

# Terms of Reference

## A review of the offence of Choking, suffocation or strangulation in a domestic setting (*Criminal Code*, section 315A)

### Background

The offence of 'Choking, suffocation or strangulation in a domestic setting' in section 315A of the *Criminal Code* was enacted by the *Criminal Law (Domestic Violence) Amendment Act 2016*. It criminalised domestic non-fatal strangulation, giving effect to Recommendation 120 of the Special Taskforce on Domestic and Family Violence Report, *Not Now, Not Ever: Putting an End to Domestic Violence in Queensland* (Not Now, Not Ever Report).

The offence prohibits the unlawful choking, suffocation or strangulation of a person, without their consent, where the perpetrator is in a domestic relationship with that other person, being a relevant relationship under section 13 of the *Domestic and Family Violence Protection Act 2012* (DFVPA), or where that conduct is associated domestic violence under the DFVPA. An assault is not an element of the offence. It carries a maximum penalty of seven years imprisonment and charges against adults must proceed on indictment, though children may elect for summary disposition under the *Youth Justice Act 1992*.

These terms have received judicial consideration, most notably in the case of *R v HBZ* (2020) 4 QR 171 which concerned the correctness of a jury direction that 'choked' meant 'to hinder or stop the breathing of a person'. The Court of Appeal there determined that 'chokes' in section 315A refers to 'the act of the perpetrator that hinders or restricts the breathing of the victim and does not require proof that breathing was completely stopped', and observing that the Not Now, Not Ever Report used the words 'choke', 'suffocate' and 'strangle' interchangeably.

Following *HBZ*, some concern has been raised about whether the offence extends to compression of a person's neck that does not hinder breathing but does restrict or cut off blood flow. This issue is illustrated by the recent case of *R v WCA* [2023] QCA 265 where a convicted man argued on appeal that he had applied a chokehold designed to cut off circulation in a person's neck but not their breathing. The appeal was dismissed on the basis that there was evidence of restricted breathing and so did not further consider the scope of the offence.

Other potential issues have also been raised in recent years concerning the offence. The appropriateness of the applicable penalties has been raised by some stakeholders, as have concerns that the element requiring the relevant act be without the victim's consent may present barriers to prosecution, as proof of this element may be complicated by the relationships characterised by violence and coercive control in which these offences tend to occur. Relevant research has also raised concern about delays and the overall length of prosecutions proceedings presenting a barrier to complainants remaining engaged in the process and has raised the question of whether conduct of this nature should be specifically criminalised in contexts beyond domestic violence.

## Terms of Reference

1. I, YVETTE MAREE D'ATH, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence (Attorney-General), refer to the Queensland Law Reform Commission (the Commission) pursuant to section 10 of the *Law Reform Commission Act 1968* for review and investigation, the structure and operation of the offence of 'Choking, suffocation or strangulation in a domestic setting' under *Criminal Code*, section 315A (strangulation offence).

## Scope

2. The Commission is asked to examine the scope, structure and interpretation of the strangulation offence, as well as any procedural rules and practices applicable to proceedings for the strangulation offence.
3. The Commission is asked to make recommendations on:
  - (a) whether the terms 'chokes', 'strangles' and 'suffocates', as applicable to the strangulation offence, should be defined either generally or for the specific purposes of the strangulation offence, and if so in what way;
  - (b) whether the requirement that the choking, strangulation or suffocation be 'without the other person's consent' in the strangulation offence should be removed or amended;
  - (c) whether the strangulation offence should be applicable to conduct that is not:
    - i. committed in circumstances where the perpetrator is in a domestic relationship with the victim; or
    - ii. associated domestic violence under the *Domestic and Family Violence Protection Act 2012*;
  - (d) whether the maximum penalty of seven years imprisonment for the offence appropriately reflects the gravity of the prohibited conduct;
  - (e) whether, and, if so, in what circumstances, the strangulation offence should be able to be subject to summary disposition before the Magistrates Court; and
  - (f) any other matters the Commission considers relevant having regard to the issues relating to the referral.
4. As the Queensland Sentencing and Advisory Council has previously reviewed the strangulation offence in the context of the Serious Violence Offence Scheme, the Commission is not asked to consider whether the strangulation offence should be added to Schedule 1 of the *Penalties and Sentences Act 1992* as a 'serious violent offence'.
5. In making its recommendations, the Commission should have regard to:
  - (a) the original findings and recommendations of the Special Taskforce on Domestic and Family Violence;
  - (b) all relevant findings and recommendations of the independent Women's Safety and Justice Taskforce;
  - (c) the relevant findings and recommendations of the Queensland Audit Office: Keeping people safe from domestic and family violence, Report 5: 2022-23;
  - (d) the experiences of victims and survivors, and their families, in the criminal justice system;
  - (e) the views and research of relevant experts, including those with specialist expertise in relation to criminal law, domestic and family violence (DFV), and the experience of victims and survivors;
  - (f) recent developments, similar legislation including recent reforms, and research in other Australian and international jurisdictions;
  - (g) the compatibility of the recommendations with the *Human Rights Act 2019* (including balancing the rights of victims and accused persons); and
  - (h) any other matters that the Commission considers relevant having regard to the issues relating to the referral.

6. In conducting its review, the Commission should engage experts with specialist expertise in DFV and the impacts of criminal conduct on victims and survivors.

### **Consultation**

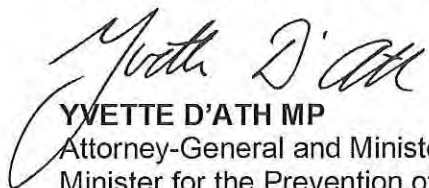
The Commission shall consult with:

- (a) legal stakeholders;
- (b) people who have experienced DFV or who have been the victim of other criminal conduct, and relevant bodies that work with or represent victims and survivors, or the family of victims, of DFV and other offences;
- (c) Aboriginal and Torres Strait Islander stakeholders;
- (d) the public generally;
- (e) any group or individual, in or outside Queensland, the Commission considers relevant having regard to the issues relating to the referral.

### **Timeframe**

The Commission is to provide its final report, including any information required to give effect to its recommendations, to the Attorney-General by 30 September 2025.

Dated the 5 September 2024



**YVETTE D'ATH MP**

Attorney-General and Minister for Justice

Minister for the Prevention of Domestic and Family Violence