

9 May 2019

Our ref: BDS:CrLC

The Hon Yvette D'Ath MP
Attorney-General and Minister for Justice
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Dear Attorney 

**Working with Children (Risk Management and Screening) and Other Legislation
Amendment Bill 2018 – disqualifying offences**

We write to supplement our letter dated 26 April 2019 regarding the Parliamentary Education, Employment and Small Business Committee's Inquiry into the Working with Children Bills. We note that the comments made in this submission are not exhaustive and we reserve the right to make further comment on these proposals.

Our letter of 26 April 2019 provided comment on the proposed expansion of the list of disqualifying offences. The Bill contemplates some expansion of disqualifying offences for issuing a Blue Card and further offences have been raised as part of the debate.

As previously noted, the expansion of disqualifying offences must be viewed with the knowledge that each Criminal Code offence captures a wide range of conduct. The conduct captured by a single offence might range from low level offending to serious criminal behaviour.

Take for example the offence of choking, suffocation or strangulation in a domestic setting in section 315A of the Criminal Code. This provision states:

315A Choking, suffocation or strangulation in a domestic setting

- (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*.

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Maximum penalty—7 years imprisonment.

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

Due to the broad nature of the provision, any restriction of the airways or blood vessels of the neck/throat, no matter how momentary or transient in nature, might result in a charge of choking, suffocation or strangulation. This might include anything from a push to an individual's throat or a sustained chokehold. From our member's experience, the offence of strangulation is one that is regularly overcharged. Our members have reported that there have been instances where the offence of strangulation is initially charged but subsequently reduced to the lesser charge of common assault.

While section 315A of the Criminal Code may be the subject of overcharging, successful convictions under section 315A for choking, suffocation or strangulation in a domestic setting have been obtained for what might be considered low level offending. Our members have reported that individuals have been convicted under section 315A of the Criminal Code for what might be considered relatively minor conduct, such as the placement of a hand on a throat.

As such, we would caution against section 315A of the Criminal Code being included as an automatic disqualifying offence for the purposes of a Blue Card application, rather the conduct comprising the offence should be carefully considered in each case.

The Society is supportive of maintaining the broadest discretion in the application process for the deciding agency and resisting blanket expansion of disqualifying offences without a thorough exploration of the factual circumstances of each case.

We would be happy to meet with you to discuss these matters further.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team by phone on (07) 3842 5930 or by email at policy@qls.com.au.

Yours faithfully


Bill Potts
President