

15th July 2020

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

Email: lacsc@parliament.qld.gov.au

Dear Sir/Madam,

RE: AN ACT TO AMEND THE CRIMINAL CODE AND THE PENALTIES AND SENTENCES ACT 1992 FOR PARTICULAR PURPOSES

Women's Legal Service Queensland (WLSQ) provides Queensland wide specialist, free legal information, advice and representation to women in matters involving domestic violence, family law, child protection, financial abuse prevention and some sexual violence matters. In the 2018/19 financial year we assisted over 16 000 victims of sexual or domestic violence and provided over 30 000 services. We also employ allied domestic violence social workers and a financial counsellor, who assist clients to ensure a holistic response for our clients.

WLSQ support the need for the existing Section 315A Strangulation Offence to be amended and better defined and in general, support the Bill.

As we have previously stated, it is very common for clients of WLSQ to be victims of non-fatal strangulation in the context of domestic violence. Perpetrators strangle their victims as an act of power and control and the action is a very effective way of instilling fear and having ongoing domination over every aspect of their life. It sends a very clear message to victims that the perpetrator has ultimate control over whether the victim lives or dies. It is a very serious and intentional offence.

In the Coronial Inquest of Tracy Ann Beale, the Coroner Mr David O'Connell, on 28th March 2018, made the following recommendation which was not accepted by the Government:

Recommendation 1

The Attorney-General, after allowing submissions from appropriate interested parties, review Criminal Code s.315A to determine if it is adequate to deal with the incidence of so-called vasovagal reflex, and whether the types of neck compression specified in the provision should be defined in the legislation.

The Government's response was there was no need to define the terms as they the ordinary meaning already covered squeezing or constricting the neck area. In its



response the Government described succinctly the policy response supporting the introduction of 315A as:

The Not Now, Not Ever report acknowledged strangulation both as a common feature of domestic and family violence and as a predictive risk factor for future severe violence, including homicide and may not present any physical injuries. The offence was therefore formulated to reflect the inherent dangerousness of any strangulation behaviour both in terms of the immediate threat of harm and as a predictor of future violence.

The District Court of Queensland decision by Coker DCJ on 23rd July 2019 *R v AJB [2019] QDC 169* and *R v Green (No 3) [2019] ACTSC 96* a Supreme Court of ACT decision which is influential on our jurisdiction although not binding required the provision to include the “stopping of breath” for the definition to be satisfied.

In *R v HBZ [2020] QCA 73* the Court of Appeal distinguished these two cases above found that choking is an act which hinders or restricts the breathing of victims it does not require proof that breathing was completely stopped. Obviously, this leaves open arguments under the current law about whether an act ‘hindered or restricted’ the breathing of victims under the current definition.

A broader definition is preferred

We support the approach of the current Bill that provides a wider definition than the Court of Appeal decision.

Remove consent

As we have previously argued we would also remove the wording from the current Section 315A “*without the person’s consent*”. This is a highly problematic provision which WLSQ previously strongly argued against being included, when the original bill was introduced.

A new approach to drafting domestic violence and sexual violence matters should be considered

We understand the usual approach to drafting Criminal Code provisions is to leave terms undefined and keep terms broad and encompassing. In matters involving domestic violence or sexual violence offences, with respect we believe the usual drafting approach, should be reviewed. Although we accept any definition may result in an unintentional limitation of certain conduct, in domestic and sexual violence matters where victims of violence are already reluctant to take official action, a lack of definition and ambiguity can result in greater uncertainty for victims, which in turn can result in further reluctance in taking official action.

The fact that cases were being determined in 2019 by judges as the complete stopping of breath and the definition was only clarified in 2020 by the Court of Appeal, has led to great uncertainty for victims, police and the prosecution. For cases where the lower

court approach was adopted the outcome for victims has been devastating – with a perpetrator being found not guilty or they’re being a reluctance to charge perpetrators with the crime.

We note there has been a large drop in charges of strangulation in Queensland. The following statistics are taken from the official government website¹ on 14th July 2020:

Strangulation offences

Table 14. Strangulation offences, by court level				
Court	2016-17	2017-18	2018-19	2019-20 YTD (to 31 May 2020)
Magistrates Court	878	834	675	521
District Court	209	875	716	545
Supreme Court	<5	10	9	6

This represents a percentage reduction as follows:

Magistrates Court: 25% drop between 2018-19 and 2019-20 (YTD)

District Court: 26% drop between 2018-19 and 2019-20 (YTD)

We cannot assert the reason for the reduction is caused by the lack of definition and confusion about what actually constituted strangulation however, we have little doubt that the “stopping of breath” decisions have contributed to the reduction.

The Queensland Government and QPS should be very concerned about these figures. We have a concern that the confusion about the definition has already caused irreparable damage.

An independent evaluation be undertaken to ascertain the reason for the reduction of offences

We would recommend an independent evaluation be undertaken of the offence of strangulation to fully understand the reasons behind the reduction. In our case files, the issue of strangulation remains an extremely common occurrence.

If you require any further information please do not hesitate to contact us.

Regards,



Angela Lynch
CEO

¹ <https://www.courts.qld.gov.au/court-users/researchers-and-public/stats>

