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TASMANIA

Tuesday 22 May 2018

Current consensual assault laws leave most vulnerable at risk: report

Tasmania's current laws governing consent to violence are outdated and do not adequately protect those most at risk to family violence, new research shows.

The Tasmania Law Reform Institute (TLRI) today released its recommendations about the circumstances when a person can consent to being assaulted in the report *Consensual Assault*.

Updating the archaic language in the State's Criminal Code would help eliminate ambiguity about consent to violence in situations of family violence, according to report author Dylan Richards.

"The idea that a person might consent to an assault seems unusual, but normally consent is a defence to assault. The example of contact sports shows why this is so," Mr Richards said.

"However, consensual violence cases pose difficulties for the criminal justice system and society.

"There are limits on the circumstances when consent can be a defence to assault.

"These are set down in section 182(4) of the Tasmanian Criminal Code.

"Unfortunately, that section is a mixture of archaic language and outdated thinking about permissible violence.

"In particular, it does not address the problem of violence in the home.

"This means that it may leave those who are particularly vulnerable to family violence without adequate protection."

Among the report's five recommendations is the introduction of a new test for where consent will be valid for cases of assault, which better accounts for violence inflicted in the home or in the presence of children.

Mr Richards said when the State's current law was developed in the 19th century, the main concern was preventing public disturbances of the peace.

"There was little concern about violence inflicted in the privacy of people's homes," he said.

As a result, section 182(4) does not deal with violence inflicted in private.

"This is an obvious anomaly," Mr Richards said.

"Nowadays, there is considerable concern about domestic and family violence.

"Additionally, its impact upon children has increasingly been recognised as a significant social ill."

Mr Richards said the current law is unclear and presents considerable difficulties for judges and juries.

"The archaic language used in section 182(4) makes it difficult for judges to direct juries on when consent is not a defence to assault," he said.

"It also means that juries have to make decisions based on 19th-century concepts for which there is no real modern equivalent."

The report was prepared following a request from the former State Attorney-General, the late Vanessa Goodwin, that the TLRI investigate the issues surrounding consensual assault in Tasmania.

A copy of the report and its recommendations can be found at <https://tinyurl.com/ya3nkbxw>

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