experienced at least once incident of stealthing.[22] A striking finding was that both male and female participants who had experienced stealthing were three times less likely to consider it to be sexual assault than participants who had not experienced it.[23] Additionally, only 1% of respondents who had experienced stealthing reported the incident to the police.[24]

Low incidences of reporting are partly attributable to the legal ambiguity surrounding stealthing.[25] Despite increasing media attention in Australia towards this issue since 2017, the States and Territories have been slow to adopt specific legislation that addresses the deliberate removal or breaking of a condom during consensual sex.[26] Although some argue that stealthing is technically already prosecutable under existing State laws, advocates for the criminalisation of stealthing argue that a specific offence is required to aid victim-survivors in their recovery and to hold perpetrators accountable. Additionally, a discrete offence for stealthing will help to ensure that the prosecution of this offence is not solely guided by courts' interpretations of existing, non-specific laws.[27]

In 2021, the ACT became the first Australian jurisdiction to outlaw stealthing.[28] The Crimes (Stealthing) Amendment Bill 2021 amends s 67 of the Crimes Act to explicitly state that consent is

[22] Latimer, R.L., Vodstrcil, L.A., Fairley, C.K., Cornelisse, V.J., Chow, E.P.F., Read, T.R.H. and Bradshaw, C.S. (2018). Non-consensual condom removal, reported by patients at a sexual health clinic in Melbourne, Australia. PLOS ONE, 13(12), p.e0209779.
[23] Ibid.
[24] Ibid.
[25] Chesser, B., David, N. and Zahra, A. (2021). Stealthing. In: Consent, Stealthing and Desire-Based Contracting in the Criminal Law. [online] Oxford: Routledge, pp.72–99. Available at: https://www.routledge.com/Consent-Stealthing-and-Desire-Based-Contracting-in-the-Criminal-Law/Chesser-David-Zahra/p/book/9780367710705 [Accessed 7 Feb. 2022].
[26] triple j, 2017. "Is this rape?" The legal grey-area around prosecuting "stealthing" in Australia. Available at: https://www.abc.net.au/triplej/programs/hack/stealthing-and-the-law/8489348.
[27] Ibid; Chesser et al. 2021.
[28] Christian, K. (2021). Consent law overhaul: ACT criminalises "stealthing" in Australian first. ABC News. 7 Oct. Available at: https://www.abc.net.au/news/2021-10-08/act-criminalises-stealthing-in-australia-first/100522564.

negated by an 'intentional fraudulent representation' about the use of a condom during sex.[29] As this legislation was only passed in October of last year, we are yet to witness the effectiveness of its implementation.

Impact of stealthing on victim-survivors

No to Violence supports the criminalisation of stealthing due to our recognition of its devastating impacts. Direct adverse consequences include the risk of unintended pregnancy and STIs, but victim-survivors also often experience severe psychological trauma, guilt and shame associated with the violation of their dignity and autonomy.[30] Importantly, these psychosocial consequences are strongly underpinned by the lack of recognition of stealthing as a legitimate form of sexual assault – both in legislation and within the public psyche.

Reproductive coercion

In a family violence context, stealthing is an adjacent behaviour to reproductive coercion; while both can involve the intentional misuse or sabotage of contraceptive devices, they are recognisably different forms of abuse. Reproductive coercion is broadly defined as any attempt to control a person's reproductive choices or interfere with their reproductive autonomy, such as forcing someone to become pregnant and/or sabotaging their contraception.[31] In contrast, stealthing focuses on a specific behaviour (i.e. the removal of a condom) where the underlying motivation is often sexual in nature rather than an attempt to control the reproductive choices of their partner.[32]

No to Violence notes that the criminalisation of stealthing provides a new avenue of redress for victim-survivors of reproductive coercion who specifically experience acts of coercive control centred around condom use. However, we also acknowledge that reproductive coercion is not the focus on this legislation, and nor should it be due to the level of nuance required in successfully addressing this form of abuse.

Criminalisation and perpetrator accountability

While stealthing is more likely to occur in short-term relationships or casual encounters and does not often coincide with patterns of intimate partner violence, its criminalisation is still an important step forward in holding men accountable for sexual violence. Stealthing is overwhelmingly perpetrated by cisgender men and reflects a level of entitlement that is reinforced by a lack of legal or social

[29] Chesser et al. 2021.
[30] Ibid.
[31] Miller, E., Decker, M.R., McCauley, H.L., Tancredi, D.J., Levenson, R.R., Waldman, J., Schoenwald, P. and Silverman, J.G. (2010). Pregnancy coercion, intimate partner violence and unintended pregnancy. Contraception, [online] 81(4), pp.316–322. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2896047/.
[32] In a recently published Australian qualitative study by Tarzia and colleagues (2020) that interviewed 14 women with lived experience of reproductive coercion, respondents identified that when stealthing did occur within the context of a relationship, the perpetrator's motivation was primarily a dislike of condoms rather than a goal to promote pregnancy. See Tarzia, L., Srinivasan, S., Marino, J. and Hegarty, K. (2020). Exploring the gray areas between "stealthing" and reproductive coercion and abuse. Women & Health, 60(10), pp.1174–1184.

repercussions for this behaviour. Criminalisation not only provides tangible consequences but also enforces societal condemnation of this act.

In concluding this section, No to Violence positions ourselves in support of the criminalisation of stealthing. The following sections outline our response to the proposed Tasmanian amendment, including suggestions for improvement, and guidance regarding its implementation.

Positives of the proposed amendment

Use of gender-neutral language

No to Violence applauds the use of gender-neutral language within the proposed definition. While we recognise that stealthing is mainly perpetrated by cisgender men against cisgender women or other men, we note that it is also possible for the non-penetrating partner to remove a condom without their partner's consent.[33] Furthermore, the decision to make this definition gender-neutral ensures this legislation adequately represents LGBTIQA+ victim-survivors, especially those who are transgender or non-binary and/or experience stealthing from a same sex/trans/nonbinary partner.

Recommendation

16. Retain the use of gender-neutral language within the proposed definition of stealthing, to ensure this definition remains applicable to LGBTIQA+ victim-survivors and/or perpetrators.

Adding stealthing to the definition of consent

Based on our consultations with experts in Australian criminal law we believe that the proposed approach to criminalising stealthing is sound. According to these experts, adding a clear and targeted definition of stealthing to existing legal definitions of consent makes it clear that any previous declaration of consent to sexual intercourse is vitiated through the removal or deliberate damaging of a condom. [34] However, we note that the introduction of a standalone offence to criminalise stealthing may provide improved protections and greater visibility of the offence for victim-survivors.

Dr Briana Chesser, who was consulted in the production of this submission, suggests that making stealthing a standalone offence may be more ideal. This is because the introduction of a separate statutory provision "appropriately separates stealthing from the existing offences [of rape and sexual assault] and avoids the confusion of adding to an already convoluted area of law".[35] The ACT legislation is an example of an approach that focuses only on the enacting of a standalone offence.

[33] Chesser, B. and Zahra, A. (2019). Stealthing: a criminal offence? Current Issues in Criminal Justice, 31(2), pp.217–235.
[34] Chesser et al., 2021.
[35] Chesser et al., 2021, p.99.

However, without changing the definition of consent, a standalone offence may cause victim-survivors to feel that their experience is less serious than other forms of sexual assault".[36]

While we endorse the approach the Tasmanian government has taken, we recommend considering the other option of introducing a standalone offence – following further consultation with criminal law experts and sexual violence researchers.

Recommendation

17. Consider implementing a standalone offence for stealthing to ensure victim-survivors of stealthing have greater access to justice and improved legal recognition of their experiences.

Specific reference to "condoms" rather than "contraceptive devices"

Finally, No to Violence also endorses the specific reference to condoms within the proposed amendment. While stealthing can be experienced or perpetrated regardless of a person's gender identity, sexual orientation or the nature of their sexual interaction, precise wording around the use of condoms is essential to prevent specific unintended consequences.

For example, Triple J Hack's 2017 exposé on stealthing reported that Hack listeners wanted to know if "lying about taking the pill" counted as a form of stealthing.[37] While lying about taking the pill is recognisably unethical, we feel it is a distinct issue to stealthing. Stealthing is recognisably grounded within patterns of power and control related to gender inequality and places a disproportionate burden of risk to the wellbeing and physical health of victims. In contrast, being deceptive about the use of the contraceptive pill may be viewed as a form of reproductive coercion where most physical impacts are borne by the perpetrator.

Unfortunately, expanding the definition to include any form of contraceptive protection risks incurring situations where people can potentially be prosecuted for rape due to missing or skipping a dose of their pill. This outcome would have cascading effects, such as additional pressure on the courts, and could possibly be weaponised against women (the primary users of oral contraceptives in Australia) as a form of punishment or control.

Recommendation

18. Retain the use of the word "condom" rather than using the more general phrasing of "contraceptive device" to avoid potential repercussions that would disproportionately impact users of oral contraceptives.

[36] Chesser et al., 2021.
[37] triple j, 2017.

Negatives of the proposed amendment

Use of the word "tampers"

In terms of further suggested changes to the Criminal Code Amendment Bill 2022, No to Violence recommends the removal or replacement of the word "tampers". To our knowledge, there is no legal definition of the word "tamper" included within either the existing Act, or the proposed amendments. This may make it difficult to enforce this legislation in instances of stealthing where a condom has been broken or otherwise damaged on purpose, such as what occurred in the case of *Assange v Swedish Prosecution Authority*.[38] We instead advocate that "tamper" is replaced with "purposely damages".

Recommendation

19. Replace the word "tamper" with "purposely damages" to ensure the enforceability of the amendment in circumstances where a condom has specifically been broken or otherwise damaged by the perpetrator to engage in stealthing.

Issue of intentionality

No to Violence would also like to alert the Tasmanian government to the inclusion of the word "intentionally" in section 2A. This wording may give defendants the additional ability to argue their decision to remove or not use a condom was unintentional (for example, saying the condom fell off). Consequently, complainants may face additional pressures to provide a greater standard of proof. This is particularly problematic when considering the low numbers of successful prosecutions of rape and sexual assault in Australia, and the risk of additional trauma to victim-survivors within court settings.

We note that making no reference to intentionality could give rise to issues of justice, such as instances where prosecutions are made in situations of genuine mistake or accident. However, we also note that guidance on intention and motive are clearly outlined in Chapter IV of the Criminal Codes Act 1924 (Tas) under section 13, while section 14A also outlines the circumstances regarding mistake to consent in certain sexual offences.

While No to Violence do not claim to be experts in criminal law proceedings, we still feel significant hesitation around the inclusion of word "intentionality" and the potential difficulties this may cause for victim-survivors seeking redress for their experiences of stealthing – especially because this issue was brought to our attention through our consultations with stealthing experts. We would like to

[38] In *Assange v Swedish Prosecution Authority,* Anne Ardin (formerly identified as 'Miss A') stated that Julian Assange engaged in" deliberately sabotaging his condom" during sexual intercourse, resulting in the condom ripping prior to ejaculation. While Assange was ultimately not prosecuted for this offence, and the statute of limitations on Ardin's allegations expired in 2015, this case is an important demonstration of how intentionally damaging a condom can constitute as a form of stealthing.

point out that in Dr Briana Chesser's chapter on stealthing and criminal law, she suggests the alternative wording of "without the express permission of the other party".[39] However, this wording is likely related to a greater argument for more consistent wording around consent provisions, which may go beyond the purposes of this amendment.

With recognition of our own limited knowledge of Australian criminal law and common law defences, we recommend the Tasmanian government engages in further consultations with lawyers and criminal law experts to determine whether the use of the word "intentionally" is required or necessary. This should include discussions of potential replacements that balance the workings of the law with the need to protect the interests of victim-survivors, who are already recognisably at a disadvantage within the prosecution of sexual offences.

Recommendation

20. Engage in further consultation with lawyers and criminal law experts on the inclusion of the word "intentionally", to explore whether the use of the term is necessary and/or possible replacements that may better protect the interests of victim-survivors.

Unintended consequences

No to Violence notes concerns raised by TasCoss and Women's Legal Services Tasmania regarding the need to pay close attention to the racialised and gender impacts of new legislation, especially regarding Aboriginal Tasmanians. We are aware that Aboriginal Tasmanians are over-represented within custodial settings in Tasmanian; a recent study from the Justice Reform Initiative suggests that the Aboriginal and Torres Strait Islander imprisonment rate in Tasmania is currently more than five times the non-Indigenous imprisonment rate.[40]

The criminalisation of stealthing is less likely to contribute to this issue due to the structural issues that often prevent the successful prosecution of sexual violence. However, we also recognise that Aboriginal men have historically received harsher punishment for sexual offences, and remain under close surveillance by State and Federal bodies due to misrepresentations of sexual violence within Aboriginal communities.[41] We are also aware from our own consultations with Aboriginal and Torres Strait Islander VICTIM-SURVIVORS that there is a reluctance to pursue legal redress for family violence

[39] Chesser 2021, p.97.
[40] Justice Reform Initiative. 2021. State of Incarceration: Tasmania's broken criminal justice system. Justice Reform Initiative, p.1. Available at: https://www.justicereforminitiative.org.au/resources#:~:text=State%20of%20Incarceration%3A%20Tasmania's%20Broken,to%20both%20disadvantage%20and%20offending.
[41] A specific example of this is the Howard Government's Northern Territory Intervention. This intervention aimed to address problems of child sex abuse in remote and regional Aboriginal communities but was implemented without any sustained consultations with Aboriginal organisations or people living within the affected areas. While child sex is distinct to other forms of sexual violence, this decision was arguably influenced by a long, racially motivated that associated Aboriginality with sexual deviance.

and sexual offences, due to the damaging effect of over-incarceration, over-policing, and overt/covert racism in law enforcement and judicial systems on First Nations communities.

Acknowledging this, we also want to acknowledge the disproportionate impact of stealthing on women and other groups who experienced intersecting forms of marginalisation. In our consultations with frontline sexual violence organisations in Tasmania, we have heard anecdotes of stealthing predominantly impacting young women in otherwise consensual relationships. Other consultations with Tasmanian peak bodies indicated that stealthing is often perpetrated against women on seasonal work visas, who experienced increased disadvantage due to language barriers and/or understanding of Tasmanian laws, systems, and services. Finally, research from Victoria has also identified that sex workers experience disproportionately high incidences of stealthing and are also more likely to be victim-survivors of other sexual offences such as rape and sexual assault.[42]

Accordingly, there is a significant tension between the need to mitigate the adverse consequences of criminalisation for Aboriginal and other marginalised communities, and the simultaneous need for clear and enforceable legislation that protects the interests of victim-survivors. In response, No to Violence would like to make clear that while we generally support the criminalisation of stealthing and the accountability this would enforce, such legislation must be implemented with extreme care.

To provide the best possible outcomes for Aboriginal communities in Tasmania and victim-survivors impacted by stealthing, No to Violence recommends that the implementation of this amendment involves significant, ongoing consultation with Aboriginal organisations, victim-survivors, and other stakeholders. We also recommend increased funding is provided to support Aboriginal community-controlled organisations in the provision of community education and support services to Aboriginal Tasmanians impacted by stealthing and/or its criminalisation.

Finally, we recommend that funding is directed towards Tasmanian Aboriginal specialist legal services. It is vitally important that Aboriginal victim-survivors and perpetrators are provided with tailored legal advice that increases their understanding of judicial processes and their access to individual advocacy and support. We feel that by taking these steps, the Tasmanian government will be better positioned to implement this amendment in ways that do not disproportionately harm Aboriginal and Torres Strait Islander communities.

[42] Latimer et al. 2020.

Recommendations

21. Undertake extensive and ongoing consultation with Aboriginal organisations, victim-survivors and other stakeholders to ensure the amendment is implemented in ways that minimise potential adverse impacts on Aboriginal and Torres Strait Islander communities.
22. Increase funding of Aboriginal community-controlled organisations to provide community education and specific supports for Aboriginal Tasmanians impacted by stealthing and/or its criminalisation.
23. Direct increased and sustainable fundings towards Tasmanian Aboriginal specialist services, to ensure Aboriginal victim-survivors and perpetrators are provided with tailored legal advice that:
    a. Increases their understanding of judicial processes.
    b. Increases their access to individual advocacy and support

Guidance regarding implementation

No to Violence strongly advises the Tasmanian government that stealthing, as a particularly insidious and covert form of sexual violence, should not be addressed by legislation alone. We would ultimately like to see a careful and considered plan for the implementation of this amendment, informed by in-depth consultations with experts, stakeholders, frontline services, people with lived experience, and representatives of specific marginalised groups impacted by said legislation (e.g. Aboriginal and Torres Strait Islander peoples, migrant and refugee communities, LGBTIQA+ communities, young people). We recommend particular focus on the following areas: specialised training; public health responses; additional funding for sexual violence services; community awareness campaigns; and primary prevention efforts aimed at young people and supported by the wider community.

Recommendation:

24. Ensure the implementation of this stealthing legislation is informed by in-depth consultations with experts, stakeholders, frontline services, people with lived experience, and representatives of specific marginalised groups impacted by said legislation (e.g. Aboriginal and Torres Strait Islander peoples, migrant and refugee communities, LGBTIQA+ communities, young people).

Specialised training

Specialised training for police, lawyers and members of the judiciary is vital to ensure stealthing is responded to with the necessary gravitas. Approximately 85% of sexual assaults never come to the attention of the Australian criminal justice system, with a smaller number of cases proceeding to a

trial.[43] Out of the few cases that come before the courts, an even smaller proportion result in a successful conviction.[44] Overwhelming, this low rate of convictions reflects:

- a belief in sexual assault myths and stereotypes (e.g. that true rape is always violent)
- an innate mistrust of victim-survivor testimonies
- difficulties in providing sufficient evidence due to the nature of sexual assault and rape, and how it differs to other forms of violent crime

All these issues will be magnified when attempting to prosecute stealthing, as this form of abuse often occurs in private settings with no witnesses, with little to no physical violence or tangible evidence beyond victim-survivor testimony.

We recommend that all workers and bodies involved in the enforcement of this amendment receive specialised training on rape and sexual assault. This training should include the deconstruction of common rape and sexual assault myths, a comprehensive and nuanced explanation of what stealthing is and appropriate responses, and trauma-informed informed responses to witness testimony.

Comprehensive training is especially important for police as they are the first to interact with victim-survivors of sexual assault and rape within the justice system – and the quality of their response makes a significant impact on whether a victim-survivor continues to pursue justice.

Recommendation

25. Ensure that workers and bodies involved in the enforcement of this amendment, especially within law enforcement and the judiciary, receive specialised training on rape and sexual assault, including what stealthing is and appropriate responses, and trauma-informed informed responses to witness testimony.

Public health responses

No to Violence would like to endorse TasCOSS' view that the criminalisation of stealthing must be accompanied by an appropriate public health response. As noted previously, stealthing is an offence that embodies notable risks to a person's health and overall wellbeing (e.g. unintended pregnancy, STIs, mental distress). We similarly recommend that health professionals responding to disclosures of stealthing are trained in making referrals to the appropriate services, to ensure that all health and support needs of victim-survivors are sufficiently met. We also support recommendations made for medical staff to have greater awareness of family and sexual violence support services so they can respond appropriately and provide non-medical referrals as needed.

[43] Christian, K. (2021). Consent law overhaul: ACT criminalises "stealthing" in Australian first. ABC News. [online] 7 Oct. Available at: https://www.abc.net.au/news/2021-10-08/act-criminalises-stealthing-in-australia-first/100522564.
[44] Ibid.

No to Violence is aware that a pilot of the Health Justice Partnership is soon to be delivered in Tasmania by Women's Legal Service at a hospital in Launceston. No to Violence supports the further development and funding of similar initiatives, especially as we are aware such approaches are particularly effective for women facing multiple intersecting forms of disadvantage.[45]

Recommendations

26. Ensure health and medical professionals receive training that supports their ability to:
    a. Refer victim-survivors to appropriate services e.g. sexual health, mental health.
    b. Increases their knowledge and awareness of family and sexual violence services so non-medical referrals are provided as needed.
27. Fund and develop similar initiatives to the Health Justice Partnership to improve the health and legal outcomes of people experiencing stealthing who come from a background of intersecting disadvantage and/or other complexities.

Additional funding for sexual violence services

If this amendment is passed, it is likely that frontline sexual assault services in Tasmania will receive a noticeable increase in demand. This should be framed as a positive development, as we know stealthing is currently incredibly underreported and that criminalisation plays an important role in legitimising the experiences of victim-survivors. However, services must be adequately and sustainably funded to cope with a potential influx of people seeking support.

Currently, No to Violence is aware that there is one major sexual assault phone counselling service in Tasmania – the Sexual Assault Support Service (SASS), which provides a 24/7 crisis response and support service to survivors of recent sexual assault. We note the Tasmanian government recently funded this service to service all areas of the state, which is a welcome development. We further recommend funding that would allow the further expansion of this service, such as funding for more part-time and full-time staff.

The not-for-profit, community-based sexual assault service Laurel House (which services North, North-East and North-West Tasmania) should similarly receive funding to expand existing services. This is particularly important as Laurel House offers free counselling, training and education aimed at victim-survivor recovery that goes beyond a crisis response.

Most importantly, all existing sexual assault services should be offered resourcing for additional professional development and training aimed at improving their understanding of and responses to

[45] Kalapac, V. (2016). inLanguage, inCulture, inTouch: Integrated model of support for CaLD women experiencing family violence. Final Evaluation Report. Jean Hailes for Women's Health, Melbourne, Australia. Available at: https://intouch.org.au/wp-content/uploads/2018/11/inCulture-inTouch-evaluation-report-Feb-2017.pdf

stealthing. This should include modules aimed at providing a thorough understanding of the amendment and its legal implications.

Recommendations

28. Increase funding to existing sexual violence services directed at providing additional staff and the expansion of services to help support potential increased demand caused by criminalising stealthing.
29. Ensure all frontline sexual assault services are offered resourcing for additional professional development and training aimed at improving their understanding of and responses to stealthing

Community awareness campaigns

While stealthing has recently gained media attention, public awareness of what stealthing is and why it is a serious issue is still limited. This is reflected in the previously mentioned University of Melbourne study, where both male and female participants who had experienced stealthing were three times less likely to consider it to be sexual assault than participants who had not experienced it.[46] Greater public awareness of stealthing would not only help validate victim-survivors' experiences. It would also help prevent victim-blaming and minimisation from other community members. As many sexual assault survivors first disclose to people in their social networks before reporting to the police, this is an important connection to make.

No to Violence urges the Tasmanian government to consider implementing public awareness campaigns on stealthing in accompaniment to this amendment. These campaigns should not only raise awareness of what stealthing is, but also how it violates a person's consent. In addition, we support TasCOSS' recommendation that these campaigns must be accessible to all Tasmanians, including community members with limited digital literacy and/or access to technology. We also advise, in line with TasCOSS' suggestions, that versions of campaign materials are made available in Simple English and languages other than English, to ensure they are accessible for people with a limited understanding of English and people living with cognitive impairment.

Recommendations

30. Implement public awareness campaigns that raise awareness of what stealthing is and how it violates a person's consent.
    a. Ensure versions of that versions of campaign materials are made available in Simple English and languages other than English, to ensure they are accessible for people with a limited understanding of English and people living with cognitive impairment.

[46] Latimer et al., 2018.

Primary prevention efforts

Investing in effective sex and relationship education

Finally, the proposed amendment to the Tasmanian Criminal Code to criminalise stealthing should also consider the role of primary prevention in their implementation plan. Comprehensive consent-based sex and relationship education plays a vital role in the prevention of sexual violence.[47] We urge the Tasmanian government to ensure an explanation of stealthing and how it violates consent is added to existing sex education curriculums.

As noted in our discussions with Tasmanian organisations, there are already number of successful primary prevention education programs offered within Tasmania's communities. We are aware that SASS run several programs targeted at school-aged children (primary and secondary) aimed at helping young people identify harmful and address behaviours and attitudes whilst also promoting healthy, respectful, and ethical sexual decision-making. Laurel House and Women's Legal Service Tasmania also jointly delivered a program called *Consent – Sex and Respect,* which is delivered over six sessions by experienced youth workers and specialist sexual violence counsellors. This program offers the opportunity for students to engage with in-depth discussions of consent, sex, and the law, and to build the capacity of school staff to broach these topics within the classroom.

Importantly, we would like to highlight that Laurel House and Women's Legal Service Tasmania also offer a program called *Consent, Sex and the Law* aimed at parents, carers, and teachers. This program is delivered in a single session by a Senior Solicitor for Women's Legal and a specialist family violence counsellor, encourages participants to consider the gendered drivers of sexual violence, the signs of unhealthy relationships, the specifics of the law, and how to access support. Importantly, this program can be adjusted for delivery to businesses and other community groups.

No to Violence applauds this initiative as we are all too aware that young people face numerous difficulties in disclosing sexual violence, especially to their schools or families. Adolescents often first disclose their experiences of sexual violence victimisation to a friend, family member or other trusted adult figure, and the response they receive greatly impacts whether they disclose to anyone else or seek legal redress.[48] We feel this targeted approach to community education is not only useful in increasingly public awareness, but also increases the likelihood that young victim-survivors will receive the necessary support and care from their families and communities.

With this in mind, we recommend the Tasmanian government consider increasing their support of these vital services. In line with TasCOSS, No to Violence believes sustainable and ongoing funding for the continuation and expansion of these initiatives is a vital underpinning of the successful

[47] Rollston, R., 2020. MD (2020). Comprehensive Sex Education as Violence Prevention. [online] info.primarycare.hms.harvard.edu. Available at: http://info.primarycare.hms.harvard.edu/review/sexual-education-violence-prevention.

[48] Hanson, R.F., Kievit, L.W., Saunders, B.E., Smith, D.W., Kilpatrick, D.G., Resnick, H.S. and Ruggiero, K.J. (2003). Correlates of Adolescent Reports of Sexual Assault: Findings from the National Survey of Adolescents. Child Maltreatment, 8(4), pp.261–272.

implementation of this legislation. We further recommend that funding is directed towards supporting the monitoring and evaluation of these programs, to help build a stronger evidence base around the primary prevention of sexual violence in Australian settings.

Recommendations

31. Increase funding towards existing primary prevention services aimed at children, young people, and their community supports, to support their understanding of sexual violence and relationships.
32. Direct funding towards the monitoring and evaluation of existing primary prevention efforts, to support the goal of building a stronger evidence base around the primary prevention of sexual violence in Australian settings.

Consent education

We encourage a review of existing sex education programs to determine whether they are effectively teaching young people about consent. Not all consent education is created equally, and some mainstream definitions of consent (e.g. affirmative consent) are less able to consider the structural, social and contextual factors that impact a person's ability to say "yes" or "no".[49]

No to Violence suggests ensuring that all sex education programs operate from a central definition of enthusiastic consent. Enthusiastic consent is defined by the Rape, Abuse & Incest National Network (RAINN) as "looking for the presence of a 'yes' rather than the absence of a 'no'".[50]

We believe that this definition better captures the nuances of consent and the influences of less visible pressures on non-consensual sexual activity, such as differences in power or status. As stealthing often occurs when sex has already been consented to, it is important to ensure young people understand that saying "yes" to sex with a condom is completely different to saying "yes" to sex without a condom.

Recommendations

33. Launch a review of existing sex education programs to determine whether they are effectively teaching young people about consent.
34. Ensure that existing and future sex education aimed at young people operate from a central definition of enthusiastic consent.

[49] Fileborn, B. and Hindes, S. (2021). How to get consent for sex (and no, it doesn't have to spoil the mood). [online] The Conversation. Available at: https://theconversation.com/how-to-get-consent-for-sex-and-no-it-doesnt-have-to-spoil-the-mood-172139 [Accessed 7 Feb. 2022].
[50] RAINN, n.d. What Consent Looks Like. [online] Available at: https://www.rainn.org/articles/what-is-consent#:~:text=Simply%20put%2C%20enthusiastic%20consent%20means%20looking%20for%20the.