

INQUIRY INTO THE INTRODUCTION OF A NEW STRANGULATION OFFENCE

**Legal Aid NSW submission to the
Department of Attorney General and Justice**

July 2013

About Legal Aid NSW

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW) to provide legal assistance, with a particular focus on the needs of people who are economically or socially disadvantaged.

Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and through grants of aid to private practitioners. Legal Aid NSW also administers funding a number of services provided by non-government organisations, including 36 community legal centres and 28 Women's Domestic Violence Court Advocacy Services.

The Legal Aid NSW criminal law practice provides legal advice and representation in criminal courts at each jurisdictional level throughout the State, including proceedings in Local Court, Children Court, District Court, Supreme Court and Court of Criminal Appeal in summary hearings, committals, indictable sentences and trials, and appeals. Legal Aid NSW specialist criminal law services include the Children's Legal Service, Prisoners' Legal Service and the Drug Court.

The Women's Domestic Violence Court Advocacy Program (WDVCAP) funds 28 Women's Domestic Violence Court Advocacy Services (WDVCASs), servicing 108 local courts in NSW. Women's Domestic Violence Court Advocacy Services are locally-based, independent services for women and children seeking help and information about how to get protection from the court from domestic violence. WDVCASs assist women and children who are or have been experiencing domestic violence to obtain effective legal protection through applications for Apprehended Domestic Violence Orders (ADVOs).

Legal Aid NSW values the opportunity to make a submission to the NSW Attorney General in relation to the inclusion of a new strangulation offence in the *Crimes Act 1900*.

Should you require any further information, please contact Annmarie Lumsden, Executive Director, Strategic Policy and Planning at annmarie.lumsden@legalaid.nsw.gov.au.

Introduction

Strangulation or choking is recognised as a key indicator of further harm in domestic violence situations. If strangulation or choking is known to have occurred in a domestic violence situation, the victim is considered to be at an increased risk of further (and often escalating) harm, including homicide. For example, the 2011-12 report of the Domestic Violence Death Review Team found that suffocation/strangulation was the second-most common cause of death in female domestic violence homicides involving relatives or kin during the reporting period, and was the cause of death in 14.85% of female domestic violence homicides involving intimate partners during the reporting period.

For this reason strangulation has been included in the Risk Identification Tool for domestic violence victims proposed as part of the current Domestic and Family Violence Reforms. Other jurisdictions already identify strangulation as an indicator of the risk of further harm, especially homicide.

Unfortunately, it is difficult to find reputable significant sample data that specifically examines strangulation in the context of intimate partner violence or homicide. In this regard, Legal Aid NSW welcomes the Australian Bureau of Statistics project "*Defining the data challenge for family, domestic and sexual violence*".

Case examples of inappropriate charging and/or sentencing

The experience of the Legal Aid NSW Women's Domestic Violence Court Advocacy Program (WDVCAP) reflects the statistics that indicate strangulation is most commonly dealt with as common assault.

Below are some examples of matters known to WDVCASs in which strangulation was arguably not charged or sentenced appropriately:

1. Illawarra WDVCAS

- a) In November 2009 a WDVCAS client was strangled severely and required hospitalisation. However, the alleged offender was charged with common assault and the matter was dismissed due to insufficient evidence.
- b) In November 2009 another offender strangled a client to the point of unconsciousness, revived her, strangled and revived her again, then beat both her legs with a tyre iron and spat in her mouth (offender was known to have Hepatitis C). The offender was charged with common assault for the strangulation and assault occasioning actual bodily harm for the injuries caused to the victim's legs.

2. North Coast WDVCAS

- c) A defendant charged with strangulation under section 37 was found not guilty because the jury in the District Court was not satisfied that there was also an intention to commit an indictable offence.
- d) All offenders known by the North Coast WDVCAS to have been convicted of common assault for strangulation have received a section 9 bond.

A new strangulation offence

While it is acknowledged that the circumstances in each matter differ, and the evidence available to the prosecution affects the charge/s laid and the success or otherwise of their prosecution, it is arguable that the above cases demonstrate that strangulation is not dealt with appropriately under the current legislation.

Given this context Legal Aid NSW would not oppose the introduction of a two-tiered strangulation offence where the simple offence does not require an intention on the part of the offender to commit a separate indictable offence.

Legal Aid NSW supports a two-tiered formulation similar to the strangulation/choking offence in section 27 of the *Crimes Act* (ACT) which classifies intentional and unlawful strangulation as an act endangering life.

Consistent with the ACT provision Legal Aid NSW is of the view that the maximum penalties for the new simple offence of strangulation should be 10 years imprisonment, with 15 years imprisonment for the aggravated offence.

Concluding remarks

Legal Aid NSW is of the view that this formulation may make the offence more available and encourage the appropriate prosecution of this conduct. However, the data also reveals that when questioned about the physical violence they had experienced, women were least likely to report that a man had tried to strangle or suffocate them.¹ This is a fundamental issue that needs to be appropriately explored. It may be beneficial to provide specialised training to frontline services to increase their awareness of this form of violence, the effects on the victim and the consequent dangers.

Legal Aid NSW welcomes the opportunity to provide these comments and would be grateful for the opportunity to comment upon any future draft legislation.

¹ Women's Experience of Male Violence, Findings from the Australian Component of the International Violence Against Women Survey (IVAWS), AIC Reports, Research and Public Policy Series 56.