

Criminal Code and Another Act (Choking in Domestic Settings) Amendment Bill 2020

Explanatory Notes

Short title

The short title of the Bill is the Criminal Code and Another Act (Choking in Domestic Settings) Amendment Bill 2020.

Policy objectives and the reasons for them

The policy objectives of the Criminal Code and Another Act (Choking in Domestic Settings) Amendment Bill 2020 (the Bill) are to:

- strengthen the offence of choking, suffocation or strangulation in a domestic setting (non-lethal strangulation offence) as provided for in section 315A of the Criminal Code;
- address the ambiguity of the words ‘choke’, ‘suffocate’ or ‘strangle’ which are not defined in section 315A of the Criminal Code;
- increase the maximum penalty for the non-lethal strangulation offence to adequately punish offenders and deter other persons from committing the same offence;
- recognise the seriousness of the non-lethal strangulation offence by classifying the offence as a serious violent offence.

Achievement of policy objectives

The policy objectives will be achieved by:

- amending the non-lethal strangulation offence contained in section 315A of the Criminal Code to provide definitions of the words ‘choke’, ‘suffocate’ or ‘strangle’;
- doubling the maximum penalty of the non-lethal strangulation offence from 7 to 14 years imprisonment;
- inserting the non-lethal strangulation offence in schedule 1 of the *Penalties and Sentences Act 1992* (PSA) to provide that the offence is classed as a serious violent offence, which will require the prisoner to serve 80% of their sentence of imprisonment. This will be mandatory for offenders sentenced to 10 years imprisonment or more and discretionary for sentences of 5 years or more but less than 10 years imprisonment.

Alternative ways of achieving policy objectives

There are no known alternate ways of achieving the same policy objective.

Estimated cost for government implementation

There are no known costs to government with respect to the implementation of the legislation.

Consistency with fundamental legislative principles

Section 4(2) of the *Legislative Standards Act 1992* (LSA) requires legislation to have sufficient regard to rights and liberties of individuals and the institution of Parliament.

Currently, section 315A of the Criminal Code does not define the words ‘choke’, ‘strangle’ or ‘suffocate’. Clause 3 of the Bill addresses this shortfall by amending section 315A of the Criminal Code to define these terms. This will have the effect of creating unambiguity of the non-lethal strangulation offence, in accordance with the principle outlined in section 4(3)(k), which will ultimately serve to deliver justice for victims of this offence.

Clause 3 of the Bill increases the maximum penalty of the non-lethal strangulation offence from 7 to 14 years imprisonment. This amendment constitutes a potential infringement of the FLP that legislation has sufficient regard to the rights and liberties of individuals, as provided for in section 4(2)(a) of the LSA, by exposing perpetrators of domestic violence to lengthier sentences. However, this potential infringement needs to be weighed against the need to protect the community and to ensure that legislation adequately punishes perpetrators for their actions. It is considered that these changes appropriately reflect the inherently dangerous act of choking, strangulation and suffocation and therefore a domestic violence perpetrator will justifiably have their right to liberty limited.

Clause 5 of the Bill amends schedule 1 (Serious violent offences) by inserting section 315A (Choking, suffocation or strangulation in a domestic setting) to provide that the offence is classed as a serious violent offence. A conviction of a serious violent offence will have the effect of the prisoner serving 80% of their sentence of imprisonment. It is mandatory for sentences of 10 years imprisonment or more and discretionary for sentences of 5 years but less than 10 years imprisonment.

While this amendment constitutes a potential infringement of the FLP that legislation has sufficient regard to the rights and liberties of individuals, as provided for in section 4(2)(a) of the LSA, it is considered justified in order to protect the community, adequately punish the perpetrator and denounce this type of offending.

Consultation

The Opposition consulted with the Queensland Law Society and discussed the Private Members’ Bill prior to finalisation.

Consistency with legislation of other jurisdictions

The Bill mainly adopts the Australian Capital Territory’s definition of ‘choke’, ‘strangle’ and ‘suffocate’ as provided for in the *Crimes Act 1900* (ACT).

Notes on provisions

Clause 1 refers to the short title of the Bill.

Clause 2 provides that the Bill amends the Criminal Code.

Clause 3 amends section 315A(1) (Choking, suffocation or strangulation in a domestic setting) by omitting the maximum penalty of 7 years imprisonment and replacing it with 14 years imprisonment.

Clause 3 also amends section 315A by inserting a new subsection (3) to provide for the definition of 'choke', 'strangle' and 'suffocate'. 'Choke', a person, includes apply pressure to the person's neck. 'Strangle', a person, includes apply pressure to the person's neck. 'Suffocate', a person, includes the following: (a) obstruct, any part of the person's (i) respiratory system; or (ii) accessory systems of respiration; (b) interfere with the operation of the person's (i) respiratory system; or (ii) accessory systems of respiration; (c) impede the person's respiration.

Clause 4 provides that the Bill amends the *Penalties and Sentences Act 1992*.

Clause 5 amends schedule 1 (Serious violent offences) by inserting section 315A (Choking, suffocation or strangulation in a domestic setting) to provide that the offence is classed as a serious violent offence.