

COMMUNITY LEGAL CENTRES TASMANIA

18 February 2022

Department of Justice
Office of the Secretary
GPO Box 825
Hobart TAS 7001
attn: Brooke Craven

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

Dear Brooke,

Re: *Criminal Code Amendment Bill 2022*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to respond to the *Criminal Code Amendment Bill 2022* ('the Bill').¹ We support the Government's intent to introduce a new standalone criminal offence of strangulation and to amend the definition of 'consent' in relation to stealthing.

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

Family Violence

Awareness of family and domestic violence has increased significantly over the last few decades, and was heightened following the announcement of Rosie Batty as Australian of the Year in 2015. Nevertheless, rates of family and domestic violence remain high. According to the most recent *Australian Bureau of Statistics* data, there were 145 victims of family and domestic violence related homicide recorded in 2020, an increase of 12 per cent from the previous year. Nationally, almost two in five homicide and related offences (37 per cent or 145 victims) recorded by state and territory police were family and domestic violence related.² As well, almost half of all assaults (46.9 per cent) in Tasmania in 2020 were family and domestic violence related, a 1 per cent increase on 2019.³

¹ CLC Tas would like to acknowledge those persons and organisations who gave freely of their time in assisting with our submission.

² Australian Bureau of Statistics, 'Recorded Crime – Victims'. As found at <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2020#victims-of-family-and-domestic-violence-related-offences> (Accessed 18 February 2022).

³ Australian Bureau of Statistics, 'Recorded Crime – Victims'.

Family Violence and Transitional Housing

We are also concerned at the lack of transitional housing for survivors wanting to escape abusive relationships. Family and domestic violence is the most common reason provided by people seeking support from specialist homelessness services in Australia.⁴ The current lack of transitional housing means that some survivors of domestic and family violence feel that they have no choice but to remain in violent and abusive relationships. As the following data demonstrates, the number of people seeking housing because of family and domestic violence in Tasmania remained relatively stable between 2017/18 – 2019/20 but jumped by a significant 53 per cent in 2020/21:⁵

Family violence indicated as a reason for seeking assistance

Family Violence Reason	2017-18	2018-19	2019-20	2020-21
Yes	1 590	1 553	1 560	2 391
No	4 918	5 070	4 884	4 176
Total	6 508	6 623	6 444	6 567

The data also demonstrates that Tasmanian survivors of family and domestic violence who are homeless when they request assistance with housing has increased by 8 per cent over the last four years:

Housing status (first reported) - family violence clients

Homelessness Status	2017-18	2018-19	2019-20	2020-21
Primary homeless: <ul style="list-style-type: none"> • No shelter or improvised/inadequate dwelling • Other homeless 	147	152	159	159
Other	1 443	1 401	1 401	1 389
Total	1 590	1 553	1 560	1 548

Most worryingly, survivors of family and domestic violence who remain homeless after requesting assistance has risen from one third (34 per cent) to more than half (51 per cent). And, the number of survivors who are housed in either a social housing or private rental property has dropped by 41 per cent.

Housing status (last reported) - family violence clients

Homelessness Status	2017-18	2018-19	2019-20	2019-20
Primary homeless: <ul style="list-style-type: none"> • No shelter or improvised/inadequate dwelling 	50	83	78	82

⁴ Australian Institute of Health and Welfare, *Specialist Homelessness Services Annual Report 2019-20*. As found at <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-annual-report/contents/summary> (Accessed 18 February 2022).

⁵ Correspondence received by Tenants' Union of Tasmania from Kylie Fidanza, Principal Performance Advisor with Communities Tasmania on 5 July 2021 and Reece Munnings Acting Lead Housing Analyst with Communities Tasmania on 12 January 2022.

• Other homeless				
Secure accommodation: • Public or community housing • Private or other housing	1 178	725	744	691
Other	362	745	738	775
Total	1 590	1 553	1 560	1 548

It is imperative that a whole of Government approach is taken to addressing family and domestic violence including investing in transitional housing and community education as well as legislative reform.

Non-fatal strangulation – The Facts

International research has found that non-fatal strangulation is a relatively common form of abuse among women who experience intimate partner violence with studies finding that around 10 per cent of women who experience intimate partner violence have also experienced non-fatal strangulation.⁶ For example, in a study of 656 protection order applications submitted to a Queensland court between 2008-10 the authors found that 12 per cent of women who applied for a protection order alleged an incident of non-fatal strangulation in their application.⁷

Non-fatal strangulation is associated with many forms of non-fatal injury including difficulty swallowing, bruising, miscarriage and voice changes and in more serious cases can cause oxygen deficiency which may lead to brain injury.⁸

The research demonstrates the inherent danger of strangulation and its potential for significant harm. Strangulation may be fatal, causing unconsciousness within seconds and death within minutes. Tragically, survivors of non-fatal strangulation are over seven times more likely to be a murder victim or victim of serious injury in the future⁹ with the Australian Institute of Criminology recently reporting that that around 9 per cent of family homicide deaths of women in Australia are caused by strangulation and or suffocation.¹⁰

⁶ Susan Sorensen, Manisha Joshi and Elizabeth Sivitz, A Systemic Review of the Epidemiology of Nonfatal Strangulation, a Human Rights and Health Concern (2014) 104(11) *American Journal of Public Health* (2014) at 57.

⁷ Heather Douglas and Robin Fitzgerald, Strangulation, Domestic Violence and the Legal Response (2014) 36(2) *Sydney Law Review* 231 at 246.

⁸ See, for example, Sentencing Advisory Council, *Sentencing for non-fatal strangulation* (Research Paper No. 5) (May 2021) at 6-9. As found at https://www.sentencingcouncil.tas.gov.au/data/assets/pdf_file/0016/613411/Interim-accessible-version-for-web-site-Sentencing-for-Non-Fatal-Strangulation-paper.pdf (Accessed 18 February 2022).

⁹ Nancy Glass, Kathryn Laughon, Jacquelyn Campbell, Carolyn Block, Ginger Hanson, Phyllis Sharps and Ellen Taliaferro, Non-fatal strangulation is an important risk factor for homicide of Women (2008) 35(3) *Journal of Emergency Medicine* 329 at 339-340.

¹⁰ Australian Institute of Criminology, *Homicide in Australia 2018-19* (Statistical Report 34: 2021) at 14.

Non-fatal strangulation and the law

In the Sentencing Advisory Council's recently released research paper *Sentencing for non-fatal strangulation* there were 77 cases identified between 2010-2020 where offenders were sentenced in the Supreme Court for acts of non-fatal strangulation.¹¹

The Sentencing Advisory Council report ('the SAC report') found that assault was the most commonly charged offence in cases of non-fatal strangulation, with 66 per cent of all cases and 81 per cent in family violence cases.¹² Less common charges included aggravated assault, assault on a pregnant woman and persistent family violence.¹³

The SAC report also found that for all counts of assault involving non-fatal strangulation, 94 per cent received a custodial sentence comprised of either imprisonment or a partly or fully suspended sentence.¹⁴ And, for all counts of assault that were committed against an intimate partner, 93 per cent received a custodial sentence.¹⁵

As the SAC report noted, there is clear recognition by those charged with prosecuting non-fatal strangulation and by the courts in Tasmania of the seriousness of non-fatal strangulation, particularly in the context of family violence. The Director of Public Prosecutions has guidelines noting that non-fatal strangulation is "grave criminal conduct" whilst Tasmania's Supreme Court has imposed heavier sentences for assault involving non-fatal strangulation with more sentences of imprisonment imposed (47.3 per cent compared to 37.6 per cent) and the median sentence of imprisonment imposed having more than doubled (24 months compared to 10 months).¹⁶

Nevertheless, it is important to note the limitations of the Sentencing Advisory Council research, including that the research was limited to cases in the Supreme Court where only the most serious, harmful and well-evidenced cases are finalised. Most acts of non-fatal strangulation occur behind closed doors and are not reported because the victim is frightened about the consequences of reporting or does not believe that the conduct is serious enough. As well, even where the conduct is reported, recognition by Tasmania Police personnel continues to be "uneven".¹⁷ Finally, prosecution may not take place where the complainant seeks to withdraw their complaint or where the prospects of a successful prosecution are low.

Over time, a standalone offence of non-fatal strangulation is likely to increase the number of survivors reporting the conduct and result in a more responsive approach from the police and prosecution. A new standalone offence will also ensure that there is a more accurate record of non-fatal strangulation in the community, will assist with community education and will also send a strong statement about the seriousness of non-fatal

¹¹ Sentencing Advisory Council, *Sentencing for non-fatal strangulation* (Research Paper No. 5) (May 2021) at 12.

¹² *Ibid* at 75.

¹³ *Ibid*.

¹⁴ *Ibid* at 76.

¹⁵ *Ibid*.

¹⁶ *Ibid*.

¹⁷ *Ibid* at 5.

strangulation. For these reasons, we support the introduction of a standalone offence of non-fatal strangulation.

Stealthing


We also support the Bill's intention to amend the definition of 'consent' in relation to stealthing. The act of removing a condom during sexual intercourse without consent should be clearly identified as a sexual offence, particularly as it can result in physical and mental harm for survivors.

In the recent New Zealand decision of *R v Campos*¹⁸ the District Court of Wellington found that there were a number of aggravating factors applicable to stealthing, including premeditation, the risk of pregnancy or contracting a sexually transmitted disease and psychological harm.¹⁹

We strongly believe that specific recognition of 'stealthing' will better educate the public, discourage would-be offenders and over time encourage complaints and prosecutions.

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

Yours faithfully,



Benedict Bartl
Policy Officer

Community Legal Centres Tasmania

¹⁸ *R v Campos* [2021] NZDC 7422. The judgment is available at https://www.districtcourts.govt.nz/assets/secure/2021-05-25/bf501081a3/2021-NZDC-7422_R-v-Campos.pdf (Accessed 15 February 2022).

¹⁹ *R v Campos* [2021] NZDC 7422 at paras. [13]-[16].