

23 March 2016

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

To Whom It May Concern:

**RE: Inquiry into the need for a nationally-consistent approach to alcohol-fuelled violence**

In reference to **a(i)** *the current status of state and territory laws relating to bail requirements and penalties surrounding alcohol-related violence*

**Summary of Submission**

This submission considers the impact of ‘one punch laws’ enacted in New South Wales (assault causing death),<sup>1</sup> Queensland (unlawful striking causing death),<sup>2</sup> Western Australia (unlawful assault causing death),<sup>3</sup> the Northern Territory (violent act causing death),<sup>4</sup> and Victoria (single punch or strike is a dangerous act for the purposes of establishing the offence of manslaughter).<sup>5</sup> These legislative responses to addressing one-punch deaths are inadequate. The ‘one punch laws’ have little impact on the length of sentences, and have limited impact in deterring alcohol-fuelled violence. Approaches to addressing alcohol-fuelled violence that are grounded in sociological understandings of violence are likely to be more effective and should inform the development of a nationally-consistent approach to alcohol-fuelled violence.

**A) Sentencing Impact of ‘One Punch Laws’**

Both legislative and case analysis reveals there is little impact on sentencing made by the introduction of specific ‘one punch laws’. The sentencing provisions of ‘one punch laws’ do not impose longer sentences than existing manslaughter provisions. Whilst some provide for the imposition of minimum sentences, they are not ensured.

*Legislative Analysis*

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<sup>1</sup> *Crimes Act 1900* (NSW) ss 25A, 25B.

<sup>2</sup> *Criminal Code Act 1899* (Qld) s 314A.

<sup>3</sup> *Criminal Code Act Compilation Act 1913* (WA) s 281.

<sup>4</sup> *Criminal Code Act 1983* (NT) s 161A.

<sup>5</sup> *Crimes Act 1958* (Vic) s 4A.

(a) WA

There is no minimum or mandatory sentence for a person who is convicted of assault causing death; they are liable to 10 years imprisonment,<sup>6</sup> less than a conviction for either murder or manslaughter.<sup>7</sup> It is possible that on conviction a non-imprisonment sentence is imposed, such as suspended imprisonment,<sup>8</sup> or a community based order.<sup>9</sup>

(b) Qld

Unlawful striking causing death has a maximum penalty of life imprisonment,<sup>10</sup> no different to manslaughter.<sup>11</sup> There is no guarantee of a mandatory imprisonment sentence; it is only “if a court sentences a person to a term of imprisonment” that the requirement they serve a minimum of 80% of the imprisonment sentence or 15 years, which ever is lesser, becomes applicable.<sup>12</sup> These minimum requirements do not secure longer sentences, but provide for a minimum non-parole period in limited circumstances. Furthermore, these minimum requirements do not apply if the sentence is life imprisonment, indefinite, or where an intensive correction order or suspended sentence is imposed.<sup>13</sup>

(c) NT

There is no guarantee of imprisonment, or a minimum sentence in the NT. Violent act causing death has a maximum penalty of 16 years imprisonment,<sup>14</sup> less than life imprisonment for murder or manslaughter.<sup>15</sup> As a level one violent offence,<sup>16</sup> it is only when an offender has a previous violent offence conviction that the court must impose a term of actual imprisonment.<sup>17</sup> Even then a suspended sentence or home detention order in relation to part of the sentence, but not the whole,<sup>18</sup> is permitted.

(d) NSW

Assault causing death has a maximum sentence of 20 years imprisonment,<sup>19</sup> making it on par with the sentence for manslaughter.<sup>20</sup> In circumstances where the offender is intoxicated and over 18 years of age it is an aggravated offence and they are liable to 25 years imprisonment; the court is required to impose a minimum sentence and non-

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<sup>6</sup> *Criminal Code Act Compilation Act 1913* (WA) s 281(1).

<sup>7</sup> *Criminal Code Act Compilation Act 1913* (WA) ss 279, 280.

<sup>8</sup> *Sentencing Act 1995* (WA) pt 11.

<sup>9</sup> *Sentencing Act 1995* (WA) pt 9.

<sup>10</sup> *Criminal Code Act 1899* (Qld) s 314A(1).

<sup>11</sup> *Criminal Code Act 1899* (Qld) s 310.

<sup>12</sup> *Criminal Code Act 1899* (Qld) s 314A(5).

<sup>13</sup> *Criminal Code Act 1899* (Qld) s 314A(6).

<sup>14</sup> *Criminal Code Act 1983* (NT) s 161A(1).

<sup>15</sup> *Criminal Code Act 1983* (NT) ss 157, 161.

<sup>16</sup> *Sentencing Act 1995* (NT) ss 78C, 78CA(5), sch 2.

<sup>17</sup> *Sentencing Act 1995* (NT) s 78DF.

<sup>18</sup> *Sentencing Act 1995* (NT) s 78DG.

<sup>19</sup> *Crimes Act 1900* (NSW) s 25A(1).

<sup>20</sup> *Crimes Act 1900* (NSW) s 24.

parole period of not less than eight years.<sup>21</sup> Any alteration of this sentence is prevented.<sup>22</sup>

(e) Vic

Constructed under the existing offence of manslaughter; liability to a maximum of 20 years imprisonment or to a fine alone, or in addition,<sup>23</sup> is applicable. If the Department of Public Prosecutions files notice appropriately,<sup>24</sup> the court must impose a term of imprisonment and non-parole period of 10 years for manslaughter by a single punch or strike.<sup>25</sup> Still, the court is not required to impose this minimum term of imprisonment if a special reason exists,<sup>26</sup> which includes the broadly articulated “substantial and compelling circumstances that justify doing so.”<sup>27</sup>

*Case Analysis*

(a) NSW, Vic and Qld

There have been no cases prosecuted in Qld,<sup>28</sup> Vic, and NSW under the new legislative provisions, however this may in part be attributed to the short amount of time since their enactment. Analysis of convictions and sentences in recent cases under existing homicide offences indicates that the introduction of ‘one punch laws’ will have minimal effect on sentencing. There is a growing trend in NSW cases under existing homicide laws for sentences to reflect the denunciation of one-punch conduct, and thus be more appropriate. In an appeal against the original sentence in *R v Loveridge*,<sup>29</sup> a new sentence of 10 years and six months with a non-parole period of seven years was substituted,<sup>30</sup> with reference that sentences should “carry a very significant degree of general deterrence.”<sup>31</sup> The need for such deterrence has been considered in alike cases,<sup>32</sup> resulting in sentences under the existing offence of manslaughter that are appropriate, and akin to those possible under the ‘one punch’ offence in NSW. Similarly in Vic,<sup>33</sup> and Qld,<sup>34</sup> there have been convictions under the

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<sup>21</sup> *Crimes Act 1900* (NSW) s 25B(1).

<sup>22</sup> *Crimes Act 1900* (NSW) s 25B(2)-(3).

<sup>23</sup> *Crimes Act 1958* (Vic) s 5.

<sup>24</sup> *Sentencing Act 1991* (Vic) s 9A.

<sup>25</sup> *Sentencing Act 1991* (Vic) s 9C(2).

<sup>26</sup> *Sentencing Act 1991* (Vic) s 10A.

<sup>27</sup> *Sentencing Act 1991* (Vic) s 10A(2)(e).

<sup>28</sup> Four individuals have however been charged with the assault causing death offence in Qld.

<sup>29</sup> *R v Loveridge* [2013] NSWSC 1638, [80].

<sup>30</sup> *R v Loveridge* [2014] NSWCCA 120, [283].

<sup>31</sup> *R v Loveridge* [2014] NSWCCA 120, [103].

<sup>32</sup> See also *R v Lane* (No 3) [2015] NSWSC 118, [67-69] (eight years and six months sentence, six years and four months non-parole); *R v Lambaditis* [2015] NSWSC 746, [98] (nine year sentence, six years and nine months non-parole).

<sup>33</sup> See *DPP v Closter* [2014] VSC 484 (nine year sentence, six years non-parole); *DPP v Townsend* [2015] VSC 456 (seven year sentence, five years non-parole); *R v Sharp* [2015] VSC 116 (eight year sentence, four years non-parole).

<sup>34</sup> *R v Skondin* [2015] QCA 138, [100] (nine year sentence, five years non-parole).

existing manslaughter provisions demonstrating the imposition of sentences that are similar to those that could occur under the ‘one punch laws.’

(b) NT

Enacted in 2012, a short amount of time cannot account for the absence of cases prosecuted in the NT under the ‘one punch law’. This may indicate reluctance by the DPP to prosecute under the violent act causing death provision, considering the unknown scope for criminal responsibility to be negated by an act reasonably done for the purpose of benefiting another person or as part of a socially accepted function or activity.

(c) WA

WA provides the greatest insight into the actual impact of ‘one punch laws’ hitherto, with 12 cases convicted and sentenced under unlawful assault causing death up to 1 January 2014.<sup>35</sup> Of these 12, only four fall within the context of one-punch deaths; the average sentence in these cases is 21.5 months,<sup>36</sup> a result less than would occur under existing homicide offences.

## **B) Deterrent Effect of ‘One Punch Laws’**

The legislating of a particular offence for one-punch deaths has little deterrent effect on potential offenders. Much of the rhetoric surrounding the introduction of ‘one punch laws’ made the unqualified association between their implementation and a deterrence of violence. Yet criminalisation of an act through a specific offence does not necessarily deter it, even when the creation of an offence is highly publicised. Deterrence relies on the premise that a potential offender makes a rational choice not to commit an offence because of fear of the consequences.<sup>37</sup> One punch attacks are by their nature not rational, but impulsive, the inebriation of offenders often compounding this. The introduction of ‘one punch laws’ has proven to have had little impact in deterring conduct that often occurs in an instant, without premeditation.

## **C) Alternative Approaches**

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<sup>35</sup> Office of the Director of Public Prosecutions for Western Australia, Unlawful Assault Occasioning Death (1 January 2014) Supreme Court of Western Australia <[http://www.dpp.wa.gov.au/\\_files/assault\\_occasioning\\_death.pdf](http://www.dpp.wa.gov.au/_files/assault_occasioning_death.pdf)>.

<sup>36</sup> *Western Australia v Sinclair* (Unreported, District Court of Western Australia, 25 May 2012) (20 months sentence); *Western Australia v Blurton* (Unreported, District Court of Western Australia, 23 February 2012) (two years and six months sentence); *R v Robinson* [2011] WASC SR 59 (16 months sentence); *Western Australia v JWRL(a child)* [2010] WASC A 179 (two years suspended sentence).

<sup>37</sup> Law Institute Victoria, ‘Mandatory Minimum Sentencing’ (Submission to Attorney-General Robert Clark, 30 June 2011), 7.

The nature of violence and the culture surrounding many one-punch incidents indicates that more than a legislative response of introducing offences is required to deter violent behaviour. Sociological analysis both in Australia and internationally,<sup>38</sup> points to various social factors that contribute to one-punch related violence, including alcohol,<sup>39</sup> and perceptions of masculinity.<sup>40</sup> There are suggestions that even consideration of these factors is limited and that deeper issues regarding the prevalence and social sanctioning of violence denote broader cultural factors that contribute to its prevalence in Australia.<sup>41</sup>

Placing one-punch incidents within broader sociological understandings of violence points to solutions that address the factors and cultures that perpetuate violence, rather than introducing specific legislative offences and presuming a deterrent effect. This has been attempted in many Australian jurisdictions, notably Qld's 'one punch law' was enacted as part of a broader reform package aimed at addressing alcohol-related violence,<sup>42</sup> which introduced safe night precincts and targeting policing through ID scanners. Government policy responses to the deaths of Matthew Stanley and Thomas Kelly are further examples. The death of Matthew Stanley resulted in the 'One Punch Can Kill' campaign, and formation of a Youth Violence Taskforce. The 15 months following the death of Thomas Kelly saw the NSW government respond with a multi-faceted policy programme which included an audit of late trading licenced venues, tightening of licence conditions, educational campaigns, and legislative reforms including a freeze on new liquor licences, implementation of ID scanners, trial of a sobering-up centre, and additional and targeted policing. These policy responses are reflective of careful consideration of community concerns by policy makers in informing policy objectives and developing responses.

Sociological research has identified further avenues for addressing alcohol-related violence including reformed regulation of packaged liquor outlets,<sup>43</sup> increases in the price of liquor

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<sup>38</sup> Deanna L Wilkinson, 'Violent Events and Social Identity: Specifying the Relationship Between Respect and Masculinity in Inner-City Youth Violence' (2001) 8 *Sociological Studies of Children and Youth* 235, 243; Vaseekaran Sivarajasingama, Kent Matthews, and, Jonathan Shepherd, 'Price of beer and violence-related injury in England and Wales' (2006) 37 *Injury, International Journal of the Care of the Injured* 388, 393.

<sup>39</sup> Jennifer Lucinda Pilgrim, Dimitri Gerostamoulos, and Olaf Heino Drummer, "'King hit" fatalities in Australia, 2000–2012: The role of alcohol and other drugs' (2013) 135 *Drug and Alcohol Dependence* 119, 130.

<sup>40</sup> Stephen Tomsen and Thomas Crofts, 'Social and cultural meanings of legal responses to homicide among men: Masculine honour, sexual advances and accidents' (2012) 45(3) *Australian & New Zealand Journal of Criminology* 423, 424, 429; Stephen Tomsen, "'Boozers and Bouncers': Masculine Conflict, Disengagement and the Contemporary Governance of Drinking-Related Violence and Disorder' (2005) 38(3) *Australian & New Zealand Journal of Criminology* 283, 294.

<sup>41</sup> Asher Flynn, Mark Halsey and Murray Lee, 'Emblematic Violence and Aetiological Cul-De-Sacs: On the Discourse of 'One-Punch' (Non)Fatalities' [2015] *British Journal of Criminology Advance Access* 1, 13.

<sup>42</sup> *Safe Night Out Legislation Amendment Act 2014* (Qld).

<sup>43</sup> Michael Livingston, 'Alcohol outlet density and harm: Comparing the impacts on violence

through taxation,<sup>44</sup> tighter regulation of the supply of liquor, and social campaigns to promote masculine disengagement from conflict.<sup>45</sup> Contrasting these sociologically underpinned reforms against the purely legal response of introducing ‘one punch laws’ suggests that the former are more effectual in deterring violence because they limit factors that have been identified as contributing to its occurrence. Reforms underpinned by sociology are more likely to achieve enduring solutions because they address root causes rather than reacting to symptoms. As such they are also more likely to satisfy the concerns of the community and receive their ongoing support.

Thank you for the opportunity to contribute a submission to your Committee.

Kind regards,

Yasmin Murry

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and chronic harms’ (2011) 30 *Drug and Alcohol Review* 515, 522.

<sup>44</sup> Vaseekaran Sivarajasingama, Kent Matthews, and, Jonathan Shepherd, ‘Price of beer and violence-related injury in England and Wales’ (2006) 37 *Injury, International Journal of the Care of the Injured* 388, 393.

<sup>45</sup> Stephen Tomsen, ‘‘Boozers and Bouncers’’: Masculine Conflict, Disengagement and the Contemporary Governance of Drinking-Related Violence and Disorder’ (2005) 38(3) *Australian & New Zealand Journal of Criminology* 283, 294-295.