

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

Statement of Compatibility

Prepared in accordance with Part 3 of the Human Rights Act 2019

In accordance with section 38 of the *Human Rights Act 2019*, I, Deb Frecklington MP, Leader of the Opposition and Shadow Minister for Trade make this statement of compatibility with respect to the Criminal Code and Another Act (Choking in Domestic Settings) Amendment Bill 2020.

In my opinion, the Criminal Code and Another Act (Choking in Domestic Settings) Amendment Bill 2020 is compatible with the human rights protected by the *Human Rights Act 2019* (Human Rights Act). I base my opinion on the reasons outlined in this statement.

Overview of the Bill

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

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 Human Rights Act 2019)

In my opinion, the human rights under the Human Rights Act that are relevant to the Bill are:

- right to liberty and security of person (section 29)

For the reasons outlined below, I am of the view that the Bill is compatible with the human rights under the Human Rights Act.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Right to liberty and security of person

(a) The nature of the right

Section 29 of the Human Rights Act provides for the right to liberty and security of person. Specifically, section 29(1) of the Human Rights Act provides that every person has the right to liberty and security and section 29(2) of the Human Rights Act provides that a person must not be subjected to arbitrary arrest or detention.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Clause 3 of the Bill increases the maximum penalty of the non-lethal strangulation offence from 7 to 14 years imprisonment. This amendment could potentially engage the right to liberty and security of the person by exposing perpetrators of domestic violence to lengthier sentences and increased time in detention. However, this potential infringement needs to be weighed against a range of factors such as the need to protect the community from harm and to ensure that legislation adequately punishes perpetrators for their actions.

General deterrence is a critical component of sentencing. Offenders, potential offenders, prosecution authorities and judicial officers need to be made aware that the community expectation is to denounce this type of offending which is often a precursor to homicide in a domestic violence situation.

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. This amendment could potentially engage the right to liberty and security of the person by exposing perpetrators of domestic violence to lengthier sentences and increased time in detention. However, as outlined above, the amendment is considered justified in order to protect the community, adequately punish the perpetrator, for general deterrence and to denounce this type of offending.

Moreover, section 26 of the Human Rights Act titled 'Protection of families and children' provides that families are the fundamental group unit of society and are entitled to be protected by society and the State.

It is considered that these changes appropriately reflect the inherently dangerous act of choking, strangulation and suffocation and recognises the predictive risk factor for future more severe domestic violence.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to liberty and security of person supports the purpose of deterring persons from committing the non-lethal strangulation offence or other domestic violence behaviour. As outlined above, the increased penalty and the potential for the offender to serve 80% of their sentence of imprisonment will act as a general deterrence and to adequately punish offenders for their crime.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There is no alternative way to effectively achieve the policy intent of the measures to which the offence relates.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The increase in the maximum penalty and the classification of the offence as a serious violent offence is considered appropriate and justified, given the seriousness of domestic violence and its devastating impact on members of the community.

Conclusion

In my opinion, the Criminal Code and Another Act (Choking in Domestic Settings) Amendment Bill 2020 is compatible with human rights under the Human Rights Act because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

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