LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr PS Russo MP (Chair)
Mr JP Lister MP
Mr SSJ Andrew MP
Mrs MF McMahon MP
Ms CP McMillan MP
Mrs LJ Gerber MP

Staff present:

Ms R Easten (Committee Secretary)
Ms M Westcott (Assistant Committee Secretary)

PUBLIC BRIEFING—INQUIRY INTO THE CRIMINAL CODE (CHOKING IN DOMESTIC SETTINGS) AND ANOTHER ACT AMENDMENT BILL 2020

TRANSCRIPT OF PROCEEDINGS

MONDAY, 13 JULY 2020

Brisbane

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The committee met at 8.19 am.

CHAIR: Good morning. I declare open this public briefing for the committee's inquiry into the Criminal Code (Choking in Domestic Settings) and Another Act Amendment Bill 2020. On 20 May 2020 the Leader of the Opposition and shadow minister for trade, Mrs Deb Frecklington MP, introduced the bill into the parliament. The parliament has referred the bill to the Legal Affairs and Community Safety Committee for examination.

My name is Peter Russo, member for Toohey and chair of the committee. With me here today are: James Lister, member for Southern Downs and deputy chair; Stephen Andrew, member for Mirani, who is on his way; Laura Gerber, member for Currumbin; Corrine McMillan, member for Mansfield; and Melissa McMahon, member for Macalister,

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages.

I ask everyone present to turn mobiles phones off or to silent mode. Only the committee and Mr Janetzki may participate in the proceedings. As parliamentary proceedings, under the standing orders any person may be excluded from the briefing at my direction or by order of the committee.

The purpose of the briefing today is to assist the committee with its examination of the bill. The program for today has been published on the committee's webpage, and there are hard copies available from committee staff. I now welcome Mr Janetzki, who has been invited to brief the committee on the bill.

JANETZKI, Mr David, Member for Toowoomba South, Parliament of Queensland

CHAIR: Good morning, Mr Janetzki. I invite you to brief the committee, after which committee members will have some questions for you.

Mr Janetzki: Thank you for the opportunity to address the committee on the opposition's Criminal Code (Choking in Domestic Settings) and Another Act Amendment Bill 2020. In February this year the nation was shocked to learn of the horrific murder of Hannah Clarke and her precious children. The sad reality is that since 1 July 2006 more than 300 women, men and children have been killed by a family member or someone they were or had been in an intimate partner relationship with. Australia's leading researcher in the field of strangulation, Heather Douglas, who is a professor of law at the University of Queensland, says that a woman whose partner tries to strangle her is eight times more likely to end up killed. Often it is the last warning shot before death, which is why it is fundamental that these perpetrators are stopped before it is too late.

Chillingly, in 2017-18 there were 1,146 reports made to Queensland police about victims being choked, strangled or suffocated by their partner. However, in 2017-18 there were only 353 convictions for the nonlethal strangulation offence. We know that the median period of imprisonment as reported in 2017-18 was two years.

A prominent issue with the nonlethal strangulation offence which has been raised by advocacy groups such as the Women's Legal Service is that there is no legislative definition as to what constitutes choke, suffocate and strangle. It is therefore necessary that as law-makers we do everything in our power to fix any legal loopholes and strengthen laws to stop offenders. By doing so, there is every possibility that it will save a life.

Nonlethal choking and strangulation can have serious lifelong consequences for victims including memory loss, paralysis, pregnancy miscarriage, and changes to vision, vocal cords, hearing and breathing. Organisations such as the Red Rose Foundation have dedicated their time to raising awareness, providing expert training and forging partnerships of research and education to better understand the dangerous nature of nonlethal strangulation.

After 2016, when section 315A of the Queensland Criminal Code was introduced—namely, the provision around choking, suffocation and strangulation—some problems did emerge. Firstly, the definition was unclear. There were varying definitions and understandings of the legal, medical and ordinary definitions of the terms 'choke', 'suffocate' and 'strangle'. What was surprising is that it took until August 2019 for an appellate decision to recognise the complexity and challenges of section 315A. Regina v AGB, a District Court decision, was the first to make findings in this regard and supported, unfortunately, a narrow definition whereby the offence of choking could only be established where there was evidence that the complainant was unable to breathe. This was clarified in some respects by a Court of Appeal decision earlier this year in Regina v HBZ, where it became clear that 'choke' would mean to hinder or stop the breathing of a person. Given the judicial interpretations over the last number of years, it is now important that the legislature clarify the definitions of choking, strangulation and suffocation as a matter of some urgency. Accordingly, at the heart of this bill is the strengthening of the nonlethal strangulation offence.

On 20 May this year the Leader of the Opposition introduced the Criminal Code (Choking in Domestic Settings) and Another Act Amendment Bill 2020. The objectives of the bill are to: strengthen the nonlethal strangulation offence by providing for legislative definitions of the words 'choke', 'suffocate' and 'strangle'; increase the maximum penalty for the nonlethal strangulation offence from seven years to 14 years to adequately punish offenders and deter other persons from committing the same offence; and recognise the seriousness of the nonlethal strangulation offence by classifying the offence as a serious violent offence which will require the prisoner to serve 80 per cent of their sentence of imprisonment. This will be mandatory for offenders sentenced to 10 years imprisonment or more and discretionary for sentences of five years or more but less than 10 years imprisonment.

The opposition has pleaded with the Palaszczuk Labor government for bipartisanship in respect of these laws and there have been some indications from the government that that may be possible, or at least the government is open to these ideas. I will finish by commending domestic violence organisations across Queensland who do such an extraordinary amount of work in protecting vulnerable women and children in the most extraordinary circumstances. I encourage this committee to take a favourable approach to this private member's bill and the government to take these matters most seriously and to act on them expeditiously. I welcome questions from the committee.

Mrs GERBER: I am really interested in the urgency of this and the impact of this. Why is it necessary that the terms 'choke', 'strangle' and 'suffocate' be defined? What is the urgency in defining those terms in these amendments right now?

Mr Janetzki: I do not think there would be a person in Queensland who was not deeply moved by the tragic circumstances of Hannah Clarke and her three children earlier this year. However, this has been a longstanding problem. That is why I have a view that the time for talking is at an end and we do need to address these problems more head-on. If you look back to 2014, the *Not now, not ever* report was created by the then LNP government. Since losing office and the Labor government enacting some of those recommendations, the LNP has continued to support those recommendations. That is an important report that highlighted the need for action across the board in respect of these problems. However, more work needs to be done. The tragic case from earlier this year brought home again the need to do more.

What we have seen over the last couple of years as well has been a lack of clarity around the definition of those three terms. That came to my attention after the 2019 District Court decision. Obviously, there were groups such as the Red Rose Foundation and the Women's Legal Service that had gone on the record saying there needed to be some clarity around those definitions because it did appear that the District Court had formed the view that it had to be a complete obstruction of breathing, and there were senior police officers who were concerned that could actually mean many domestic violence victims would not be protected by the law because often their breathing may be hindered or restricted but not completely stopped.

Although the Court of Appeal did provide some clarity earlier this year, I think this is vitally important. This private member's bill is something we can do now and we can do quickly. It is a straightforward amendment. I believe the community wants to see something of a legislative nature done. I acknowledge that the government has been making additional contributions to this most important area during COVID-19; however, that is but one part of the problem. It is an important part of the problem to fix the gaps, the loopholes and the inconsistencies in the law once and for all to better protect women and children.

Ms McMILLAN: In the introductory speech by the Leader of the Opposition, she stated that the bill would provide a broader definition of strangulation. Can you please explain the difference between how strangulation is currently interpreted under the Criminal Code and how it would be changed by this bill?

Mr Janetzki: In 2016 when nonlethal strangulation was introduced into the Criminal Code arising out of the *Not now, not ever* report, it was clear that the offence was targeted at deterring would-be perpetrators from committing the offence. This was borne out in the Court of Appeal decision as well. Some of that intent was not being captured by the interpretation of the law. For some time, as we have seen in the numbers from 2017 to 2018, there were numerous charges but not a requisite conviction. As we saw in the District Court decision of 2019, that was because it was quite a restrictive interpretation of those terms which meant that it required a complete withdrawal of breath. It is clear that from 2016 when it was initially introduced in the legislation it was meant to deter strangulation suffocation—the act itself—and that was not being borne out in reality.

From the District Court decision, senior police officers started saying, 'This would mean a lot of domestic violence charges would fall short,' and it became clear that there was a gap in the law. That is why this reform is necessary: to fill that gap. The Women's Legal Service said there had been concern about some judicial interpretation of it and the Red Rose Foundation had a similar view, and that is why this bill does go towards filling that gap. It creates certainty where currently there has been uncertainty. That is why that gap in the definition ought to be closed as soon as possible.

Ms McMILLAN: Is it the bill or is it the interpretation by police officers, judicial officers et cetera? Are you confident that changing this would result in a different interpretation?

Mr Janetzki: This bill will give certainty in the definition. The bill is modelled on provisions from the Labor ACT government. They had a decision in R v Green where issues arose similar to what happened in the District Court here in Queensland. Their legislature moved to fix the definition there and provide that certainty. This private member's bill is modelled on those provisions.

At the end of last year, the Western Australian Labor government introduced a definition around these terms as well to again provide that certainty. There is clearly a move around the country across all legislatures to fix what has been a gap in the law. It certainly was not the intent when nonlethal strangulation was introduced into the criminal law in 2016, but that is how it was left. The ordinary definition as outlined in a dictionary is not sufficient in these circumstances. That is why as a legislature we need to step in and clarify it once and for all, so that the police have certainty and the judiciary can act accordingly.

Mr LISTER: Is it the case that in your role as shadow Attorney-General you have a great deal of contact with victim advocacy groups regarding domestic violence?

Mr Janetzki: Yes, I do. I note that the member for Mansfield was also present at the funeral of Hannah Clarke and her children. That was a horrifying case. Tragically, we have seen over 300 people die at the hands of a partner since 2006 across the country. As parliamentarians, we sadly get to meet with people who have lost everything, who have lost their loved ones.

Mr LISTER: That being so, whenever reforms which propose an increase in penalties for offences come about, it is understandable that some people will concern themselves over the impact on perpetrators. Given that this proposes an increase in penalty for choking, what would you say to those who argue that perpetrators of these offences will be impacted—speaking for victims groups perhaps?

Mr Janetzki: I think Betty Taylor, the CEO of the Red Rose Foundation, says it best when she says that strangulation is the mark of a killer. Bringing a more serious penalty to this offence sends the clearest possible message that it will not be tolerated by the community. When a woman is eight times more likely to be killed after being strangled by that intimate partner, I think that sends a clear message that this is a precursor, more often than not, to other significant violence, most tragically murder.

I do not believe there is anything we as parliamentarians can do that is more important than to send the most serious message, the most important message, that this will not be tolerated by the community. That is why I believe the seven to 14 years is justified in the circumstances and is certainly proportionate to the offence. There can be no more intimate act than putting your hands around someone's neck. That is extraordinarily powerful and we must be taking that very seriously. That is why this bill is so important and why the doubling of the penalty is necessary in the circumstances.

Mrs McMAHON: I want to go back to the figures that you were looking at for the 2017-18 period and just confirm that it was 1,146 complaints and 353 convictions. Was that the data you were referring to?

Mr Janetzki: Yes. They are responses to questions on notice.

Mrs McMAHON: Do you have information on how long most of these cases are taking from complaint to finalisation—that is, a conviction being recorded, no conviction or anything like that? Do you know how long this is taking for it to be investigated and to go through the prosecutorial process?

Mr Janetzki: I am not aware of those matters but I can certainly find the responses to the questions on notice and that may reveal more information.

Mrs McMAHON: Finally, I am aware of campaigns by organisations like the Red Rose Foundation around the issue of definition here in Queensland as well as what is happening in other states. I was reading something on the weekend that, along with this campaign in relation to definition, there is the issue of consent and the element of consent that is within the offence. Have you considered as part of your amendments removing that clause 4 requirement for consent?

Mr Janetzki: That is certainly a matter that needs to be addressed. In Western Australia's recent legislative reforms they investigated that process, and I believe they were considering whether to remove the element of consent. That is a bigger question in terms of what is currently before the Queensland Law Reform Commission. A range of issues in respect of consent are currently being considered at the Queensland Law Reform Commission level. This bill has not gone to that yet, but I await with interest the findings of the Queensland Law Reform Commission to see whether further amendments will be necessary.

CHAIR: Isn't the issue before the Law Reform Commission different to the question of consent in relation to this?

Mr Janetzki: My understanding is that it was a broad remit to the Queensland Law Reform Commission. That is my understanding. I will be waiting to see that report first.

CHAIR: But it would not prevent an amendment being made to remove consent in relation to this particular offence?

Mr Janetzki: No, but given that consent is being considered by the Queensland Law Reform Commission at a whole range and a broad remit, it is not appropriate at this stage to make that amendment. I will be waiting to see that report with interest.

CHAIR: In relation to the Court of Appeal decision of R v HBZ [2020 QCA 73, would you agree with the proposition that the definition of the word 'choke' has been adequately given a legal interpretation by that case?

Mr Janetzki: The Court of Appeal after the District Court has certainly clarified in many respects the definition. However, as happened in the ACT and Western Australia, I think it is important that there be clarity given; otherwise, we could be in a situation where there could be more cases brought to the appellate level that would take up the court's resources where, most simply and most efficiently, the legislature can give clarity, rather than have a situation where we could see more and more cases reach that level. Certainly the Court of Appeal has provided some clarity, but that does not mean that the Queensland parliament should not step in and solve this and provide certainty to every Queenslander and particularly the police and the judiciary.

CHAIR: Would you agree that the Court of Appeal decision is binding on courts of lesser jurisdiction?

Mr Janetzki: Of course.

CHAIR: So why can the interpretation that has been given by the Court of Appeal not be applicable in matters that go before the District Court?

Mr Janetzki: The Court of Appeal decision related to the definition of choking. We are also talking about the definition of suffocation and strangulation here. Similar and analogous definitions could be developed. However, the Court of Appeal decision just focused on that definition. Here is our opportunity to define all three terms and provide clarity to Queenslanders.

Mr LISTER: When you have spoken with the domestic violence victim advocacy groups, in general have they given stories that support your contention that choking is a precursor to violent offending, which by implication means murder?

Mr Janetzki: Yes, they have. I am looking forward to seeing the submissions in respect of this bill because I know many of those groups will be making them. I think interesting issues and issues for serious consideration will be raised. The Women's Legal Service in particular has been quite strong in indicating a need to reconsider section 315A in terms of the offence, given the ongoing concern that I have explained for the committee this morning.

There are ample stories of cases of strangulation and choking, as we have seen from the question on notice responses, that have not gone through to conviction. If there is one thing that I have learned from listening to the Red Rose Foundation, the Women's Legal Service and other groups, it has been the need for the law to keep pace and move to where the new risk is. We cannot simply rely on the *Not now, not ever* report from 2016. There needs to be more legislative reform. This is the first step.

In my role as shadow Attorney-General I would have spoken with a dozen families over the last couple of years, and generally they are the parents of very worried daughters and their children. They are extremely concerned that the law is not reacting to them, that there are gaps in the law, and they are fearful for the welfare of their daughters and their daughters' children.

There are major issues with the legislative framework that we see played out in the federal arena in relation to the Family Court and the ongoing reviews there but also here in Queensland. That is why funding is important. The opposition has always supported funding to these important groups. What we need now is action. Action in law reform is important. We have had none in Queensland for four years. This problem has continued to grow. From listening to groups like the Women's Legal Service, the Red Rose Foundation and others, it is clear that we now need to act.

Mr LISTER: Following on from your statement about urgency, I think we have nine sitting days left before the parliament has run its course this year. Could you offer your opinion on the community reaction if this bill were not to progress to the second reading stage for proper debate in the House?

Mr Janetzki: My hope is that this bill is expedited and we can debate it. I look forward to that. I think it was the former deputy premier who said about the opposition's domestic violence reform program that all options need to be on the table and the government would keep an open mind. My hope is that those sentiments, as expressed by the former deputy premier, remain today because I think the community is wanting action.

I think this bill is a good first step. It is just a step, though. There is more to be done. That is why with the opposition's domestic reform package we are so committed to investigating those things and it delivering those things. Although we have had our worries and challenges over the last few months with COVID-19, we know that the problem of domestic violence has not disappeared. The ABC reported a while ago that there had been a 75 per cent increase in searches of the term 'domestic violence' on Google. We know that the domestic violence problem is still there. We know that the demand is still strong for our support services. Anything our parliament can do on a legislative reform program basis to support the hard work of these groups and to protect vulnerable Queenslanders should be done.

Mrs GERBER: Can you explain for the committee what the risk is if these amendments are not passed by the legislature?

Mr Janetzki: As the chair of the committee has said, the Court of Appeal has offered and defined one part. However, there is a need now to provide clarity. The problem we face is that there could be victims out there who will fall through the cracks in the coming months and years or potentially be subject to long-term legal proceedings to get that clarity. This is an opportunity to draw a line in the sand, close the loopholes and provide certainty.

CHAIR: What is the rationale behind doubling the maximum penalty in section 315A from seven to 14 years?

Mr Janetzki: When the *Not now, not ever* report was formulated and when the nonlethal strangulation offence was introduced into the criminal law, it was clear that it was meant to be the strongest possible deterrent. The amendment around increasing the penalty from seven to 14 years and its incorporation into the Penalties and Sentences Act places the offence of nonlethal strangulation at the same level as grievous bodily harm. There are elements of robberies that are in schedule 1 as well. I think it is a marker of how important and what an indicator strangulation is. That is why the doubling of the penalty to 14 years is necessary and, in my view, proportionate. It would put it at the same level as other serious violent offences.

CHAIR: Are you concerned that by increasing the penalty you would be forcing cases to be dealt with by higher courts and not by the Magistrates Court?

Mr Janetzki: Let us wait and see what happens in practice. I believe that there will be cases, given the seriousness of these matters and the indicators of violent activity that strangulation indicates. I think it is important that it be given the necessary penalty of 14 years maximum. If that means that cases will be dealt with in higher courts then so be it. I believe that the community, more than ever, wants to send a strong message that strangulation will not be tolerated. When we know that a woman is eight times more likely to be killed if they have been strangled—and the research has indicated that—I think it is appropriate that the penalty be doubled to 14 years. If that means hearings are held in higher courts then so be it.

CHAIR: Do you have any evidence that doubling the penalty would be a deterrent?

Mr Janetzki: The Court of Appeal in their decision most recently said quite clearly that the initial purpose of the nonlethal strangulation offence was to send the strongest message possible. I believe doubling the penalty from seven to 14 years to liken it to grievous bodily harm does send that message and is an appropriate course of action.

CHAIR: But do you have any evidence that that would be a deterrent?

Mr Janetzki: The criminal law acts as a deterrent. The penalties in the Criminal Code act as a deterrent and send the strongest possible message no matter the offence. In terms of evidence, the evidence that I see as most concerning is the numbers of responses in the question on notice—the number of cases of strangulation and suffocation that occur in Queensland and are not appropriately punished. We need to provide the strongest possible deterrent, and I believe that this increase in penalty will do it.

CHAIR: Would you agree that there are other provisions within the code to deal with these acts of violence?

Mr Janetzki: Yes, there is a range of offences in the Criminal Code that capture a whole range of different offending. However, the *Not now, not ever* report was quite clear about the introduction of the offence of nonlethal strangulation and criminalising it. That was certainly drawn from the *Not now, not ever* report. The nonlethal strangulation offence was introduced by the Palaszczuk Labor government.

As to whether other offences under the code could capture some of this activity, it is possible, but what was absolutely clear from the Palaszczuk Labor government's introduction of nonlethal strangulation, which was supported by the opposition, was that this was such a serious offence and an offence within a domestic setting hidden from public view that it was absolutely necessary for an offence with this particularity to be introduced into the criminal law. If this kind of behaviour was happening on a street corner, on the street or in shopping centres there would be public outcry. This is an offence hidden away from public view, and that is why the particularity of the nonlethal strangulation offence was necessary in the first place.

Mr LISTER: Is there anything you would like to say before our time is up by way of summing up?

Mr Janetzki: Thank you, member for Southern Downs. I look forward to the submissions that will be brought to this committee. They are important submissions. I think we underestimate the hidden nature of the offending of strangulation. The Red Rose Foundation has launched the Australian Institute for Strangulation Prevention in Queensland in the last couple of months. I know from talking to people like Di McLeod from the Gold Coast Centre Against Sexual Violence that strangulation, choking and suffocation are very serious offences and hidden offences. We are now seeing organisations that work in this space focusing more and more on this, whether it be the Red Rose Foundation with the creation of their institute or other stakeholders or the research done by Brian Sullivan, who is on the board of the Red Rose Foundation.

We now know the seriousness of strangulation and where it can possibly lead and, even if it does not lead anywhere, the damage that it does to the wellbeing of women, let alone their mental wellbeing, and what it means for domestic life. We now know that this is vitally important. That is why the organisations that work in this space are looking at it more closely than ever. I think that is why the Queensland parliament ought to get behind this bill and bring it forward for debate. These are important issues and there are loopholes that can be fixed and deterrent messages that need to be sent to perpetrators. My hope is that we do not miss this opportunity.

CHAIR: There being no further questions, that concludes this briefing. I thank Mr Janetzki for appearing before the committee today. Thank you to our Hansard reporters and the secretariat. A transcript of this proceeding and an archived broadcast will be available on the committee's parliamentary webpage in due course. If possible could the response to the question taken on notice be provided to the secretariat by Wednesday, 22 July. I declare this public briefing for the committee's inquiry into the Criminal Code (Choking in Domestic Settings) and Another Act Amendment Bill 2020 closed.

The committee adjourned at 9.00 am.