

From: [Linda-Ann](#)
To: [Legal Affairs and Community Safety Committee](#)
Cc: [EVAWQ Secretariat \(Evawq@dvconnect.org\)](mailto:Evawq@dvconnect.org)
Subject: Criminal Law (Domestic Violence) Amendment Bill (No. 2) 2015 - submission from EVAWQ
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Attachments: [image001.png](#)
[EVAWQ Submission_Circumstances_of_Aggravation_and_Strangulation_Submission_.pdf](#)

Dear Legal Affairs and Community Safety Committee

In regard to the request for relevant submission information on the pending Criminal Law (Domestic Violence) Amendment Bill (No.2) , we are just re-forwarding the submission previously lodged by the Ending Violence Against Women Qld (EVAWQ) Peak Body on Circumstances of Aggravation and Strangulation - for the committee's information if needed.

Please see attached.

Thank you and kindest regards

Linda-Ann

EVAWQ President

Linda-Ann Northey

General Manager



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ENDING VIOLENCE AGAINST WOMEN QUEENSLAND INC.

Peak body for Sexual Violence, Women's Health and Domestic Violence Services

<http://www.violenceagainstwomengld.com.au> evawq@dvconnect.org.au

SUBMISSION IN RESPONSE TO DISCUSSION PAPER

'Circumstances of aggravation and strangulation'

Ending Violence against Women Queensland Inc. (EVAWQ) is the Peak Body for women's services working in the violence against women sector. EVAWQ provides a representative and united voice for Queensland women and children affected by gender-based violence, and the individuals and service that provide specialist support.

The Peak acknowledges that violence is predominantly perpetrated by men against women and children and believe that:

- Violence against women and children is a human rights violation
- Women and children are entitled to a safety response from the community

EVAWQ commends the Queensland Government's acceptance and commitment to the 140 recommendations contained in the *Not Now, Not Ever* report from the Special Taskforce on Domestic and Family Violence.

Currently, the Peak has 31 organisational members and 5 individual members. This submission has been developed based on input and endorsement from the Management Committee which includes the following members.

Cairns Regional Domestic Violence Service	North Queensland Combined Women's Services
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Gold Coast Centre Against Sexual Violence Inc.;	Zig Zag Young Women's Resource Centre Inc.
Lena Passi Shelter	

The Peak intends to provide a concise submission with endorsement of other submissions to address some aspects of the discussion paper.

RECOMMENDATION 118

That the Queensland Government introduce a circumstance of aggravation of domestic and family violence to be applied to all criminal offences.

EVAWQ acknowledges that domestic violence remains a serious issue in Queensland.

During 2011-2012, Queensland Police Statistics shows there were **36,856** Domestic Violence Police Call-outs in relation to domestic violence and **2035** women and **227** men reported sexual assault offences to Queensland Police Service (Queensland Government, 2012). Furthermore, **22,332** applications for protection were made to Queensland Magistrates Courts under the *Domestic and Family Violence Protection Act 2012*.

EVAWQ also acknowledges that Domestic Violence takes an exacting toll on those who experience violence, family and friends, support services and the wider community. Tragically for some, each year a significant number of Queenslanders are killed while others have a lifetime of physical and mental trauma.

Strengthening legislative responses to domestic violence can provide for enhanced efforts to keep victims safe and abusers accountable for their behaviour. Unlike stranger violence, domestic violence often occurs over a considerable length of time, usually years, and is rarely a single “unexplained” incident. In the past, the justice system response has been to consider domestic violence as a ‘domestic’ or social problem best dealt with outside the criminal justice system.

Governments have streamlined processes for obtaining protection orders as well as expanding the coverage of legal protection to other groups of people affected by violence and abuse. While access to legal protection through civil legislation has been enhanced, the road through the Criminal Code is still mostly difficult and arduous (Taylor, 2002).

Often the option of criminal charges is not mentioned to victims at the time of police intervention or lack of adequate and substantive evidence gathering results in police relying solely on victim statements and testimony. Victims are then often ‘blamed’ when they recant prior truthful statements.

Issues for Aboriginal and Torres Strait Islander women, women from culturally diverse backgrounds and women with disabilities can add to the often insurmountable barriers many face in seeking legal protection and justice.

EVAWQ welcomes legislative reform which will focus on acknowledgement of the seriousness of abuse and strengthen legal interventions for victim.

Changes to the Criminal Code

In response to how circumstances of aggravation can best be addressed, the alternate approach outlined on page 6 of the discussion paper, offers the best way forward.

“Consideration be given to amending section 9 of the Penalties and Sentences Act 1992 which sets the sentencing framework for all offenders aged 17 years and over in Queensland, to provide that the court must have regard to whether the offence constitutes an act of domestic and family violence, in determining the appropriate sentence for an offender”

EVAWQ endorses the recommendations outlined in the DVConnect and Domestic Violence Death Review Action Group submission which includes:

- That *domestic violence relationships* be described as those currently defined under the *Domestic & Family Violence Protection Act 2012*
- That *Section 9 of the Penalties and Sentences Act* be amended to allow courts to impose sentences at the higher end of the range for any offence committed in a domestic or family context, even offences with a maximum penalty of life imprisonment.
- That for victims who commit indictable offences in retaliation or self-defense, there be mitigating provisions to ensure the circumstance of aggravation is not applied in these circumstances.
- That polices and training be enhanced to enable police to identify predominant aggressor and document self -defense injuries as such and not record them as offensive injuries.
- That a circumstance of aggravation is not removed from notations made on charges and criminal histories for those offences as introduced by the Criminal Law (Domestic Violence) Amendment Bill 2015.
- That the safety of victims be paramount in all considerations of legislative change.
- That policy reform, training and public education occurs in tandem with legislative change to remove barriers for victims of domestic violence who express a desire to proceed with criminal charges against their partners.
- That all criminal cases identified as ‘domestic violence’ have an expatiated pathway through the criminal justice system.
- That the current domestic violence court assistance programs be expanded to included support for victims within the arrest courts and at criminal court trials.

RECOMMENDATION 120

That the Queensland Government considers the creation of a specific offence of strangulation.

It is well established and accepted that strangulation is one of the most lethal forms of domestic violence and is furthermore considered one of the highest risk indicators for domestic homicide.

The impacts of strangulation intersects with all professionals working in sexual violence, women’s health and domestic and family violence services. Strangulation has been receiving increasing attention within the risk and safety assessments when responding to domestic violence,

however is lacking in medical and legal responses to sexual violence. Resnick (2015) attributes this to the 'role of strangulation in sexual assault being less clear' and a lack of understanding within hospital and police stations.

Strangulation frequently affects the short and long term health of victims with reported symptoms including vision changes, loss of consciousness, memory loss, pregnancy miscarriage, anxiety and post-traumatic stress disorder (Douglas and Fitzgerald, 2014).

Participants in a study conducted by the University of Pennsylvania (2012) reported ongoing health issues from loss of consciousness to stroke, sore throat, voice change, swelling in the neck and as such requires considered attention in how legal responses can best assist and protect women who have been victims of strangulation within the context of domestic and family violence.

According to the Training Institute on Strangulation Prevention in the United States there are 38 states who have legislation against strangulation with the provision for a charge of attempted homicide. Consideration and review of the efficacy of such provisions and how they could be effectively applied within the Australian context would be advantageous.

EVAWQ supports the creation of a specific offence of strangulation and amending section 315 of the Criminal Code to create a new offence of intention strangulation with a maximum penalty of five years, and further recommends:

- That Queensland Police Service are provided with mandatory training on strangulation signs and symptoms and how to investigate and prosecute strangulation cases including working with medical evidence.
- That specific training on strangulation also be provided to judiciary, prosecution, emergency health professionals and service providers.
- That police and prosecutions be trained in the identification and documentation of all injuries relative to non-lethal strangulation.
- That the government explore technology based options to assist women in reporting strangulation such as the mobile phone application designed by the Training Institute on Strangulation Prevention to help women document their incident and references of an event.
- The development of a strangulation specific fact sheet such as that developed by the Training Institute on Strangulation Prevention.
- All professionals who attend to the needs of women, particularly within the context of sexual violence, are provided with information and training on identifying strangulation.
- That the co-existence of strangulation and sexual violence be further explored and responded to by police, health professionals, courts and other intervention agencies.
- That the new Domestic Violence Death Review Board monitors and records all prior histories of any non-lethal strangulation prior to death.

REFERENCES

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