

Women's Legal Service

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
Brisbane QLD 4000

Email address: lacsc@parliament.qld.gov.au

28th January 2016

Dear Sir/ Madam,

RE: CRIMINAL LAW (DOMESTIC VIOLENCE) AMENDMENT BILL (NO.2) 2015

The Women's Legal Service Queensland (WLSQ) is a community legal centre that provides Queensland wide specialist legal information, advice and representation to women in matters involving domestic violence, family law and child protection. We also employ allied domestic violence social workers who assist clients to obtain a holistic response from our service. We offer a range of services including domestic violence duty lawyer services at Holland Park, Caboolture and Ipswich, family law advice at two family relationships centres at Logan and Mt Gravatt and outreach to the Brisbane Women's Correctional Centre. We also employ a specialist rural, regional and remote lawyer who operates a RRR telephone line one day per week. WLSQ has been in existence for 31 years. In 2014/15 we assisted 3700 clients.

In addition to these services, we also provide community legal education on topics including domestic violence and family law to community workers in metropolitan Brisbane and, with the assistance of corporate grants and charitable trusts, to workers in rural and regional Queensland. In 2015, WLSQ provided education forums and client clinics in Mt Isa, Bundaberg, Hervey Bay, Rockhampton and St George.

We also conduct work in law reform. WLSQ does not practice in criminal law but we provide the following comments informed by our practice knowledge and expertise in the dynamics of domestic violence.

We thank the committee for the opportunity to provide feedback on the above bill. WLSQ is happy to appear to give evidence before the committee to clarify any points, if required.

In relation to the specific amendments we make the following comments.

1. Section 315A Choking, suffocation or strangulation in a domestic setting

Should there be a new offence?

WLSQ supports the establishment of an offence specifically covering choking, suffocation and strangulation. It is very common for clients of WLSQ to have been victims of non-fatal strangulation in the context of a domestic violence relationship. Perpetrators of domestic violence strangle their victims (non-fatally) as an act of power and control and the action is a very effective way of instilling fear and having ongoing domination over every aspect of their life. It is a very effective message to their victims that they have ultimate control over whether the victim lives or dies. It is a very serious and intentional offence.

Queensland research provides some evidence of how common strangulation is in domestic violence relationships in Queensland. In a study of applications for protection orders, the researchers found allegations of strangulation were quite common with one in ten women in the study making the allegation



Women's Legal Service Inc. www.wlsq.org.au

Address: 8 Ponsonby Street (cnr Ipswich Road) Annerley Qld 4103 | PO Box 119, Annerley Qld 4103

Administration Line: (07) 3392 0644 | Fax: (07) 3392 0658

Helpline: 1800 WLS WLS (1800 957 957) or (07) 3392 0670 | Email: admin@wlsq.org.au

and that the allegation of strangulation was not treated any differently by the police or the courts than other less serious incidents and assaults.¹ This is probably an under reporting but provides some evidence of the extent of the problem in the community.

It is rare, in our experience that the police discuss with our clients, the possibility of laying criminal charges for the offences that have been committed against them. It is rare that criminal action is ever taken under the current law for a non-fatal strangulation. Eg. The perpetrator being charged with assault. WLSQ acknowledges there may be a range of complex reasons why criminal action is not pursued in domestic violence matters including that women themselves do not want to pursue criminal action. However, our point is that women are often not made aware that a crime has been committed against them and given the option of pursuing charges or time to make an informed decision about this.

WLSQ supports the development of a new offence in Queensland of non-fatal strangulation because:-

- Of the seriousness of the activity and that is well established as a precursor to lethality and is regarded as a red flag in risk assessment.
- Would highlight the seriousness of the activity to the police which would increase the risk profile of the victim, increase the likelihood of a criminal charge being laid, would increase the likelihood that medical attention be arranged for the victim and referrals being made for appropriate community support.
- Would assist in broader education about the seriousness of the activity in the wider community.
- Would increase knowledge of magistrates and police in the civil protection order process and would assist the court in its determination of who is the person in most need of protection, when there are competing applications for protection orders before the court.

Recommendation one

WLSQ supports the development of an offence in relation to non-fatal choking, suffocation or strangulation.

DV specific offence vs generic offence?

We note from the explanatory memorandum that 'domestic relationship' is defined in Section 1 of the Criminal Code and the Criminal Code definition adopts the definitions of 'relevant relationship' contained in Section 13 of the *Domestic and Family Violence Protection Act 2012*.

We understand there are advantages in having consistent definitions across both civil and criminal law. However, we believe it is likely there will be some serious unintended consequences that will flow from this including:-

- Making the relationship an element of the offence means that if the relationship is not proved beyond reasonable doubt then the prosecution will fail;
- That it excludes some offending behaviour, in particular many dating relationships are unable to satisfy the definition of a 'couple relationship' ;
- Does not acknowledge the broader issue of violence against women in the community outside of domestic violence relationships;
- As it is an element of the offence, there is a high probability that the criminal courts will be required to interpret the meaning of domestic relationship. In all likelihood this will result in a narrowing or restriction of the definition because it is being interpreted in a criminal law context and outside the protective framework used in the civil jurisdiction. However, this criminal law context will influence civil protection order outcomes and may result in less women being able to access a protection order.

For these reasons outlined, WLSQ prefers the offence to be generic and not domestic violence specific as this would have broader application and does not rely on the nature of the relationship between the victim and defendant. If the relationship does involve a domestic violence relationship then this could be taken into account in sentencing as an aggravating aspect of the offence.

¹ Douglas, Heather and Fitzgerald Robyn *Strangulation, Domestic Violence and the Legal Response*
Sydney Law Review Volume 36:231

Recommendation Two

WLSQ supports the development of a generic offence of non-fatal strangulation rather than a dv specific offence because:-

- **Making the relationship an element of the offence means that if the relationship is not proved beyond reasonable doubt then the prosecution will fail.**
- **That it excludes some offending behaviour, in particular many dating are unable to satisfy the definition of a 'couple relationship';**
- **Does not acknowledge the broader issue of violence against women in the community outside of domestic violence relationships;**
- **As it is an element of the offence, there is a high probability that the criminal courts will be required to interpret the meaning of domestic relationship. In all likelihood this will result in a narrowing or restriction of the definition because it is being interpreted in a criminal law context and outside the protective framework used in the civil jurisdiction. However, this criminal law context will influence civil protection order outcomes and may result in less women being able to access a protection order.**

Current Drafting

If the committee proceeds with the current drafting and a domestic violence specific offence, we are concerned about inclusion of the words in a "domestic setting". Our concerns are that this may be limiting or cause confusion. Domestic violence, especially post separation is not limited to domestic settings or violence in the home but can take place in public places, in restaurants, at contact handovers, in front of courts and at workplaces. We believe therefore the words "domestic setting" should be removed.

Recommendation Three

That if a domestic violence specific offence is adopted that the words "domestic setting" be removed from the proposed Section 315A to avoid confusion or limitation in the application of the offence to cases where the offence may have occurred in a non-domestic setting eg. On a street, workplace.

Improved responses - Education and resourcing

Police and first responders would need education and support regarding the introduction of the new offence including when they charge with non-fatal strangulation and when they charge with other more serious offences such as attempted murder.

They would also need guidance and protocols in relation to the gathering of evidence (how to question the victim effectively) and referrals to medical assistance and support for the victim. It should fit into wider education about high risk factors and lethality risk factors.

The education could also include education to the police about the likelihood of women withdrawing statements and reasons for this, especially very vulnerable women. These women would be frightened and many are unsupported, they can be susceptible to pressure from the perpetrator and also sometimes his family, friends and community.

Police protocols should be developed that specifically deal with the withdrawal of statements and have policies in place to help police respond appropriately to this, especially to very vulnerable communities. Criminalising vulnerable women is not going to be the answer. Currently there are no widespread supports, if at all for women who are victims of domestic violence proceeding through this system. It is not unsurprising that highly vulnerable women who are at high risk may withdraw their statements.

Recommendation Four

That the introduction of the new offence of non-fatal strangulation be supported by comprehensive training for police and the development of appropriate protocols that cover the following areas:-

- **Gathering evidence and how to question the victim effectively;**
- **Referrals to medical assistance and victim support;**
- **High risk and lethality factors;**
- **Appropriate bail conditions;**

- **The police response if vulnerable women withdraw statements, understanding why this occurs and an acknowledgement that criminalising vulnerable women for withdrawing statements is not the preferred approach.**
- **The appropriate charge if non-fatal strangulation cannot be established.**

Attempted murder should still be an option when this can be established

We presume that if the intention was to kill the victim but the perpetrator fails they would be charged with attempted murder. We would not want to see the result that perpetrators of domestic violence end up on a lesser charge of non-fatal strangulation when attempted murder was the more appropriate charge. We, of course understand the complexity of proving criminal matters beyond reasonable doubt and that establishing intent in this context could be difficult. This should be dealt with in the education and training of police.

2. Amendment of Penalties and Sentences Act Section 9

WLSQ supports this proposal to make domestic violence an aggravating factor on sentence.

Recommendation Five

WLSQ supports the recommendation to make domestic violence an aggravating factor on sentence.

Ongoing monitoring

WLSQ believes that both of these legislative changes should be subject to ongoing monitoring by the relevant departments that considers the impact on victims of domestic violence and if there are any unintended consequences.

Regards


Angela Lynch
Law reform and community legal education lawyer