

TASMANIA
LAW REFORM
INSTITUTE

Submission Template

Consensual Assault

This Issues Paper considers the law on consensual assault in Tasmania. It traces the historical development of the law from its common law roots through to its current manifestation in s 182(4) of the *Criminal Code*.

The Issues Paper contends that some aspects of s 182(4) lack clarity and do not reflect current concerns about when the law might appropriately negate consent to assault. The Issues Paper also expresses concern that the *Code* provision reflects an outmoded view of when consent should or should not operate as a defence to assault and leaves those who are particularly vulnerable to violence in the home outside the protection of the law.

The TLRI is seeking your feedback on the desirability of, and options for, reforming the law on consensual assault.

You can answer any or all of the questions and provide as little or as much information as you wish.

The Template can be filled in electronically and sent by email or printed out and filled in manually and posted.

- The form is designed to be completed electronically by entering responses. The space provided for your answer will expand (if necessary) as you type. You are invited to include as much or as little information as you choose.
- Alternatively, you may print out the form and either fill it in manually or use a separate answer sheet (if you use a separate answer sheet, please ensure that you clearly number your answers to correspond with the questions in the Issues Paper). Again, you are invited to include as much or as little information as you choose.

After you have completed your submission please either email or post the document to the Institute:

Email: law.reform@utas.edu.au

Post: Tasmania Law Reform Institute

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Publication of Submissions

The Institute uses any submissions received to inform its research. Submissions may be referred to or quoted from in a final report which will be published on the Institute's website. However, if you do not wish your response to be referred to or identified, the Institute will respect that wish.

Therefore, when making a submission to the Institute, please tick the applicable box to identify how you would like it to be treated based on the following categories:

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Confidential submission – the Institute will not refer to or quote directly from my submission in any report or publication. Confidential submissions will only be used to inform the Institute generally in its deliberations of the particular issue under investigation.

Question 1:

Is there a need to amend s 182(4) of the *Criminal Code*?

Question 2:

- (a) Should the *Code* be more prescriptive about the type of violence that cannot be consented to?

- (b) Should an upper limit of harm be set beyond which consent is immaterial? If so, where should that limit be set? Grievous bodily harm? Serious bodily harm? Bodily harm that is not minor? Some other level of harm?

- (c) Should there be some circumstances where consent is immaterial, regardless of the harm actually caused? If so, what circumstances should be included? Assault involving a weapon? Violence in the presence of children? Any other circumstances?

Question 3:

Should s 182(4) be repealed and an additional vitiating circumstance inserted in s 2A of the *Code* to provide that ‘a person does not freely agree to an act if the person agrees or submits because of emotional manipulation by a spouse or partner as defined in the *Family Violence Act 2004*’?

Question 4:

- (a) Should s 182(4) be amended to remove the requirements that the assault be ‘otherwise unlawful’, ‘injurious to the public’ and ‘a breach of the peace’? Should those requirements be replaced with the requirement that the prosecution be required to establish that the activity entails positive social harm? If some other requirement should replace the current requirements in s 182(4), what should that be?
- (b) Should only some, and if so, which of the requirements in s 182(4) be removed? If ‘yes’, what, if anything, should those requirements be replaced with?

