



10 July 2020

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4000

By email: lacsc@parliament.qld.gov.au

Dear Committee Secretary

**Re: *Criminal Code (Choking in Domestic Settings) and
Another Act Amendment Bill 2020 (Qld)***

Introduction

1. Rape & Domestic Violence Services Australia thank the Legal Affairs and Community Safety Committee (“the Committee”) for the opportunity to comment on the *Criminal Code (Choking in Domestic Settings) and Another Act Amendment Bill 2020 (Qld)* (“the Bill”).
2. Rape & Domestic Violence Services Australia is a non-government organisation that provides a range of specialist trauma counselling services to people who have been impacted by sexual, domestic or family violence¹ and their supporters. Our services include being a referral option for Queensland Police when they attend domestic violence incidents. In the 2018/19 year, Rape & Domestic Violence Services Australia provided 1,645 occasions of service to those who had experienced domestic violence in Queensland and were referred to us by Queensland Police. Other services offered include NSW Rape Crisis counselling service for people in NSW who have been impacted by sexual violence and their professional or non-professional supporters and Sexual Assault Counselling Australia for people accessing the National Redress

¹ Generally, Rape & Domestic Violence Services Australia prefer the term *people who have experienced sexual assault and/or domestic and family violence* to describe individuals who have suffered this type of violence, rather than the terms survivors or victims. This is in acknowledgement that, although experiences of sexual assault and/or domestic and family violence are very significant in a person’s life, they nevertheless do not define that person. However, in this submission, Rape & Domestic Violence Services Australia will sometimes use the term victims as this accords with the language used in the legislation.

P 02 8585 0333 F 02 9555 5911
PO Box 555 Drummoyne NSW 2047

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ABN 58 023 656 939

Counselling Services

24/7 NSW Rape Crisis 1800 424 017

CBA Domestic &

Family Violence Line 1800 222 387

Sexual Assault

Counselling Australia 1800 211 028

rape-dvservices.org.au

Scheme resulting from the Royal Commission into Institutional Responses to Child Sexual Abuse. Our services operate from NSW; however, they are available for individuals around Australia who may have experienced sexual, domestic or family violence.

Definition of terms

3. The *Criminal Code* (Qld) provides for two offences related to choking, suffocation or strangulation. Section 315 provides:

Any person who, by any means calculated to choke, suffocate, or strangle, and with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, renders or attempts to render any person incapable of resistance, is guilty of a crime, and is liable to imprisonment for life.

4. While the offence under s.315 applies generally but requires proof of a specific intent, the offence in s.315A applies only in a domestic violence context and does not require a specific intent:

(1) A person commits a crime if—

(a) the person unlawfully chokes, suffocates or strangles another person, without the other person's consent; and

(b) either—

(i) the person is in a domestic relationship with the other person; or

(ii) the choking, suffocation or strangulation is associated domestic violence under the Domestic and Family Violence Protection Act 2012.

(2) An assault is not an element of an offence against subsection (1).

5. Rape & Domestic Violence Services Australia supports the Bill's introduction of definitions of the terms, "choke", "suffocate" and "strangle" based on the ACT provisions.² The non-exhaustive definitions provide clarity without excluding other conduct capable of falling within the terms of the offence.
6. However, the Bill seems to amend only s.315A with the insertion of definitions into new sub-section (3). These definitions are stated as applying "In *this section*" (ie. s.315A). It does not appear that these definitions will also apply to the offence in s.315. There may well be occasions where the more serious offence under s.315 is charged in either a domestic or non-domestic context. It is therefore recommended that, in the interests of consistency, the definitions of the terms, "choke", "suffocate" and "strangle" in the Bill apply to the offences under both s.315 and s.315A.

² Section 27(1), *Crimes Act 1900* (ACT).

Increase in the maximum penalty

7. The maximum penalty prescribed for an offence should reflect the seriousness of the offence by inviting comparison between the case with which the court is dealing and cases falling within the “worst case” category.³
8. Non-fatal strangulation is recognised as a recurring feature in serious domestic violence assaults and homicides. The NSW Domestic Violence Death Review Team reported that there were indications of prior strangulation in just over a third (34%) of all cases of intimate partner homicides in NSW between March 2008 and June 2016.⁴ As well as being associated with future fatal harm, this method is used in a significant proportion of lethal acts of domestic violence. The Australian Domestic and Family Violence Death Review Network reported that strangulation or suffocation was the method used by 15.7% (n=19) of male intimate partner homicide offenders, following assault with a sharp weapon (31.4%) and assault without a weapon (17.4%).⁵
9. Non-fatal strangulation is also a serious offence in and of itself. Those who have experienced it have reported a range of symptoms including loss of consciousness, paralysis, impaired vision, vocal changes, memory loss, anxiety and post-traumatic stress disorder.⁶
10. Rape & Domestic Violence Services Australia therefore supports an increase in the maximum penalty for the offence under s.315A to reflect the dangerousness of choking, strangulation and suffocation, particularly in a domestic violence context, and the serious adverse health outcomes associated with the offence.

Categorisation of a s.315A offence as a “serious violent offence”

11. Rape & Domestic Violence Services Australia agrees with the description of an offence of choking, suffocation or strangulation as a “serious violent offence”. However, the legislative purpose of this characterisation is to activate the mandatory minimum sentences under the *Penalties and Sentences Act 1992* (Qld), particularly where the sentence imposed is 10 years’ imprisonment or more. In our view, such legislation achieves little benefit in protecting those who experience domestic and family violence, while undermining the exercise of judicial discretion in sentencing.
12. Sentencing is a difficult task involving the balancing of various objective and subjective factors, some of which may favour flexibility in both the total term and the proportion between that term and the non-parole period, including mental illness, cognitive impairment and the demonstration of genuine steps towards rehabilitation. Prosecutors generally have available to them mechanisms to appeal sentences that

³ *Elias v The Queen* (2013) 248 CLR 483 at [27].

⁴ NSW Domestic Violence Death Review Team, *Report, 2017-2019*, 2019, p 155; see also Heather Douglas and Robin Fitzgerald, “Strangulation, Domestic Violence and the Legal Response” (2014) 36 *Sydney Law Review* 231, 233-234.

⁵ Australian Domestic and Family Violence Death Review Network, *Data Report*, 2018, p 15.

⁶ Heather Douglas and Robin Fitzgerald, “Strangulation, Domestic Violence and the Legal Response” (2014) 36 *Sydney Law Review* 231, 232-233.

are “manifestly inadequate” to the higher courts. Mandatory minimum sentences may also have the effect of creating expectations that cannot be met in individual cases.

13. Of greater benefit would be increased awareness for police and judicial officers about the dangerousness of the conduct giving rise to the offence and its potential lethality. Training should be provided for police to identify and document the impact of the offence.

Conclusion

14. In conclusion, Rape & Domestic Violence Services Australia:

- supports the introduction of the statutory definitions of “choke”, “strangle” and “suffocate”
- recommends that the statutory definitions apply to offences under s.315, as well as offences under s.315A
- supports the increase in the maximum penalty for an offence under s.315A from imprisonment for 7 years to imprisonment for 14 years
- does not support the prescription of mandatory minimum sentences or mandatory proportions between the total term and the minimum term
- recommends that the amendments be accompanied by police and judicial training about the seriousness of the conduct giving rise to the offence and its potential lethality.

15. We again thank the Committee for the opportunity to comment on the *Criminal Code (Choking in Domestic Settings) and Another Act Amendment Bill 2020* (Qld).

16. If you have any questions or would like to discuss further, please do not hesitate to contact me on [REDACTED] or by email at [REDACTED].

Yours faithfully,

Rape & Domestic Violence Services Australia



Karen Willis

Executive Officer