Media Release
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When should the law criminalise consensual assaults?

The Tasmania Law Reform Institute (TLRI) is seeking submissions on its latest Issues Paper, *Consensual Assault*.

The paper considers the circumstances when a person can consent to being assaulted.

As a rule, cases of assault involve a non-consenting victim.

However, on occasion people consent to assault. For example, people may resort to a fist fight to resolve a disagreement.

“Such cases pose difficulties for the criminal justice system and for society,” report author Dr Helen Cockburn said.

“Normally consent is a defence to assault.

“However, in some circumstances the law currently does not permit people to consent to being assaulted.

“The difficulty for those who make our laws is to determine when assaults should be unlawful regardless of consent.

“Such determinations have proved no easy task.”

The Issues Paper examines the current law on consensual assault in Tasmania.

It has been prepared in response to concerns that some aspects of the law relating to consensual assaults are unclear, and do not reflect contemporary views about when the law should criminalise consensual assaults.

In particular, it suggests that the law does not respond adequately to modern concerns about violence in the home.
“This means that it may leave those who are particularly vulnerable to family violence without adequate protection from the law,” Dr Cockburn said.

“Further, the Issues Paper notes that the current law presents considerable difficulties for judges and juries, because it utilizes outdated technical terms and concepts.

“This makes it difficult for judges to direct juries on when consent is not a defence to assault.”

The Institute is seeking public responses to five approaches to reforming the law:

- Make no change to the law;
- Allow consent to be a defence to all assaults;
- Impose limits on the level of actual or likely physical injury people can consent to;
- Create a presumption that consensual assaults are lawful unless the prosecution proves that positive harm has been caused;
- Amend Tasmanian family violence laws to make violence perpetrated in the presence or hearing of children a family violence offence.


Responses close on 7 September, 2017.

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