

Inquest into the death of Tracy Ann Beale

Tracey Ann Beale died just after midnight on the morning of 22 January 2013 as a result of violence inflicted on her by her husband.

Coroner David O'Connell delivered his findings of inquest on 28 March 2018.

The Queensland Government responds to recommendations directed to government agencies at inquests by informing the community if a recommendation will be implemented or the reason why a recommendation is not supported.

Further information relating the implementation of recommendations can be obtained from the responsible agency named in the response.

Recommendation 1

The Attorney-General, after allowing submissions from appropriate interested parties, review Criminal Code s.315A to determine if it is adequate to deal with the incidence of so called vasovagal reflex, and whether the types of neck compression specified in the provision should be defined in the legislation.

Response and action: the recommendation was not implemented.

Responsible agency: Department of Justice and Attorney-General.

On 16 January 2019 the Attorney-General and Minister for Justice and Leader of the House responded:

The offence in section 315A of the Criminal Code of choking, suffocation or strangulation in a domestic setting (strangulation offence), which commenced in May 2016, implemented recommendation 120 of the *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* report (Not Now, Not Ever report).

The offence in section 315A of the Criminal Code is broad in application and does not contain a requirement to prove either that the strangulation caused bodily harm or death or that the strangulation was accompanied by an intention to cause physical harm.

The Not Now, Not Ever report acknowledged strangulation both as a common feature of domestic and family violence and as a predictive risk factor for future severe violence, including homicide and may not present any physical injuries. The offence was therefore formulated to reflect the inherent dangerousness of any strangulation behaviour both in terms of the immediate threat of harm and as a predictor of future violence.

The ultimate formulation of the offence in section 315A of the Criminal Code was informed by consultation. In addition to the consultation underpinning the Not Now, Not Ever report, a discussion paper was publicly released in 2015 seeking comment on options to improve the legal response to non-lethal strangulation.

The immediate inquest gives rise to the coroner's concern that the offence in section 315A of the Criminal Code fails to contemplate the outcome of serious injury or death, for example a vasovagal attack, occurring as a result of or secondary to the strangulation. The criminality in such cases far exceeds that contemplated by section 315A, which carries a maximum penalty of 7 years

imprisonment. A range of other more serious Criminal Code offences are available for instances of strangulation, choking or suffocation that result in bodily harm or death. Such offences include grievous bodily harm (14 years imprisonment), acts intended to cause grievous bodily harm (life imprisonment), manslaughter (life imprisonment) and murder (mandatory life imprisonment).

The coroner also suggests that consideration be given to whether all forms of neck compression are adequately covered by the existing offence. The terms *choke*, *suffocate* and *strangle* are not defined in the Criminal Code. The ordinary meaning of these words clearly contemplates the act of squeezing or constricting the neck area.

It is also important to note that these undefined terms of *choke*, *suffocate* and *strangle* have been used in the Criminal Code section 315 offence of Disabling in order to commit since inception of the Criminal Code in 1899.

Defining the terms in the Criminal Code is undesirable given the potential to unintentionally limit and exclude conduct. In Queensland, offences are generally drafted for broad and encompassing application. Terms are generally defined only when there is a need to overcome ambiguity or to deliberately limit application.

Given the above considerations, a review of the adequacy of the strangulation offence is not considered to be required at this time.

Recommendation 2

The Attorney-General determine if an appropriate public awareness campaign should be conducted to educate of the dangers of neck compression (of whatsoever type) in the domestic violence setting.

Response and action: the recommendation was not implemented.

Responsible agency: Department of Justice and Attorney-General.

On 16 January 2019 the Attorney-General and Minister for Justice and Leader of the House responded:

In response to the Not Now, Not Ever report, the Queensland Government is implementing a 10-year reform program to eliminate domestic and family violence.

The reform program is underpinned by the Queensland Government's *Domestic and Family Violence Prevention Strategy 2016-2026* (the strategy), which sets the direction for government action to deliver on the Not Now, Not Ever report recommendations and to help create a Queensland free from domestic and family violence. The strategy encourages partnerships between the government, community and business to drive a significant shift in community attitudes and behaviours together.

There are a number of key initiatives being progressed as part of the strategy which aim to challenge and change cultural attitudes and behaviours that contribute to the cycle of violence, including the Queensland Government's *Domestic and Family Violence Prevention Engagement and Communication Strategy 2016-2026* (engagement and communication strategy). The focus of the engagement and communication strategy and associated advertising campaigns is on long-term behaviour change and raising awareness of domestic and family violence. Specifically, the messages aim to raise awareness of the different forms of domestic and family violence, the early signs of an abusive relationship, and how to seek help.

To include messaging around the specific risks of neck compression does not support the current focus on responding to the recommendations of the Not Now, Not Ever report, and may also have unintended consequences such as encouraging someone who has not otherwise thought of it, to try this action. It is therefore considered that a public awareness campaign about neck compression is not appropriate at this time.