




Speech By
Mark Furner

MEMBER FOR FERNY GROVE

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CRIMINAL LAW (DOMESTIC VIOLENCE) AMENDMENT BILL (NO. 2)

 **Mr FURNER** (Ferny Grove—ALP) (4.04 pm): I rise to commend the Criminal Law (Domestic Violence) Amendment Bill (No. 2) 2015 to the House. The bill was referred to the Legal Affairs and Community Safety Committee last year. I am proud to be in the chamber, along with my other colleagues and the non-government members of the committee, to speak in support of this bill.

The committee received 20 submissions. The committee received a written briefing on the bill and subsequently, in February, received advice on issues raised in submissions from the Department of Justice and Attorney-General. On 24 February this year the committee also received from the department an oral briefing during public committee proceedings.

We have covered the key objectives of the bill, so I will not go over them. The Palaszczuk government has addressed a number of task force recommendations for legislative reform to address this scourge in our community. The bill was introduced to address recommendations 119, 121 and 133 of the task force report titled *Not now, not ever—putting an end to domestic and family violence in Queensland*. The bill also makes changes to the Penalties and Sentences Act 1992 and the Youth Justice Act 1992 to restore Queensland's longstanding sentencing practice whereby a court has the discretion to hear submissions from both parties to a matter in respect of appropriate sentencing.

Under the Criminal Code, a circumstance of aggravation is defined in section 1 to mean the following—

Circumstance of aggravation means any circumstance by reason whereof an offender is liable to a greater punishment than that to which the offender would be liable if the offence were committed without the existence of that circumstance.

The amendment to the Penalties and Sentences Act will provide that the court must have regard to whether the offence constitutes an act of domestic and family violence when determining an appropriate sentence for an offender. During the public hearing, the department advised that this amendment has a different effect from an aggravating circumstance applied to an offence. The aggravating factor does not have to be charged by the prosecution and be proved beyond reasonable doubt as part of proving the offence. Once proven, the effect is that the context of domestic and family violence applies to the offence and the sentence is to be considered at the higher end of the range of sentencing for that offence. The Women's Legal Service and the Queensland Association of Independent Legal Services supported making domestic violence an aggravating factor on sentence as proposed by the amendment, subject to 'ongoing monitoring by the relevant departments that consider the impact on victims of domestic violence and if there are any unintended consequences'.

In terms of the new offence of choking, suffocation and strangulation in the domestic setting, the task force recommended that the government consider the establishment of a new and separate offence of non-fatal strangulation, because strangulation was a key predictor of domestic homicide. It also noted that there were strong arguments against the creation of a specific offence. The task force noted that

many of the submitters who related personal stories as part of the inquiry had had these acts inflicted upon them and identified the importance of identifying this conduct to assist in assessing the risk to victims and increasing the protection of victims.

During the public hearing the Women's Legal Service stated that they considered that strangulation, 'sends a very effective message to their victims that they have ultimate control over them and whether the victims live or die. It is a very serious and intentional act.' Professor Heather Douglas expressed support for this provision to the committee. In her submission she suggested the following—

Offence specificity also has an educative function, emphasising the particular context and seriousness of strangulation to police and the wider community.

I digress for a moment to tell a story that was provided to me over the weekend by a friend of mine who is close to me. I never knew that she had suffered such severe and extreme domestic violence. She related her story to me and I wish to inform the House of part of it. She related the following to me—

It was the early hours of the morning before he returned on this particular night. I was asleep. He decided we were going to have sex so he yanked my underwear off.

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I started fighting him off. He was determined and I remember pulling him out of me. Saying no. He grabbed me by the throat and I remember trying to pull his hands off my throat. His face grimaced as he was trying really hard to choke me. He wouldn't let go. I was trying to remove his hands and it seemed like minutes went by. I felt myself losing consciousness and then I just gave up. I could finally escape. I took my hands away and prepared to die. It was at that moment I heard the door open and one of my sons asked his dad what was he doing to mum.

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He took my son back to bed. I can't remember what he did or said as I was struggling to breathe. He must have semi-crushed my windpipe.

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He came back to bed and appeared to go to sleep. I did not move. I lay stiff waiting for him to sleep.

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Then finally two of the kids broke down at school after watching my ex strangle me yet again over the kitchen sink. The police turned up and took out a domestic violence order.

This has to stop. The new strangulation offence and the significant penalties attached reflect that this behaviour is not only inherently dangerous but also a predictive indicator of escalated domestic violence offending, including homicide. This will send a clear message out to those in the community that these actions will not be tolerated.

Some submitters considered that the new offence should not be limited to a domestic setting. This concern was addressed in respect of both the title of the new offence and the element of the offence specifying the necessary domestic relationship between the offender and the victim. For this reason the committee requested the Attorney-General in her second reading speech on the bill to respond to concerns of submitters in relation to consent. I thank the Attorney-General for clarifying that particular part of the bill.

Finally, in respect to submissions on penalty or range of penalties, in addition to the measures relating specifically to domestic and family violence reform, the bill also contains amendments to restore the sentencing practice in Queensland whereby courts have the discretion to receive a submission from both the defence and the prosecution on what they consider to be the appropriate penalty or the range of appropriate penalties to be imposed at sentence. There was strong support from submitters to the inquiry. White Ribbon Australia were supportive of this amendment stating that it will allow courts to receive submissions from a party so as to enhance the evidence that can be presented to assist the judicial investigation and decision making. The committee unanimously supports the bill. I commend the bill to the House.