LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr PS Russo MP (Chair)
Mr JP Lister 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 HEARING—INQUIRY INTO THE CRIMINAL CODE (CHOKING IN DOMESTIC SETTINGS) AND ANOTHER ACT AMENDMENT BILL 2020

TRANSCRIPT OF PROCEEDINGS

MONDAY, 7 SEPTEMBER 2020

Brisbane

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The committee met at 9.34 am.

CHAIR: Good morning. I declare open this public hearing 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, Mrs Deb Frecklington MP, introduced the bill to the parliament. The parliament has referred the bill to the Legal Affairs and Community Safety Committee for examination. My name is Peter Russo. I am the member for Toohey and chair of the committee. With me here today are James Lister, the member for Southern Downs and deputy chair; Laura Gerber, the member for Currumbin; Melissa McMahon, the member for Macalister; and Corrine McMillan, the member for Mansfield. Stephen Andrew, the member for Mirani, sends his apologies.

The purpose of today's hearing is to hear evidence from some stakeholders who have made submissions as part of the committee's inquiry. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard I remind members of the public that, under the standing orders, the public may be admitted to or excluded from the hearing at the discretion of the committee.

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 the committee staff if required. All those present today should note that it is possible that during the proceedings you might be filmed or photographed by the media and images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobile phones off or to silent mode.

The program for today has been published on the committee's webpage and there are hard copies available from committee staff. The Legislative Assembly and its committees recognise that matters awaiting or under adjudication in courts exercising a criminal jurisdiction should not be referred to from the moment a charge is made against a person until the matter is resolved in the courts. Therefore, all witnesses are reminded not to refer to matters before the criminal courts in their evidence.

DOUGLAS, Professor Heather, School of Law, University of Queensland

FITZGERALD, Dr Robin, School of Criminology, University of Queensland

CHAIR: Good morning. Would you like to make an opening statement, after which the committee members may have some questions for you?

Prof. Douglas: Thank you very much. First of all, I want to acknowledge the traditional owners and elders past, present and future on whose unceded land we meet today. We agree that the proposed definition should be introduced. We note that it reflects the definition introduced in the Australian Capital Territory in 2019 which was developed after consideration from medical specialists.

The issue of consent is absent from the Act definitions for offences of strangulation and we submit that consent should not be part of the Queensland offence. We appended our recent research to our submission where we discuss victims' experiences of strangulation and address the consent point more fully. It is generally not possible, in the criminal law, to consent to serious levels of violence and harm. The inclusion of lack of consent in the Queensland strangulation offence suggests a lower level of seriousness in the offence, and that is at odds with knowledge about its risks and injuries. The requirement for the prosecution to prove lack of consent may create obstacles for its prosecution.

Strangulation may be perpetrated on multiple occasions within a relationship where there is domestic violence and coercive control. The woman may not have left the relationship on those previous occasions or in response to the most recent incident of strangulation. That history may provide an opportunity for the perpetrator to claim consent to strangulation and, generally, consent to the controlling dynamic within the relationship. Essentially, the inclusion of the requirement of lack of consent in the Queensland offence may justify exercise of the discretion not to charge in some cases. It also potentially opens the way for cross-examination on the victim's willingness to be strangled within the relationship.

We do not support the proposed increased sentence for the reasons set out in our submission. We believe this would lead to more pleas of not guilty increasing costs and delays, reduce the level of victim support for the charge and increase plea negotiation. We also suggest that where injuries are serious, including loss of consciousness, there are other offences in the Criminal Code that may be appropriate—for example, grievous bodily harm, attempted murder or torture. Given the risk profile of strangulation, it may be appropriate to include a specific flag for future sentencing if these other offences are charged where they are based on strangulation.

We submit that some consideration should be given to the reform of chapter 58A of the Criminal Code to allow non-fatal strangulation to be dealt with in the Magistrates Court in some circumstances. We have made suggestions in our submission about the circumstances in which this might occur—for example, where there is a plea of guilty, it is a first offence for this victim or any victim, and it is not associated with the breach of a protection order. This would have positive effects including reducing delay, which we know is important in processing domestic violence crimes, both for victim/survivors and perpetrators.

Finally, we note that the ACT Act has two forms of the offence based on whether or not the person is rendered unconscious. In circumstances where the person is rendered unconscious, the maximum sentence is 15 years while in other circumstances the penalty is five years. We do not support this approach. It is often simply a matter of luck for the victim that she was not rendered unconscious and serious injury may result despite retaining consciousness.

Mr LISTER: I do not have a question and I will hand over to the member for Currumbin, but I want to thank you very much, Professor Douglas and Dr Fitzgerald, for coming in. Professor Douglas, I acknowledge your excellent research into choking.

Prof. Douglas: Along with my colleague Robin.

Mr LISTER: You were both involved so I thank you both on behalf of the people of Southern Downs for your work in that sphere.

Mrs GERBER: I echo my fellow member's sentiments and acknowledge your great work in being instrumental in the strangulation laws in the first instance, for which this bill is before the committee. I note that your submission very fulsomely details the risks identified with increasing the penalty to 14 years. Could you expand on any benefits—generally, if that is all you can do—in relation to increasing a penalty, say, from seven to 14 years? What are the benefits to the community in that happening?

Prof. Douglas: I think that is a really big question for debate as to whether there are very many benefits in increasing the penalties. Robin might have more to say about that. Certainly some women in the community who have experienced serious abuse find that imprisonment of their abuser is an opportunity for them to re-establish their lives. It is a question about how long that takes. I think different women take different amounts of time to do that. Robin might have more to say about the benefits of imprisonment.

Dr Fitzgerald: I think the reason we landed on not increasing the penalty is that, relative to the risks of increasing it, there would not be many benefits. For example, current research shows that, in terms of prison being a deterrent effect, there is not much difference between a suspended sentence and a prison sentence in terms of the risk of reoffending after a DV offence. In terms of women's safety planning, there is a need to keep someone away from a woman for a while, but in terms of the length of time it is not certain that that needs to be 14 years. In terms of the offence itself, whether it needs to align more directly with other serious bodily harm offences or other offences such as that I guess is an open question.

Prof. Douglas: One problem that we have—and we have started interviews with members of the profession and people in the DV support sector—is that at the moment most people are on remand for up to 10 to 12 months waiting for their matter to be heard in the District Court. Often they are going into court and being released immediately and they are not serving any time in prison. The problem with remand is that there is no access to programming and there is no opportunity for dealing with those offenders, so they come out just the same as they were or possibly a bit worse because of the corrosive effect of remand.

One thing we wanted to suggest you consider is the possibility of finishing these cases more quickly, which might be able to be done through the Magistrates Court. You would only have an opportunity to get the offence to three years—at the moment the average sentence is about 1.9 years—but then those people who did go into prison would have access to rehabilitation programs. These guys come out at some point. We are not going to be locking them up for the rest of their lives. Prison is a very corrosive process. Some people benefit from the rehabilitation projects available to them in prison,

and that only happens when they are appropriately sentenced rather than when they are on remand. One of the worries we have is that at the moment the pipeline is directly back into the community after being on remand for a long time with no actual intervention into those guys' lives.

Mrs GERBER: In terms of aligning the sentence with other serious offending—we did not touch on that at all—were community expectations factored into your submission?

Prof. Douglas: We have not done any surveys on community expectation.

Dr Fitzgerald: Around that offence.

Prof. Douglas: Yes. We have certainly talked to a lot of women who have experienced domestic and family violence and obviously a lot of women, too, in our study who have experienced strangulation. A lot of those women do not even go to the police about those matters. Not all women who have experienced strangulation want to be dealt with by the criminal justice system. That is a different matter to what the community expects for those women and there is not necessarily any connection. Some women of course want criminal justice intervention in these cases, and obviously strangulation is an incredibly serious event in a victim's life. We need to have medical attention and ideally we need to be addressing their partner's behaviours. I suppose that is where we sort of land—that is, how to get there.

Mrs McMAHON: In your submission you say that accused persons are more likely to plead not guilty to the charge when they face a higher penalty. Could you talk us through the flow-on effects for the victim going through the court process?

Prof. Douglas: Certainly we know that the longer the delay the more likely women are to drop out. One of the problems we are finding with the strangulation offence is that the only evidence available in most of the prosecuted cases is the woman's testimony about the strangulation. If it is her testimony that is key to the strangulation prosecution, there is a real risk that she will change her mind, she will move on or she will re-establish and will not want to pursue it. The longer the time before the final prosecution of the offence—the delay now, as I said, is at least 10 months in these strangulation cases in most situations—is an opportunity for a change of direction of that matter. We know that that is one of the big problems facing the DPP at the moment—that is, there is not any other evidence than the victim's testimony—and that is where cases are falling through. If the victim does not give testimony, which is obviously a stressful thing, there is often not going to be a prosecution. Unless she sticks by the plan to give testimony, there is obviously not going to be a prosecution.

Mrs McMAHON: And this informs your submission that there should be more avenues for this being dealt with in the Magistrates Court?

Prof. Douglas: It does. We think that would happen more quickly and there would be less opportunity for him to influence her to remove her testimony. I think that would be helpful. I think there are other things we could do that are beyond the scope of this. Certainly I think we should have an opportunity whereby examination in chief should be taken by the police, like the situation in New South Wales. That is something we could consider here as well, but that is a matter for another day.

CHAIR: There being no further questions, we thank you for your submissions and thank you for appearing this morning before the committee.

BUTCHER, Dr Anne, President, Ending Violence Against Women Queensland Inc. (via teleconference)

IWINSKA, Ms Emma, Management Committee Member, Ending Violence Against Women Queensland Inc.

WEATHERILL, Ms Sue, Management Committee Member, Ending Violence Against Women Queensland Inc.

CHAIR: I invite you to make an opening statement, after which committee members may have some questions for you.

Dr Butcher: Thank you very much and good morning to all of you. Thank you very much for the opportunity to provide comment to the parliamentary committee with regard to the Criminal Code (Choking in Domestic Settings) and Another Act Amendment Bill. I would like to begin by reiterating the key points EVAWQ, Ending Violence Against Women Queensland, made in our submission to the committee.

We propose that the amendments to the bill include definitions for choking, strangulation and suffocation and that they also increase the maximum penalty that currently exists from seven years to 14 years for offenders who use choking, strangulation or suffocation as a means of coercive control over women. We also propose that consent should be removed from the Act because we know from working in the women's services sector that women may agree or may consent to some horrendous and heinous acts being committed upon them in the interests of either saving their own lives or protecting others such as their children or other family members. Consent, as it is in the current definition which exists, for all intents and purposes does not apply in those types of situations, yet it is very difficult, when it comes to the matter being heard in a court, to be able to provide evidence that in fact the reason for giving consent was to protect self or others from lethality or further harm.

They are the key points, but we also wish to support the inclusion of these offences—strangulation, choking and suffocation—and those who perpetrate these crimes on the serious violent offender schedule so that those serious violent offences are duly noted as such. I would like to ask my colleagues who are there present with you today if they would like to add anything further to what I have already said.

Ms Weatherill: With regard to recording the events on the serious violent offender schedule and our proposal to remove the consent provision as an element of this offence, we would like to acknowledge that many women who experience choking and strangulation experience choking and strangulation on more than one occasion—it is often over several years—and there are really significant health impacts of this to the extent that women have told us that they cannot recall events just prior to the strangulation where a period of unconsciousness occurs, so how do they give evidence in court? How do they make a statement to police to provide evidence of the offence if it is not witnessed by others if we know the health implications are that they will not recall facts?

Dr Butcher has talked about the definition of choking and strangulation, and we welcome a definition of this. We feel that the definition that is within the amendment does not quite cover the different types of force used on a woman's throat or a child's throat to effectively cut off the airways and blood flow. We have spoken to women where perpetrators have used other methods. We have one new woman who has just come to stay in our refuge and he has used her own hair to try to strangle her. Another perpetrator held the woman against the wall and held his forearm—the length between his elbow and his wrist—against her throat so that he would not leave a mark on her throat. It is quite an intentional act so we feel that it does need a definition, but potentially the definition that is proposed needs a little more work to be able to cover off on all the different scenarios that women have experienced.

Regarding the serious violent offender schedule, we really feel strongly that this offence is a potentially lethal offence. When you are looking at lethality, there are quite a number of statistics. The Queensland Domestic and Family Violence Death Review and Advisory Board reported in the 2017-18 annual report that choking and strangulation were prevalent in 29.5 per cent of the intimate partner homicides reviewed, so this offence is a very serious offence. It has long-term health implications for women and for children. Perpetrators do not just choke women; they will choke a baby. If they are violent, they are violent. That is their behaviour. It is a multiple series of episodes of violence over the period of the relationship and following the end of the relationship. If you cannot consent to be murdered, then why can you consent to be choked?

Mrs GERBER: We have heard today some opposition to the increasing of the penalty from seven to 14 years. I note in your submission that you support the increase in the punishment, and you do acknowledge the drawbacks as well. Some of the opposition that has been provided is that it might mean that accused persons are more likely to plead not guilty or that it may lead to victims withdrawing their support for the charges. I am interested in your view, given that you are really at the front line of this, and why you think the message needs to be sent to the community and to the offender in relation to increasing the penalty from seven to 14 years and making it align more with other serious offences in the Criminal Code.

Ms Weatherill: Yes, I think that is exactly the point—that is, it needs to reflect the seriousness of the crime. You are seconds away from death, being choked and strangled. It is a very serious crime. It is a choice to use this type of violence. Perpetrators do not become enraged and lose control. They are choosing to use this type of violence knowing that potentially this woman could be killed, and most of the time they are actually trying to kill her. It needs to be reflected that way to reflect the community's expectations around this type of violence and to hold perpetrators to account for their choice to use this type of violence.

Dr Butcher: This offence of strangulation, as we know, is a fairly new offence within Queensland law and the penalty of seven years has not proven to be a deterrent to those who choose to use that as a way of coercion over women. In the service that I currently manage, which is a domestic violence service in Mackay, we see it on a daily basis. Even though the existing seven-year penalty for this offence against women as a form of coercion and control should be a deterrent, it appears not to be, based on the frequency with which we are seeing these offences occur against women just in our one service alone. From speaking to other domestic violence services across the state, this is something that is happening on a daily basis. It is often unreported to police through women having fear of reporting and further repercussions. Increasing the penalty would send a very clear message to those who would choose to use this form of coercion and control that it is seen as a very serious offence and crime within the criminal law in Queensland.

Ms Weatherill: Choking and strangulation would not form the entire set of criminal charges a perpetrator would face. He is not going to be charged just with choking and strangulation when he appears at court; there will be a string of other charges that go along with it. In terms of women's attitudes towards perhaps not pursuing charges because he may get a lengthier sentence, I think we need to consider the whole context of the string of charges in the episode of violence and series of violence that the woman and children have been subjected to.

Mrs GERBER: That is a good point.

Dr Butcher: I know that the 14 years we are proposing is a maximum penalty and magistrates have the discretion to determine penalties up to that maximum amount. Even though 14 years is a considerable term, they can use their discretion, as they currently do. We have seen in Queensland that there have been very few convictions specifically relating to the charge of strangulation, comparative to the incidents that we are seeing as frontline services.

CHAIR: Thank you for your submissions and thank you for appearing before the committee this morning.

TAYLOR, Ms Betty, Chief Executive Officer, Red Rose Foundation

CHAIR: Good morning, Ms Taylor. I invite you to make an opening statement, after which committee members may have some questions for you.

Ms Taylor: Good morning and thank you for the opportunity to be here. I am chief executive of the Red Rose Foundation, but I am also a member of the Queensland Domestic Violence Death Review Board. I have been part of a group of colleagues who have lobbied around strangulation since 2004. We were the group that lobbied successfully for the Domestic Violence Death Review Board and for the strangulation legislation. We have been concerned about the lack of definition. We have seen cases that have not got up with this. We have seen police responses that have not moved forward. We have had police coming to us seeking our support around changes and we have been talking to prosecutions.

We welcome the opportunity to see a bill come before parliament that is looking at a definition; however, we feel that what is there now falls short. A lot of the discussion that has taken place to date, particularly the case in Townsville of R v AJB, is around breath: did someone stop breathing or did they not? It is not about whether they stopped breathing; it is about the interruption of breath. It is also about the interruption of blood circulation, which is actually more lethal. We run support groups specifically for victims of strangulation. We are now doing a piece of research with Central Queensland University looking at the long-term health consequences. I see a definition as important because I would rather rely on medical evidence put before the court than on the *Macquarie Dictionary*. When we look at the cases and the sentencing involved in them, we still have a fair bit of education to do.

We did not address sentencing in our submission. We would maintain the status quo—in saying that, we believe that there needs to be further education around strangulation for the judiciary, the legal system and more broadly—but we would be strongly opposed to the reduction of it. The fact that the sentencing at the moment is 2.9 years does not give us the licence then to throw it out and say, 'We will reduce it.' If we reduce it to that, what are we left with? Someone could get a sentence of six months. We already have matters involving serious offenders with strangulation failing, with victims left in fear.

On the court processes, part of the problem is that we are not putting medical evidence enough before the court. We have done training with forensic medical officers and with emergency doctors. We are growing a body of evidence that comes before the court. Also in that evidence we need to look at the effects of strangulation. There is evidence that we can gain, but sometimes post strangulation it is not there immediately. We are currently supporting a woman who now has a collapsed jugular vein, 10 months after the event. She now has a fractured hyoid bone that was not detected in earlier medical examinations. By the time something gets to the District Court, we have to have a broader understanding of what is happening.

We also advocate strongly for the removal of the consent provisions. With the growing evidence in our community and the growing prevalence of violent pornography, combined with sexual violence, we believe that it can be used that a woman has consented to strangulation during sex. There is enough confusion, as you know from work in another place with this committee, around consent to sexual activity. Even if a woman consents to sexual activity, she has not given informed consent to strangulation. You cannot consent to something that may possibly kill you. Lastly, statistics from the Domestic Violence Death Review Board show 29.5 per cent as a factor prior to the homicide.

As previous speakers have talked about, it is a new offence. We believe that the documentation of strangulation with police and other organisations is new. It is new to see strangulation on risk assessment forms et cetera. We are seeing a growing trend of this coming to the coroner's office. In the US it is sitting at 49 per cent—that is, strangulation being present prior to homicide, no matter how that person died. If it is through stab wounds, gunshot or whatever, it is there. There is also a body of evidence that men who strangle will strangle in the public arena as well. They are the most dangerous offenders.

Mr LISTER: Ms Wetherill from Ending Violence Against Women Queensland talked about how someone can be seconds from death and that, in her view, the penalty needs to recognise that seriousness. What do you have to say about that in terms of public recognition of the seriousness of choking and strangulation and how it could be expressed in a heavier sentence?

Ms Taylor: I think it is true that someone can be seconds from death. Many of the women who come to us talk about that. The most recent was a woman who woke up to him saying, 'Do you want me to kill you?' Having it enshrined in law and interpreted by the courts is quite different from the imposition of it in the courts. I think we need to look at why such small sentencing is being implemented through the courts before we look at it further. I do not know that 14 years will change anything until

we know why such small sentences are being imposed currently. Why are men who strangle their partners routinely let out on bail? There are a whole lot of things within the justice system that we need to address.

Mrs McMAHON: Thank you very much, Betty, for coming in and for all of your advocacy leading up to the introduction of this offence. I am interested in the definitions that are in the bill before this committee right now. I note the definitions of 'choke' and 'strangle' are identical. We have seen in quite a few submissions that you would prefer the medical terminology. In terms of the definitions before the committee right now, can you point out where you feel the deficiencies are in those three terms?

Ms Taylor: The legislation talks about choking, strangulation and smothering, and they are all quite different. Choking probably should not even be in there because no-one chokes you; you choke yourself on food or water or whatever. The definition that has been adopted in New Zealand and then introduced into Western Australia, which is the most recent state in Australia to adopt the strangulation law, broadens it out. We are really strong advocates that it is not just anything that touches a person's neck; it has to be their throat. In educating people, we have to get that understanding that it is not hands around the throat; it can be hands to the back of the throat. You have arteries and veins at the back of your neck as well as to the front that could be restricted and impeded.

In terms of that definition, if we leave it really loose we will be back to the same thing of having people in the judiciary walking into court with a *Macquarie Dictionary*. We have to be able to use the forensic medical opinions around strangulation. We have to recognise the interruption to breathing as well as to blood circulation. We have to have a greater recognition for women that going forward there are numerous ways they can receive permanent injury. I think that goes to the seriousness of it.

Mrs McMAHON: The definitions we have in front of us here, particularly looking at the definition of 'suffocate', do revolve around the respiratory system, and you are saying that it needs to include the cardiovascular and the blood circulatory system as well?

Ms Taylor: Yes.

Mrs GERBER: I have listened to what you have said in relation to the judiciary's response to these things, and I just want to be clear. Is it your view, Ms Taylor, that the current response to strangulation, suffocation or choking within the judiciary—that is, the sentencing that is handed down—does not meet community expectations for the severity of the offence and type of offending in relation to the bill that is currently before the committee?

Ms Taylor: It is. I would say that, even more broadly, we at the Red Rose Foundation have embarked on a lot of training and education. We have a formal partnership with the Training Institute on Strangulation Prevention in the US. As with any legislation that comes in, it has to be followed by pretty intensive education right across the board, even to the victims themselves. It is like when seatbelt legislation first came in. You cannot just bring in law; you have to legislate and educate. I think that is the path we are on.

Ms McMILLAN: Good morning, Betty. It is lovely to see you again, and thank you for your great work. Do you have any thoughts about the proposal in the bill to add section 315A, which as you would know is the schedule of serious violent offences? What is your view on that, if you have one? Otherwise, you might like to get back to us.

Ms Taylor: I believe that it is a serious offence and certainly could be added to the serious offences list. I will defer to my colleagues from the Australian Institute for Strangulation Prevention. They might expand on that further.

CHAIR: There being no further questions, we will now conclude this session. Thank you, Betty, for coming along and thank you for your written submission.

BRADFORD-MORGAN, Ms Linda, Chair, Advisory Body of the Australian Institute for Strangulation Prevention

MANGAN, Ms Diane, Member, Advisory Body of the Australian Institute for Strangulation Prevention

CHAIR: Would you like to make an opening statement, after which committee members may have some questions for you?

Ms Mangan: I am not aware of what other statements have been made, but I do know that from some of the submissions some of these statements have already been made. For us, some of this information is very important to know. When this legislation was passed, being the first in Australia—and it is amazing for Queensland to have this legislation—the first thing that jumped out for the sector was the word 'consent'. Right from the get-go it has been an issue for us. I know that it has been an issue for others. It is not defined properly yet, but it is a standalone strangulation offence within a domestic setting. Straightaway that denotes that we are talking about a case of violence, of women experiencing violence. For us, they cannot consent. When we look at the definition of 'consent' under the Criminal Code, it clearly reinforces that women who are subjected to violence are not able to consent. We have hoped right from the get-go that that could be changed, so we are pleased that we are at least having this discussion now.

I read what the Attorney-General said at the time when she made a statement to the committee: this is a new offence that reflects that this sort of violence is not only inherently dangerous but also predictive of an escalation in domestic violence offending including homicide. It was very prophetic to say that at that time, because that was a time when we all knew something about strangulation but nowhere near what we know now. I am facilitating a support group of women who have been strangled. These are all highly professional women who are unable to continue working full-time. I have been able to learn and watch and observe and hear from the women about the immediate and the long-term impacts on their health, their psychology and what is happening in the courts in relation to their victimisation.

I would like to make this point: strangulation is defined internationally and in two states in Australia as the obstruction of the blood vessels and air flow or both. I do not believe that most people working in this field, including the courts to some degree, fully grasp that this is what incorporates strangulation. I know that people have said this in their submissions, but it is a point worth noting that in 50 per cent of cases there are no observable injuries, even in fatal strangulation. What emerges afterwards—but nobody does the medical testing—is that there are often major internal injuries that do not manifest until weeks or months later and they are not put down to strangulation. I know that women have been coming to us and saying, 'My doctor can only explain my heart condition now as a result of being strangled many years ago.' Dr Bill Smock has said that a tear in the artery can cause a leakage of air that can adversely affect the heart years later. I jumped on that because at that time I did not know that it could affect the heart as well.

These are issues that we are very concerned about. We are also very concerned that police in particular and some medical staff are not aware that a woman's memory and her appearance may look as though she has been drugged or been drinking alcohol when in actual fact it is the result of strangulation. We have had a number of those cases come before us. We are saying that with a definition there needs to be an explanation for the front line. You asked Betty a question about the courts. I think there are a lot of doctors in the world and a lot of people on the front line who still do not fully understand strangulation and the impacts of it.

Mr LISTER: When we deal with sentencing matters and so forth, we often have to weigh up community expectations with expert advice regarding the implications for our legal system. If you were holding the balance in this matter, what would you say about not increasing the penalty to 14 years for non-lethal strangulation in terms of your view as advocates for victims of domestic violence in the community?

Ms Mangan: For me, in terms of the penalty of seven years, of course we would support any increase, but it is not a burning issue for us at the moment. What we would be concerned about is any lessening of that, because we now know what we did not know 10 years ago. I have been in this industry—child abuse and domestic violence—for 40 years. I have seen children strangled. I have seen women strangled. I never fully understood then what I know now as the long-term impacts. Now they are finding in America that children are being treated for ADHD when in actual fact they have been strangled by their parents. There are so many impacts that we are seeing every day.

We are getting cases referred to us. We have one woman who has finally found out after 10 months—we have been pushing and pushing for medical tests—that she has had a broken neck. What I am saying is that for us it is such a serious offence. When I look at the women who hold amazing careers who are unable to continue to work full-time—we have doctors and lawyers and nurses and social workers who cannot work full-time because of the impact of those acts of violence on them by their partners. We see it as such a deadly serious offence.

The other thing I would like to add is that, while we always knew strangulation was a bad thing, we never asked the women. What I am finding is that a lot of women do not think to mention it. I think of the 14 years I was manager of DVConnect, and we never asked the question. Some women would sometimes tell us if the opportunity presented. When we started asking the question, we were quite overwhelmed by the number of offences involving strangulation.

Mrs McMAHON: I am interested in looking at this definition and weighing up whether we go for a broad definition that can encompass many things and not be restrictive versus a very prescriptive definition. This is a long-running question that I ask the Law Society and the Bar Association when they come in and about the role of case law. I know that in quite a few submissions we have gone through an extensive number of judicial findings and some case law. Ms Bradford-Morgan, from your experience, in terms of providing an adequate framework as a legislator, do we need prescriptive definitions? How do we best encompass this so we do not rule out cases because the evidence just is not there from a medical point of view and therefore it is ruled out versus being too broad and not capturing it because it does not fit into this perfect little neat box? Where do we as legislators weigh up between a broad definition and a prescriptive definition?

Ms Bradford-Morgan: Firstly, can I say at the outset that I am a proud Queenslander. I want you to realise that the work of this committee has immense input into the campaign for eradicating gender based violence against women and girls, not just in this state but also nationally and internationally. I want to congratulate the committee on your commitment and your work.

To answer your question, yes, it needs a prescriptive definition. I say that for this reason: court based decision-making is a discrete enterprise based on the available medical evidence in that case. It is case based, which is why there has been a distinction between the sentences imposed when there are other indictable offences that require a Supreme Court decision that also involve a strangulation case versus a District Court consideration of a strangulation case on its own.

The advantage for the legislator because of the separation of powers is that you can draw on the wealth of information that is available. You are not confined to the evidence that is case based, the particular doctor giving evidence in that case, the mechanism of injury in that one case. There will be an evolution in judicial authority in this area, but to implement the intention of the legislation you must have a prescriptive definition.

That has been borne out by the limitations expressed in judicial pronouncements in decision-making to date. Having the first domestic violence based legislation, which was noted in the United Nations global *Handbook for the judiciary on effective criminal justice responses to gender-based violence against women and girls*, having looked at having a committee that revisits this issue, it is an important evolution. The decision-making has to be policy based. That is not the proper function of courts, and that is settled. Courts have to work with the legislation that implements the policy, which is driven by community standards and the information available to a committee which is a much wider evidence base to draw on. The answer is that we have to have a definition.

This area of law more than any other requires a multidisciplinary approach. It requires medical evidence because the physiology is very discrete. I personally have undergone an education process and had a level of ignorance that was shocking given the work that I do. My interest in this and my ongoing training in this is born out of a commitment because of deficiencies in what is occurring and the response that is delivered to women and children and men who are victims of domestic violence and this insidious coercive control through strangulation.

Mrs McMAHON: With a need for a prescriptive definition, do you feel that the definition in the bill that the committee is now considering meets the need for the cases that we are seeing out there? Where do you feel that it needs to expand or be more inclusive of additional aspects that have not already been considered?

Ms Bradford-Morgan: The evolution of this strangulation-specific domestic violence offence of course originated in Queensland, but it has been considered and reviewed in other jurisdictions and in other nations. I think it behoves us to consider the evolution of that legislation. Given that there were directed acquittals for a period of about a year and a half so that the DPP did not bring to trial cases where there was strangulation where there was not an allegation that breath had stopped, the intent of

the legislation—which Justice Mullins addressed in her Court of Appeal decision in the R v HPZ—had not been met. That has been remedied in relation to the definition of 'choking'. Again, the limitations on that judicial consideration were confined to the medical evidence in that case. That has delivered us a definition of 'choking'. It has not delivered us a definition of 'strangulation' and 'suffocation'.

I think New Zealand took our Queensland draft and improved it. Western Australia has now done away with the choking reference and has left it as a suffocation and strangulation offence because the vast majority of instances are strangulation. Sadly, it is something that affects all strata of society and, sadly, all age groups. I still get a jolt every time I see their age starting with the year 2000, but it is an epidemic, and COVID has exacerbated the number of incidents. That is why the work of the committee is so fundamentally important.

Ms Mangan: Could I just add, too, that one of the stats that I felt was quite alarming is that strangulation is the No. 1 cause of stroke in women under 45 who do not have health issues—heart issues.

CHAIR: The time for this session has expired. Thank you for your written submissions and also for appearing this morning before the committee.

McCASHIN, Ms Sophie, Co-Secretariat, Queensland Domestic Violence Services Network

CHAIR: Good morning. I invite you to make an opening statement, after which committee members may have some questions for you.

Ms McCashin: I have no opening statement to make.

Mr LISTER: Can I ask you about a matter that we are considering which has not been given much airing so far. In her introductory speech on this bill the opposition leader talked about introducing an offence of coercive control for offenders who manipulate and intimidate their partners. Do you have a view on the need for such an innovation?

Ms McCashin: I am speaking on behalf of QDVSN. We are an organisational network that is predominantly working on frontline response to domestic and family violence. I can speak in terms of our practitioners' experience around coercive control and what that looks like when engaging with predominantly female victims. In theory, I think having coercive control as a criminal offence would be really great. I see a lot of concerns around how that might be implemented. I see already a lot of women who have extreme difficulty in proving their experience of domestic and family violence or providing evidence that that is what they are experiencing, even when it is physical abuse. I have a question mark around how that would look.

Mrs McMAHON: I want to turn to your submission, in which you outlined that 'many individuals seeking our support might not associate what they went through as being strangled'. I was wondering if you could outline to the committee how that manifests itself in a victim coming forward with their experience and how you then have to step them through the process.

Ms McCashin: Di Mangan, who previously spoke, was the CEO of DVConnect previously and I am the manager of DVConnect now. I can say that we committed a lot of time and our own resources to educating our staff on strangulation and what that looks like. A lot of that was driven by the Red Rose Foundation, by them bringing external stakeholders from America, for example, to Queensland and then us spending our resources to educate our staff on that because we understood it to be a pressing issue. Since then we have implemented more stringent questioning around strangulation. Prior to going through that training we would have seen fewer women explicitly disclose their experience of strangulation. Now we ask it as a mandatory question as part of our risk assessment, and I understand that a lot of the regional services at QDVSN also ask it.

Our experience has been—and this was previously mentioned—that a lot of women would not necessarily understand what their experience was; they would not relate it to strangulation. They might use different language. They might use the word 'smothering', for example. The way we would go through it is to unpack what that actually looked like for them in terms of what happened and what their experience was. We would ask it as a specific question. If we sensed some pushback or if we got a history of domestic and family violence, for example, which involves quite severe physical abuse, we would ask very specifically what that looks like. Our risk assessment tool is not just a tick-a-box exercise; it is understanding a pattern of behaviours. It is getting the full story, the full narrative.

Mrs GERBER: I note that your submission supports a definition of 'choke', 'strangle' and 'suffocate' in the non-lethal strangulation bill that is currently before the committee. Can you provide some insight into how the fact that this is currently effectively not defined as an offence is restricting your clients' ability to really capture or identify the violence that is inflicted upon them?

Ms McCashin: Those us working in the field would ask the question regarding 'strangle' but would obviously have to unpack that a lot more. It is around the limited understanding of what that looks like. Also if they go through the court process—and you can see this in different approaches and different experiences across the state of Queensland—domestic and family violence is not always treated consistently or dealt with consistently. I feel like education and awareness needs to be done on domestic and family violence, full stop, but then there is a separate package in understanding, attention, education and awareness that needs to happen around strangulation and what that looks like.

Mrs GERBER: Effectively, what you are saying is that having a definition that includes 'apply pressure to a person's neck' might enable the victim to better identify what they have suffered. They could say, 'That did happen to me,' rather than using their own interpretation?

Ms McCashin: That is correct, and also understanding that a lot of women black out after being strangled and might not necessarily associate what has happened to them with being strangled in that instance. Maybe there could be more awareness around what that could look like, how that presents—just more general awareness, I think.

Ms McMILLAN: Would you like to add anything to the support you expressed in your submission for the classification of section 315A as a serious violent offence?

Ms McCashin: I go back to some of the inconsistency we are seeing across the state of Queensland when it comes to applying the law or when it comes to women going through hearings and their experiences in going through the court system when they have experienced domestic and family violence or strangulation. We are alarmed. We are concerned with the high rates of disclosures of strangulation that keep coming across our tables when we are talking to women and children. Based on that and based on our understanding around strangulation being a lethality indicator as well, we advocate that it be taken more seriously.

Mrs McMAHON: Quite a few other submitters have made comments on the element of consent. I note that there is, as has been raised by a couple of submitters, a changing demographic in terms of strangulation being used as part of sexual activity. Is this something that, through your network, you are starting to see: younger people with behaviour that might now be considered offending behaviour considering strangulation is being made an offence? Is this something that your DV networks are starting to see—a younger generation of people not necessarily in the typical domestic violence setting?

Ms McCashin: We are seeing at DVConnect—I cannot speak for the other regions—an increase in young people presenting. I would not say that those are people who are only talking about strangulation. They are talking about family violence; they are talking about domestic violence. I can see consent as being an issue certainly, because when we are educating our practitioners and inducting them we talk about what domestic and family violence looks like within a domestic setting and then, if you translate that, it does not finish when you open the bedroom door and go into the bedroom. In terms of what consent looks like when you are experiencing coercive control, I would put a question mark on that as well. I think a lot of people are experiencing it and might be too embarrassed, for example, to come forward. They might be manipulated into providing consent at that point.

CHAIR: I do not know if you had the opportunity to hear Professor Douglas and Dr Fitzgerald speaking earlier. Some of the concerns they have about increasing penalties in relation to this matter—and I am paraphrasing, and the committee can correct me if I have this wrong—are, firstly, there will be delay in matters being dealt with, because obviously they will have to be dealt with in the District Court rather than disposed of in the lower courts; and, secondly, there would be a reluctance on the part of some victims to come forward because of the length of sentence that could be imposed. Do you have any thoughts on the penalties adversely affecting the way victims are dealt with in the courts if there is an increase in penalty?

Ms McCashin: In our experience, the majority of women would not go through the court system anyway, because of a reluctance around what the judicial response will look like for them—family law court matters, for example, access to children and things like that. I do not know if it will have as much of an impact considering there already is an impact around that.

CHAIR: Can you give some examples for the committee of adverse effects that those coming forward may experience in making the complaint that may then impact on proceedings in the Family Court, for example?

Ms McCashin: I would say it is more around going through the process—taking time off from work, trying to be financially independent, all the barriers that exist. Maybe if a woman has to go into refuge and she has lived on the Gold Coast her whole life and now she has been asked to move to Bundaberg—just the huge amount of barriers associated with, 'Now I have to go back to the Gold Coast, where I am potentially putting myself and my children at further risk to go through another hearing process.' I would imagine that some people would be putting it in the too-hard basket. Women are in survival mode when they are in crisis and leave abusive relationships. I just think that would be one more thing that would be a barrier.

CHAIR: Do you have any suggestions for how that could be better managed through our adversarial system for victims?

Ms McCashin: I do. I think COVID has opened up possibilities around remote access to appear at court hearings, for example. I would say that reduces barriers significantly for women. It really assists in terms of supporting their safety and the safety of their children. In my experience as a practitioner, I have worked with multiple women who have been assaulted after a court date because that is when the person using violence has been able to again locate the woman. I see that as being a real positive. I think if services are supported to facilitate that so women do not have to go to an intimidating-looking environment but can go to their local women's refuge or regional support service and have access to a safe location to complete their video hearing, that would really reduce barriers.

CHAIR: There being no further questions, we will now conclude this session. Thank you for your written submission and thank you for appearing before the committee today.

LYNCH, Ms Angela AM, Chief Executive Officer, Women's Legal Service (via teleconference)

CHAIR: I invite you to make an opening statement, after which committee members may have some questions for you.

Ms Lynch: Thank you, Chair. The Women's Legal Service Queensland provides free Queensland-wide specialist legal advice, representation and information to women in matters involving domestic violence, family law, child protection, financial abuse and some sexual violence matters. Last year we assisted over 16,000 victims of sexual or domestic violence and provided over 30,000 services. We support the need for the existing section 315A strangulation offence to be amended and better defined and in general we support the bill.

As we have previously stated, it is very common for clients of Women's Legal Service to be victims of non-fatal strangulation in the context of domestic violence. Perpetrators strangle their victim 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 lives. It sends a 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.

It would seem that there has been a level of confusion in relation to the current provision. There was a coronial inquest into Tracy Ann Beale and the coroner, Mr David O'Connell, on 28 March 2018 did make a recommendation for a review of the offence as that case dealt with an issue of neck compression. There has also been the District Court case of R v AJB and also a Supreme Court case in the ACT, which is a jurisdiction that is influential though not binding, that required the stopping of breath to be the definition to be satisfied. What we know from the *Not now, not ever* report that acknowledged strangulation and recommended the introduction of the offence is that the offence was formulated to reflect the inherent dangerousness of the behaviour, both in terms of immediate threat of harm and as a predictor of future violence. We know that it is one of the highest risk factors for, I suppose, identifying future lethal risk.

The Court of Appeal in Queensland has distinguished those two cases which I mentioned before and found that choking is an act which hinders or restricts the breathing of victims. Proof is not required that the breathing was completely stopped. We support this bill as it does provide a wider definition than the Court of Appeal decision. We think this confusion around the definition—any confusion around the law—causes problems down the line. We note in the strangulation offences, which we noted at the time of doing the submission, that there had been a drop in strangulation offences in Queensland. I have just looked up those statistics and that has been confirmed. It looks like for the full year in 2019-20 there has been a drop in strangulation offences compared to the year before. I think this level of confusion does have impacts on whether the police feel confident in taking a matter forward or not, so obviously it is important to get these things right. That is all I was going to say in my opening statement. I am happy to take questions.

Mrs GERBER: Thank you for your appearance today. I note that in your submission you support a broad definition. We have heard from other submitters that they have supported a definition of the term but that it needs to be prescriptive so that it encompasses all scenarios. As a former federal prosecutor, when I hear 'prescriptive' I hear 'narrow'. Whilst the intent of being prescriptive might be to encompass all scenarios, it has perhaps an unintended effect of excluding certain situations that you may not have thought of, or it is up to the judiciary to ascertain whether it falls within a definition. Can you identify for the committee why you support a broad definition rather than a narrow one or a prescriptive one?

Ms Lynch: We support the definition as prescribed in this bill because it is broader and wider than the Court of Appeal has spoken about in R v HBZ in 2020, because if choking is an act which hinders or restricts breathing there could still be arguments about whether the breath was hindered or restricted and all of those kinds of things. I think that is right: there can be unintended consequences if an offence is too prescriptive. With the history of this legislation, now that the Court of Appeal decision has been made, I think the bill itself in its very sort of broad approach is the best approach to take.

Mrs McMAHON: I want to go through the table you have in your submission. I know that you spoke to it briefly in your opening statement in relation to the reduction in the numbers. Do you think there is a correlation in terms of some of those outcomes from court results or is it something around the level of reporting? Are you able to comment at all, because those are obviously court results and not necessarily complaints? My understanding is that complaints have actually risen.

Ms Lynch: I do not have the complaints. All I have is the offences or convictions. If the convictions are going down—and we do not have enough information as yet and there has been no analysis. All we have is the raw numbers. For 2018-19 there were 331 convictions and in 2019-20 there were 257, so there has been a fairly substantial reduction—enough that I would start to be concerned if I were the government and/or the police and Attorney-General's department. There can be a range of reasons, including the confusion in relation to the definition so that police will not proceed. For at least a year we were working on a definition where the District Court was saying that there had to be a complete stopping of breath. Well, the police are not going to then charge if they cannot establish that. It may not be the complete reason, but certainly, I would think, the confusion in the community ultimately also plays into where police are going to put their resources and whether they are going to proceed if they do not believe that ultimately they can get a conviction.

Mrs McMAHON: Thank you. We had an earlier submission from Professor Heather Douglas, who suggested that a mechanism to have more of these matters dealt with in the Magistrates Court, as opposed to the District Court, might reduce the amount of time that it takes to have these matters finalised. Do you have any comment on having these matters heard in a Magistrates Court versus a District Court?

Ms Lynch: I think it is something that should be considered if we are reviewing this law. It may be that we really need to hear from victims themselves and get their perspectives in relation to the length of time it takes to go through processes in the District Court versus the ease of access in a Magistrates Court. Of course, in the Magistrates Court you are going to have lower penalties associated with that outcome so it is really a weighing up of what is the best approach: that kind of speed and ease of access versus perhaps a higher penalty. I do not actually have an answer to that today, but I would be recommending that some sort of review is undertaken and that we actually speak to victims themselves and get some perspectives from them in relation to those issues.

Mr LISTER: Thank you very much for your appearance. Are there any examples that you can think of where offenders would not be held accountable for their action of choking, even with the wider definition of choking which requires partial restriction of breath?

Ms Lynch: Offenders are not held accountable every day. That is the reality of working in domestic violence. That is just day in, day out. Offenders get away with many offences. That is just the reality. We have women who come in here who have been strangled and they have never been advised that there is a criminal offence. Maybe a protection order is taken out, but that is the only thing. They were not sent off to health services. It is day in, day out.

Ms McMILLAN: Thank you for all the work you do. I have a question in relation to consent. I know that it is outside the scope of the bill, but I note that you are seeking the removal of the words 'without the other person's consent' from section 315A. Could you tell us a little bit about your concerns there?

Ms Lynch: I think the issue of consent creates an extra obstacle for victims in relation to proving the offence has occurred. It is an element of the offence. It raises the issue of the 'rough sex' arguments or whatever arguments I suppose the defendant may raise around issues of consent. Obviously if consent is not there it is not an element that has to be proved and they do not have to go through the indignity of nearly having their life taken—because that is essentially what you are doing when you put your hands around someone's throat. That victim does not have to go through the indignity of then arguing that they did not consent to that.

CHAIR: There being no further questions, we will now conclude this session. Thank you for your submissions and for appearing before the committee this morning.

GREENWOOD, Ms Kate, Barrister, Prevention, Early Intervention and Community Legal Education Officer, Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd (via teleconference)

CHAIR: I now welcome Kate Greenwood from the Aboriginal & Torres Strait Islander Legal Service (Qld). I invite you to make an opening statement after which the committee will have some questions for you.

Ms Greenwood: Good morning, Chair. By way of opening statement, our submission essentially boils down to this: the law needs to be certain and changes to definition or sentencing should be evidence based. As we read it, the changes of definition are driven by medical reasons so, for that reason, the definition should be made medical. By way of a side note, if there is uncertainty in the law that will be reflected in long remand times as evidence needs to be resolved or an element needs to be resolved.

In our view, there is no evidence based reason for increasing the penalty from seven years to 14 years. There is evidence that there is a lack of programs. The committee has already heard that there are no programs available while prisoners are on remand. We have quoted from the Sofronoff report that there are very limited programs available inside correctional facilities. There are effective programs in the community. We noted that in New South Wales such programs can be delivered via a community corrections order. The committee would be aware that there is already a recommendation from the Queensland Sentencing Advisory Council for the implementation of a community corrections order.

We are fairly neutral on the issue of characterising it as a serious violent offence but would seek to not lock out sentencing options. Given the very wide range of circumstances in which this can occur, it is important that the judicial officer has the full gamut of sentencing options available to them. That concludes my opening statement.

Mrs GERBER: I note that in your submission you say that if there were to be legislative intervention for the definition that it should properly reflect medical definitions. Do you consider it to be better to incorporate the current proposed definition into the Criminal Code or to leave section 315A without any definition?

Ms Greenwood: It sounds like my answer to your question might be neither. I think earlier you had Magistrate Bradford-Morgan speak to you in her position as the chair of a committee. She identified this as a multidisciplinary issue—both a medical and a legal issue. We would support that comment. The law needs to be certain. The concerns for the effect on the victim are medical concerns. The definitions should be evidence based. The medical profession already has quite precise definitions for strangulation, choking and suffocation. In the ACT case of Green they had a medical officer give those precise medical definitions.

I think the committee heard earlier that most of what has been described as choking is in fact strangulation—that is, there is external compression to the neck. I would also say: do not leave out choking. Choking would involve if something were put in the mouth of the victim causing the blockage of the trachea. For that reason, I do not think it should be omitted. Suffocation is the final one which does not get a lot of press but also exists.

In order to get to the point of certainty, to address the concerns around the effect on the victim, to be able to resolve the issues so that it is very clear if an accused is guilty of strangulation, choking or suffocation, it should be matched back to the medical evidence. Therefore, the definition should be matched back to the medical definition. Anything else will leave some level of uncertainty in the law which is an undesirable situation.

Ms McMILLAN: Would you elaborate further in relation to your support for the proposed listing of violent offence in section 315A?

Ms Greenwood: We note the logic of characterising it as a serious violent offence. There is a range of behaviour which can get caught within the definition, either as it is now in the bill or as we are proposing. All we are saying is that there should be reasonable discretion for a sentencing judge or magistrate, if that is how it turns out, to have a number of sentencing options. Actual time in custody, given the paucity of programs, is not necessarily a desirable thing. It may be much better for the offender to be out on parole and accessing programs in the community, where much more will be achieved with them—being a lengthy parole and accessing an effective program rather than spending a longer time in jail with no great improvement in terms of access to programs.

Mr LISTER: In the introductory speech for this bill, the opposition leader flagged a need for an offence of coercive control. Can I ask you what the Aboriginal legal service's view would be on that? Is that something you would support?

Ms Greenwood: We would recognise it as a problem. The difficulty with changing the criminal law is that it absolutely needs to be certain and there needs to be a line between legal behaviour and illegal behaviour. Any time there is far too much uncertainty there is a real risk of over-representation and overincarceration. We would be willing to look at any specific proposals and provide feedback based on the on-the-ground experience that we have, but it is difficult to speak to it in those general terms. I am aware that in other jurisdictions, for example, economic control can be a domestic violence offence. We would be happy to look at any specific proposal, but just as a very broad brush it is very difficult for me to comment without going and getting that background information.

Mrs GERBER: Ms Greenwood, you were talking previously about the definition and said that in your organisation's opinion it should be a prescriptive one based around medical evidence. Can you envision a circumstance where, if the definition was to be a prescriptive one around medical evidence, an offender may not be captured by the offence provision because, for example, at the time of the offence there is not the medical evidence to be able to establish the prima facie case in the first place?

Ms Greenwood: If there is not the evidence to support it—again, this occurs within a context. If there is other domestic violence then that should be charged as domestic violence. I did a quick ask-around of various lawyers in the criminal law team, asking for their overall impressions. I was given an example. Recently a charge was downgraded—and I will not give details—because there was absolutely no medical evidence to support it and there were issues of the complainant being on ice and other indicators that went to credibility. In the end, that charge was downgraded to assault occasioning bodily harm. There was more than enough evidence to support that, so that was the appropriate charge.

The criminal law really cannot be boxing with shadows. There has to be something to point to in one way or another for a matter to be criminalised. Otherwise, if you are talking lesser standards then maybe it should be a civil law matter if there is some long-term effect many years later. There needs to be evidence. It needs to be beyond reasonable doubt. If you are going to jail someone and jail them for a long time, there needs to be a proper level of evidence.

Mrs GERBER: To clarify, effectively what you are saying is that under the current proposed definitions—for example, for 'strangle' to apply pressure to the person's neck—there is not sufficient evidence for the charge?

Ms Greenwood: I used to play judo. I do not anymore. Quite possibly on that definition, every time you play judo you are committing an offence. There are very strict rules in judo such as tapping the ground. There is a great deal of caution about accidentally cutting off someone's airway when you are playing judo. These definitions are very broad and I think quite potentially have the ability to criminalise a whole lot of activity that parliament would never intend to criminalise.

CHAIR: There being no time left in this session, we will have to finish now. Thank you for your submissions and thank you for appearing before the committee this morning.

Ms Greenwood: Thank you, Chair and committee, for those interesting questions.

YOUNG, Ms Tabatha, Chief Executive Officer, Aboriginal Family Legal Service Southern Queensland (via teleconference)

CHAIR: Good morning. I invite you to make an opening statement, after which committee members may have some questions for you.

Ms Young: I firstly acknowledge the traditional owners of the land on which we meet. I am sitting on Quandamooka country this morning. I acknowledge our elders past, present and emerging. Thank you to the committee for inviting me along this morning to represent the communities of western and south-western Queensland. Our service is one of 14 nationally funded family violence prevention legal services across Australia. We are one of two here in Queensland. We service 12 local council areas in south-western Queensland. I am willing to take questions from the committee.

Mrs GERBER: I note that in your submission you broadly do not support the introduction of definitions and that the definitions proposed align with what is currently in place in the ACT and Western Australia. Do you think that Queensland should follow other jurisdictions around broadening the non-lethal strangulation offence and that the sooner this occurs the better for all victims of domestic violence?

Ms Young: I think it should. Often when approached by police at the point of an incident our victims struggle to communicate with law enforcers around what has occurred to them. Often it is a way of minimising what has happened because of fear of retribution. With communication with policing, they really struggle at times to make out those charges and to get the women to safety from that incident when it occurs. I believe that we really need to look at that context that makes up that definition. Obviously, as we have heard this morning, medical seems to be the best way forward for a definition.

Ms McMILLAN: Ms Young, in your submission you note that section 315A of the Criminal Code has had only a limited impact on domestic violence rates in Queensland. Do you consider that the proposed amendments, if passed, will assist in positively impacting on the domestic violence rates in Queensland?

Ms Young: When it comes to our communities, I believe that many incidents are under-reported. Victims do not come forward until the last point of an offence or interaction with other services. Again, that is about fear of retribution. It is fear of the child protection system and removal. It is basic fear, because in western Queensland the time between towns can be a couple of hours so that point of safety is not going to happen overnight. Anything can happen between the time the incident occurs and getting to safety. Also, culturally appropriate services for our victims and our families are limited out west. Although there could be money going into DV services, the money going into culturally appropriate services in western Queensland is limited, so our women will not report. You are not going to see much of an impact in the statistics for our women and children.

Mrs McMAHON: In your submission under 'Further comments', you note that you have observed that victims often want to recant their statements shortly after making them in fear of retribution by perpetrators. Submissions to this committee on this bill have stated that an increase in the penalty might be counterproductive, with some victims not wanting to come forward, and that an increase in penalty will lead to more offenders pleading not guilty and dragging out the court process. Are you able to comment on what the process consequences are for an increase in a penalty?

Ms Young: I think it is going to impact on both the perpetrators as well as the victims. I have seen this a fair bit in my career where victims have wanted to recant their statements or they just will not give a statement. I have seen a potential homicide one where six months later we were waiting to get into the District Court and they needed to take an addendum statement from her. She refused because she did not want to relive that trauma. The duration between the offence and getting into the District Court is heavy times for a victim because she has to relive all of that. Again, on the perpetrator's side—and I did not include this in my submission—because we have the highest rate of incarceration we are going to go down that road where, if they are found guilty and placed on an SVO, we are going to have more of our people in jail again and they will be in jail for a longer time.

I think what it is really going to come down to, even in the prison system, is education and programs made available a lot earlier if it is determined that an SVO fits this offence. We need to start looking at rehabilitation for our people and getting in there early. Services such as ours, which is funded by the federal government, need to get out in the community and educate very early on about the consequences of reporting a domestic violence offence. It is not to scare our people off but for them to say, 'Yes, he did that to me and I need assistance.' That assistance needs to be there when that woman puts up her hand and not six months down the track when Child Safety wants to remove the children. It has to start really early. We need to start it earlier in the prison system—when they are on remand,

not waiting for someone to be sentenced or after they have served the biggest proportion of their sentence. We have to start early with our people and it has to be done by our people educating our people.

Mrs McMAHON: Is it your experience that offenders have, in the back of their mind, the penalties that they could be facing for the actions that they are either about to commit or are in the process of committing? Is the length of a penalty or a sentence actually, at the point of committing an offence, a deterrent factor?

Ms Young: I do not believe that at the time the offence is committed they are thinking about the time they are going to get. It is not until they are actually locked up. A lot of the time our people do not think about the children or the partner until they have started doing some time in custody. Then they start wanting to go home to country. They want to be with their family. 'Oh my kids, my kids' is what you hear. That is the reason that I say we need to get in early and start educating and start to get our people to take responsibility for their families and keep their families safe, so that it is not falling back on services such as ours to educate and keep them safe, if you understand what I just said. I have gone into the prisons and seen our men who are absolutely crying their eyes out. I used to say, 'Well, you didn't think about that at the time.' A lot of the times when they are committing the offence they are intoxicated or under the influence of another substance or they are so angry because of previous trauma they have suffered themselves that they do not think about that when they are committing the offence. It is quite sad.

CHAIR: There being no further questions, we will conclude this session. Tabatha, thank you for your written submissions and for appearing before the committee. Thank you for all your hard work in the community.

Ms Young: Thank you for the opportunity.

CHAIR: Good luck, Tabatha.

COLES, Ms Klaire, Director, Coronial and Custodial Justice Practice, Caxton Legal Service

KONING, Ms Cybele, Chief Executive Officer, Caxton Legal Service

CHAIR: Good morning. Thank you for coming along. Would either or both of you like to make an opening statement to the committee, after which the committee will have some questions?

Ms Koning: Good morning, Chair and members. Thank you for the opportunity to provide evidence to the committee this morning. Briefly, as we have set out in our written submissions, Caxton Legal Service has significant experience in providing legal advice, representation and social work support to both victim/survivors and perpetrators of domestic violence, including non-lethal strangulation. In the men and women we see there is a disturbing tolerance for non-lethal strangulation where both the victim/survivor and the perpetrator talk about the event unperturbed. In our experience, none of them know there can be significant impacts on the health of the victim/survivor. When our lawyers and social workers describe this to them, the seriousness of the incident starts to be known. For some, that becomes a pivotal turning point to seek safety or to seek help to stop being violent. For others, non-fatal strangulation is minimised or denied by both the victim/survivor and the perpetrator.

For a diabolical repeat perpetrator of domestic violence it is our reflection that, as they cycle through the criminal justice system, strengthening the non-lethal strangulation offence via an extended prison sentence may not provide any deterrence. A New South Wales Bureau of Crime Statistics and Research study released in 2016 by Trevena and Poynton in relation to short-term sentences versus suspended sentences revealed no deterrent effect.

Drawing on our experience, we do not support the proposed amendments because we do not consider they will achieve the policy objectives of safety and deterrence. Thinking of the thousands of perpetrators our centre has seen over the years, and putting the safety of women at the forefront of that thinking, I perceive that real change comes when we have the right interventions available at the right time for both the victim/survivor and the perpetrator as well as primary prevention activities which should be doing their job to change the whole-of-community response. We would be pleased to take any questions from the committee.

Mrs GERBER: Following on from the submissions around the definition, we have heard varying submissions today centring on whether or not a broad definition or a narrower, prescriptive definition which perhaps picks up medical terminology is appropriate. My understanding is that you do not support a definition at all. If there were to be one proposed, in your view is a broad one or a narrow, prescriptive one that picks up medical terminology better?

Ms Coles: We do not support a definition because we think the words with their plain meaning are quite broad and more widely understood by people who may be victims of such conduct. To answer your question in terms of proving an offence has occurred, if the definition aligned with the medical evidence that might be available then that might lead to more convictions. Thinking about your question now, we would probably support a medical definition over a narrower, non-medical definition.

Ms McMILLAN: Thank you very much for coming in today. In your submission on page 3 you suggest that increased penalties may be detrimental because they could deter victims or survivors from reporting incidents, and unsophisticated perpetrators of domestic and family violence are not moderating their behaviour based on sentence length, amongst other things. Would you like to expand on your position?

Ms Koning: At our domestic violence duty lawyer service we see approximately 1,000 perpetrators per year roll through the system. When what I have called an unsophisticated perpetrator comes through the system, here I am talking usually about a first-time offender—bearing in mind that repeat offenders are approximately around 50 per cent. When that person comes through the system for the first time, we know that because it is the first time they have had an order or an application brought against them either by police or by somebody in person. When we see that person, the last thing on their mind when they talk about the incident or when we present the allegations to them is what would have been the sentence or what could have been the sentence while they were engaged in this violent behaviour.

Violence is a very dynamic issue. We have not ever found perpetrators articulating to us—and I am talking about thousands of perpetrators here—that what was in their thinking at the time was, 'I may or may not get a particular length of sentence.' Most of them do not even know there are accompanying offences to a domestic violence act. Most of them do not know what the impact of non-lethal strangulation is. In my time as a lawyer working at the Magistrates Court for a lengthy period

of time I do not think I ever came across a perpetrator who had any kind of insight into the effect a non-lethal strangulation act might have on the victim/survivor. Never were they thinking, 'I will or I won't do this act because of the likely sentence I might get.'

Ms McMILLAN: Is it the intention of the perpetrator to create a context where the control is such that the person is encouraged not to report? Is that part of that context?

Ms Koning: There has usually been an escalation. Whilst we all in this room are obviously aware of the research that has been done around the causes and risk factors for domestic and family violence, a person who has reached the point of strangulation usually does not get there as the first incident of violence towards a partner. There has been a creep towards that and the escalation has often been soon. If you have repeated incidents of violence, then the more the violence has been repeated the more likely it is to get towards non-lethal strangulation. There has usually been a pattern, but there has not been an intervention in that pattern. The perpetrator, in my discussion with thousands of perpetrators over the years, does not talk about or have insight into whether it is power and control and whether they have exercised a more serious form of violence to achieve more power and control. Those who are legitimately reflecting on what they have done in a remorseful way usually have said to me that they lost control. If you are losing control, you are rarely going to think about the term of the sentence that might be the result of your actions.

Mr LAST: Thanks very much for coming in. It is good to see the Caxton Legal Service with us again. In the context of sentencing and the bill's proposal to increase the penalty to 14 years, on your evidence so far it would appear that deterrence is the only factor which works in relation to decisions about what the sentence should be. Would you agree with the assertion that there are other factors as well, such as community expectations, in recognising the seriousness of the offence? That is something that some other witnesses today have stressed.

Ms Coles: Yes, I think we would recognise that there are other factors that need to be taken into account when considering the sentencing of offenders. I think our main point in relation to that is that if the objective of the increase in the penalty is to prevent these acts from occurring—which I think from my understanding of the explanatory memorandum is the impact—our view is that increasing the sentence will not have the outcome of preventing future acts from occurring, for the reasons that Cybele has just mentioned. There needs to be intervention at an earlier stage to stop the cycle or to stop the escalation.

To pick up on something that Cybele mentioned also, one of the programs that Caxton operates is a bail support program for men on remand at the Arthur Gorrie, Woodford and Brisbane correctional centres. We see a lot of men charged with strangulation related offences, and it is very common that they do not appreciate the seriousness of the offence they have committed or that they are currently already looking at custodial sentences if convicted of those offences. I do not think that increasing the sentence alone without other earlier intervention measures in place will have the impact of preventing future acts of offending.

Mrs McMAHON: In your submission you make reference to the QSAC sentencing spotlight. Can you outline to the committee how the results of that review inform your position in terms of the sentencing model that is proposed?

Ms Coles: The spotlight revealed that 99 per cent of offenders, or something of that nature, pleaded guilty to the offence. You heard evidence before about how people pleading not guilty impacts not only victims but also the system generally. I think it is likely that if the penalty was increased and if the offence was designated a serious criminal offence then it would decrease the number of offenders who plead guilty to the offence. It would have all of those flow-on effects not only for the system generally but also, most importantly, for victims. It would not only save victims being traumatised having to go through the trial process and giving evidence—and a lot of this kind of offending is not witnessed, so the evidence of the complainant is crucial—but also impact on whether a person decides to pursue a complaint or make a complaint in the first place. I do not think it would achieve the objective of protecting the victim, if that is what we are aiming to do.

CHAIR: There being no further questions, we will now conclude this session. Thank you for your submissions and thank you for your appearance this morning. Thank you for your work in the community.

LEWIS, Mr Simon, Barrister and Member, Criminal Law Committee, Bar Association of Queensland (via teleconference)

CHAIR: I invite you to make a short opening statement.

Mr Lewis: I will not speak for too long, because the association's submission to the committee was fairly succinct as well as referring to what the Court of Appeal said in the Queen v HBZ as far as the definition goes. It is a further concern that the wideness of the proposed definition, particularly of choking and strangulation, could have some significant unintended consequences, one of which is that there is a potential to set up almost a two-tier sentencing system if the definition is to go through as simply placing pressure on anybody's neck. Without narrowing that, as is outlined in the submission, somebody who simply places one finger on somebody's neck with any pressure would be technically guilty of choking or strangulation, and clearly that would not receive the same sort of penalty as is currently being imposed by the courts generally with respect to the offences under the section in question; hence the reason the Bar Association is not in favour of changing the definition. The association is of the view that the Court of Appeal's definition as contained in that case will take away the danger of that sort of situation occurring in an unintended way. I think that is really all I have to add to the written submission that was sent by the association.

Mrs GERBER: I note in the submission the association comments that the bill's definition of the word 'suffocate' is unnecessary on the basis that the word's ordinary meaning is 'to cause or to have difficulty in breathing', which of itself is quite wide. If parliament were to introduce a definition for 'choke', would you agree that it is important for all words to be legislatively defined for the sake of clarity and as other jurisdictions have done such as Western Australia and the ACT?

Mr Lewis: The concern of the association is not that there be definition put in the section of the code but the fact that there is no limitation on what part of the neck or indeed what would constitute the neck. For example, if somebody was to place some light pressure at the back of somebody's neck, again, that would technically constitute a choke if the current definition were to go into the Criminal Code. That clearly does not and would not accord with the everyday meaning of 'choking'.

Mrs McMAHON: My question is one I always put to the Law Society and the Bar Association when we look at changing definitions within the criminal setting. Earlier today I asked Ms Bradford-Morgan whether the broader definition or the more prescriptive definition is of assistance in negotiating our way through each of these cases. It certainly was Ms Bradford-Morgan's suggestion that a prescriptive definition is of assistance. Given that the definitions in front of us in this bill at this point only look at respiratory systems, does the Bar Association have any further clarification that it would like to see in these definitions, or would it prefer to see the original, more broader definition and wait for case law to duke it out?

Mr Lewis: The definition of 'strangulation' that appears in the draft on the association's reading of it is not inconsistent with that which has been given by the Court of Appeal in HBZ for choking—that is, if there is a detrimental effect on the breathing of the victim and it does not require that it was stopped. Hindering or restricting breathing seems to be another way of saying what is contained within the further definition, as opposed to strangulation or suffocation. The association's concerns relate more broadly to the definitions that are proposed for choking, for example, and simply that it is any pressure to the neck.

Mrs McMAHON: We have also heard that some of the submitters thought there should be more medical terminology applied to these offences. Specifically I think they referred to Western Australia, where the definition of 'choke' was removed because it was considered that choking is something where you have done something to obstruct your own airways by ingesting something and the circulatory system, so the blood system, was included—not just the respiratory and airways. Do you have any comments on the most recent changes to the Western Australian definitions as opposed to what we have in front of us today?

Mr Lewis: I have not considered what they have done in Western Australia, since the association has written its submission with respect to that, other than to say that I think in criminal matters there has to be a certain level of circumspection in starting to involve medical definitions because then you will get medical people who are witnesses only in criminal trials who have different views of what the medical interpretation is and that is likely to cause more harm than good, I would have thought.

Mr LISTER: Thank you very much for your appearance today and for the Bar Association's submission. I take you back to your objection regarding how somebody could simply be pressed on the neck with a finger and therefore be technically guilty. Could I suggest to you that people would not

worry obsessively about this in that the average person of ordinary common sense would trust that a prosecution would not be commenced under those circumstances and that, even if it were, a court would probably take a dim view and certainly no conviction would occur?

Mr Lewis: I do not think it is necessarily wise in the current day and age if you have somebody who has complained of an offence that has been committed against them and it is, pursuant to the law, something that can be prosecuted. It is my experience in more than a quarter of a century of practising criminal law that the discretion exercised by police whether to charge or not has significantly reduced over time and they do not tend to exercise that. Following on, then, once they are charged it is difficult to get it out of the system. If it is proved that there was pressure to the neck under the wide definition, then it is a situation that could occur where somebody could be prosecuted for it.

Mr LISTER: Thank you for the answer.

Mrs GERBER: It is your view that police may not exercise their discretion. Do you think that at least a court would take into consideration the circumstances around the alleged offending at the time the case is brought before the court? For instance, if a friend puts their finger on their girlfriend's neck, do you think the court would take into consideration those circumstances as opposed to a husband violently strangling his wife?

Mr Lewis: Yes, and that is the concern that I raised at the outset—that is, you are then going to end up with a two-tier sentencing system for the one charge, because the charge will appear as it is framed in the Criminal Code and then the circumstances arise whereby the court must take into account the circumstances but then you are going to end up with a very wide disparity in sentences with respect to the same offence. Now, and the way that the courts have been proceeding, it is extremely difficult, even for young first offenders, to not get sentenced to a term of actual imprisonment and if they are not sentenced to actual imprisonment they are still getting imprisonment but with parole or suspension. If you were to widen the definition, it is more than likely that you would end up with people getting sentenced for choking and put on good behaviour bonds, and that is going to give a very wide discrepancy to sentencing for the same offence.

CHAIR: As there are no further questions, we will now conclude this session. Thank you for your attendance and thank you for your written submission. That concludes this hearing. Thank you very much to all of the witnesses and stakeholders who have participated today. Thank you to our Hansard reporters and the secretariat. A transcript of these proceedings and an archived broadcast will be available on the committee's parliamentary webpage in due course. I declare this public hearing for the committee's inquiry into the Criminal Code (Choking in Domestic Settings) and Another Act Amendment Bill 2020 closed.

The committee adjourned at 11.58 am.