

FACT SHEET

Criminal Code Amendment Bill 2022

The Criminal Code Amendment Bill 2022 (the Bill) amends the definition of consent in section 2A of the *Criminal Code Act 1924* to make it plain that there is no free agreement to sexual intercourse in the event of certain conduct regarding condoms (colloquially known as 'stealthing') and creates a new offence of 'Strangulation, &c.' as well as related provisions regarding alternative convictions and arrest power for this new offence.

The Bill provides:

- That in defining consent, and without limiting the existing provision regarding consent in section 2A(2) of the *Criminal Code Act 1924*, there is no free agreement to an act of sexual intercourse in the stated circumstances. That is, a person does not freely agree to an act of sexual intercourse with another person if:
 - the person says or does anything to communicate to the other person that a condom must be used for that sexual intercourse; and
 - the other person, intentionally, before or during the sexual intercourse, does not use a condom or tampers with or removes the condom.
- That a new offence of 'Strangulation, &c.' is created. A person who intentionally and unlawfully chokes, suffocates or strangles another person is guilty of a crime.
- The element of intention makes the strangulation offence one of specific intent. The prosecution must prove that the defendant intended to cause the choking, suffocation or strangulation. Those actions are not defined in the legislation, so the words will have their ordinary meanings.
- The crime must be prosecuted on indictment and carries a maximum penalty of 21 years' imprisonment.
- A person indicted on certain other offences but found not guilty by a jury of those offences may instead be convicted of strangulation if the offence of strangulation is established by the evidence. Those offences to which strangulation is an alternative are:
 - attempting to commit murder (the Bill makes both strangulation and an unlawful act intended to cause bodily harm alternatives to attempted murder);
 - committing an unlawful act intended to cause bodily harm;
 - wounding or causing grievous bodily harm; and
 - persistent family violence.
- Common assault under section 184 of the *Criminal Code Act 1924* is made an alternative to the strangulation offence.

- The strangulation offence is added to Appendix A (Crimes for which offender may be arrested without warrant). Appendix A lists the offences, including violent offences, for which arrest without warrant by a police officer is authorised under section 27 of the Code. Section 27 also provides there is a duty to arrest a person found committing crimes in Appendix A.

The Bill is to commence on proclamation.