

29 June 2020

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email only: lasc@parliament.qld.gov.au

Dear Committee Secretary

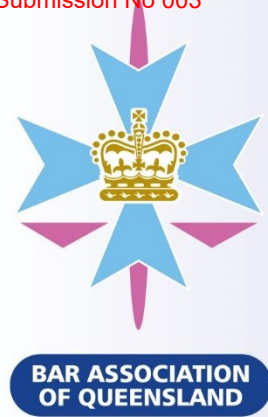
Re: Criminal Code (Choking in Domestic settings) and Another Act Amendment Bill 2020

The Bar Association of Queensland (the **Association**) welcomes the opportunity to comment on the abovementioned Bill.

The Association notes that the Bill is intended to remove any ambiguity associated with the words, “choke”, “suffocate” and “strangle”, however the amendments seem unnecessary in light of the decision of the Court of Appeal in *R v HBZ* [2020] QCA 73 where it was held that the word “choke” should not be given a restrictive interpretation requiring actual stopping of the victim’s ability to breathe, but rather that it:

[57] ... must be construed as the act of the perpetrator that hinders or restricts the breathing of the victim and does not require proof that breathing was completely stopped, although the hindering or restriction of the breathing would encompass the stopping of breathing. The act of choking will not be proved, unless there is some detrimental effect on the breathing of the victim, because otherwise it would not constitute the act of choking. Even if the restriction of the breathing, as a result of the action of choking the victim, is of short duration, without any lasting injury and does not result in a complete stoppage of breath of the victim, that will be sufficient...

It is respectfully submitted that the definitions of “choke” and “strangle” proposed in the Bill are inconsistent with the ordinary meaning of those words, and are too wide, given that all that they require is the application of pressure to the victim’s neck. Significantly, the definition does not limit the area of the neck where pressure might be applied in order to constitute the offence. Thus, a person who, for example, grabbed a person from behind by applying pressure to the back or sides of the neck would be guilty of choking or strangling, even though there was no interference, or risk of interference with the ability of the victim to breathe. Similarly, a person who merely applied pressure to one side of the neck with a single digit would be guilty of choking or strangling.



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To construe those two words so widely involves straining their meaning and will result in people being charged and potentially convicted of a serious offence where their conduct did not involve choking or strangulation as either of those terms is conventionally understood.

Further, the Bill's definition of the word "suffocate" is unnecessary. That word's ordinary meaning is to "cause or to have difficulty in breathing", which is itself very wide.

The Association therefore does not support the amended definition proposed in the Bill.

The Association does not support the increase in the maximum penalty in the absence of evidence that offenders are receiving unduly lenient sentences. It is the experience of our members that even youthful first offenders convicted of this offence can expect sentences involving actual custody, and more serious cases can result in sentences of up to five years duration.

Section 315 of the *Criminal Code* already provides for sentences of life imprisonment for offences involving choking, suffocating or strangling with intent to render a person incapable of resistance and to facilitate the commission of a crime.

It is, with respect, difficult to conceive of an offence of choking *simpliciter* that would justify a sentence of 14 years imprisonment in the absence of the commission of some other, more serious offence such as that against section 315 or one involving the intentional infliction of grievous bodily harm, torture or attempted murder.

The proposed increased maximum sentence is not supported.

The Association takes a neutral position on whether an offence against section 315A should be added to Schedule 1 of the *Penalties and Sentences Act 1992*.

Thank you for the opportunity for the Association to provide input to the Legal Affairs and Community Safety Committee. The Association would be pleased to provide further feedback, or answer any queries you may have on this matter.

Yours faithfully



Rebecca Treston QC
President