

## Inquest into the death of Karen Louise Richards

Karen Louise Richards died on 11 January 2014 from mixed drug and alcohol toxicity. The coroner examined the involvement of Ms Richards' friend who was with her when she died.

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 Queensland Government introduce a similar provision to s155 of the *Criminal Code Act (NT)* within the *Criminal Code Act 1899 (Qld)*, namely:

*155 Failure to rescue, provide help etc.*

*Any person who, being able to provide rescue, resuscitation, medical treatment, first aid or succour of any kind to a person urgently in need of it and whose life may be endangered if it is not provided, callously fails to do so is guilty of an offence and is liable to imprisonment for 7 years.*

Response and action: the recommendation was not implemented.

Responsible agency: The Department of Justice and Attorney-General.

On 25 March 2018 the Attorney-General and Minister for Justice and Minister for Training and Skills responded:

The Department of Justice and Attorney-General notes the coroner's view that there is no relevant criminal offence available in these circumstances and that the criminal law is only enlivened where the existence of a criminal duty of care can be established.

A criminal duty of care is a legal duty, an obligation to act in a certain way that is set out in a law. Failing to comply with a legal duty can result in consequences including criminal punishment.

The Department of Justice and Attorney-General notes the coroner's comments that Angelo D'Amario's failure to provide timely aid to Karen Richards was deplorable and that the introduction of the recommended criminal offence may provide more incentive to people not to simply stand by when someone is dying, especially drug users in the context of drug overdoses.

Generally, a failure to give assistance to another member of the community may be considered inconsistent with the norms of common decency and kindness. However, it is not clear that the introduction of a criminal offence is an appropriate response.

The main legal duties to act under Queensland's criminal law are based on common law duties. Each of these duties have some connection between the person and what is required of them. For example, there are legal duties when a special relationship exists between people (such as a parent or guardian caring for a child), where a person has created the danger, or if someone voluntarily participates in some activities or professions (such as driving a vehicle on the road or being a doctor or police officer).

Unlike each of these examples, the offence in section 155 of the Criminal Code (Northern Territory) imposes a legal duty without any existing special relationship or connection to the person. The offence applies if a person is suffering from a potential or actual life-threatening injury and another person:

- is physically and mentally capable of rendering assistance
  - is sufficiently close to be able to provide the assistance
  - knows the person needs assistance
- and
- callously fails to assist in circumstances where it would offend common standards of respect, decency and kindness, not to assist.

The offence does not apply in a situation where a person panics.

The Department of Justice and Attorney-General notes the coroner's findings that Mr D'Amario may have taken heroin, and that he likely panicked. In these circumstances a prosecution under section 155 may not have been successful. This is because both panic and intoxication are relevant in considering if person is capable of rendering aid and if their failure to assist was callous.

Introducing a similar offence in Queensland would establish a general duty to act to avoid danger or death to another person in Queensland. The duty would apply without any link between the person and the cause of the injury or risk, without any relationship between the person and the injured, and without voluntary participation in any activity or profession (such as driving a vehicle, or under employment contract or professional standards). This would be a significant shift in the way the criminal law operates in Queensland. The existence of such a duty in the absence of one of these links is unusual in common law jurisdictions like Australia and there are no other examples of a similar offence in Australia (outside of the Northern Territory).

There are a number of negative consequences that could follow the introduction of the recommended offence, such as:

- individuals may feel obliged to render aid to avoid prosecution but potentially be at risk of civil liability for an unsuccessful rescue attempt
  - innocent bystanders may feel compelled to put themselves in physical danger to assist another out of fear of prosecution if they fail to act
  - confusion may arise when a person actively refuses aid, for example, if a competent adult refuses medical treatment
- and
- depending on the circumstances of an incident a large number of people could potentially be held responsible for failing to intervene.

It is important to remember that if the conduct of a person goes beyond failing to rescue there are existing provisions in the Criminal Code that offer alternative avenues for prosecution, depending on the circumstances of each case. This includes in circumstances where a person was involved in causing an injury to a person or aiding or assisting another to cause an injury or when a person owes a duty of care to another

While the recommendation of the coroner is not agreed, the Queensland Government will continue its efforts to effectively, collaboratively and holistically tackle the harmful use and effects of illicit drugs.