

Non-fatal strangulation: Section 315A review

Comparison of non-fatal strangulation offences in Australian jurisdictions

Table 1: Overview of non-fatal strangulation offence elements and whether non-fatal strangulation offences can be tried or sentenced in Magistrates-level Courts in Australia.

Jurisdiction	Legislative definition	'Without consent' requirement	Domestic setting scope	Ability for trial or sentence at Magistrates-level Courts
Queensland	✓	✓	✓	✓ (Children only)
South Australia		✓	✓	✓ (Sentencing only)
Northern Territory	✓	✓	✓	✓
Victoria	✓	✓	✓	✓
New South Wales		✓		✓
Western Australia	✓		Aggravating circumstance	✓
Australian Capital Territory	✓		Aggravating circumstance	✓
Tasmania				✓

Table 2: Summary of definitions of ‘chokes’, ‘suffocates’ and ‘strangles’ in Australian jurisdictions.

Jurisdiction	Definition — Conduct		Definition — Result of Conduct		Collective or individual definition	Exhaustive or non-exhaustive definition
	Pressure to neck	Obstructs respiratory system	Restricts respiration	Restricts blood circulation		
Queensland	✓		✓	✓	Collective	Non-exhaustive
South Australia			✓		Collective	Unclear
Northern Territory	✓	✓	✓		Collective	Non-exhaustive
Victoria	✓	✓	✓		Collective	Non-exhaustive
New South Wales			✓	✓	Individual	Exhaustive
Western Australia	✓	✓ (Blocks nose/mouth)	✓	✓	Collective	Exhaustive
Australian Capital Territory	✓	✓	✓		Individual	Non-exhaustive
Tasmania	No legislative definition and definitions not yet judicially considered.					

Table 3: Non-fatal strangulation offences in Australian jurisdictions – text of the offences, relevant definitions and maximum penalties.

Jurisdiction and Legislation	Offence	Legislative definition of 'chokes', 'suffocates' and 'strangles'	Domestic setting term and definition	Maximum penalty
<p>Queensland</p> <p>Criminal Code (Qld) s 315A (introduced in 2016)</p>	<p>Choking, suffocation or strangulation in a domestic setting</p> <p>(1) A person commits a crime if—</p> <p>(a) the person unlawfully chokes, suffocates or strangles another person, without the other person's consent; and</p> <p>(b) either—</p> <p>(i) the person is in a domestic relationship with the other person; or</p> <p>(ii) the choking, suffocation or strangulation is associated domestic violence under the Domestic and Family Violence Protection Act 2012.</p> <p>(1A) For subsection (1) and without limiting the subsection, a person is taken to choke, suffocate or strangle another person if the person applies pressure to the other person's neck that completely or partially restricts the other person's respiration or blood circulation, or both.</p> <p>(2) An assault is not an element of an offence against subsection (1).</p>	<p>For the purposes of the offence (but without limiting the offence):</p> <p>a person is taken to choke, suffocate or strangle another person if the person applies pressure to the other person's neck that completely or partially restricts the other person's respiration or blood circulation, or both.</p>	<p>'Domestic relationship' means:¹</p> <ul style="list-style-type: none"> • an intimate personal relationship <ul style="list-style-type: none"> – current or former spouse or de facto partner – current or former parent of a child – are or were engaged to be married, including under cultural or religious tradition – have or had a relationship as a couple • a family relationship <ul style="list-style-type: none"> – is or was the relative of the other (ie connected by blood or marriage) – regards or regarded the person as a relative • an informal care relationship (is or was dependent on the other person for help in daily activities, excluding children and those who provide help under a commercial arrangement). <p>Those temporarily standing in place of a parent, approved foster carers and approved kinship carers are not 'parents'. However, 'parents' includes a parent of an Aboriginal or Torres Strait Islander child who, under their tradition or custom, is regarded as a parent.</p> <p>'Associated domestic violence' means domestic violence by a respondent towards:²</p>	<p>7 years imprisonment</p>

Jurisdiction and Legislation	Offence	Legislative definition of 'chokes', 'suffocates' and 'strangles'	Domestic setting term and definition	Maximum penalty
			<ul style="list-style-type: none"> a child of, or who usually lives with, an aggrieved a relative or associate of an aggrieved 	
South Australia Criminal Law Consolidation Act 1935 (SA) s 20A (introduced in 2018)	Choking, suffocation or strangulation in a domestic setting (1) A person who is, or has been, in a relationship with another person and chokes, suffocates or strangles that other person, without that other person's consent, is guilty of an offence. (2) However, conduct that is justified or excused by law cannot amount to an offence against this section.	N/A. In R v Li [2022] SADC 159, the District Court held that 'chokes', 'suffocates' and 'strangles' means conduct that stops or hinders or restricts the complainant's respiration.	Two people are taken to be 'in a relationship' if: ³ <ul style="list-style-type: none"> they are married, domestic partners, or in some other form of intimate personal relationship in which their lives are interrelated and their actions affect each other one is a child, stepchild, grandchild, or under the guardianship of another or a person who is or was in a relationship with them under the above circumstance one is a child and the other is acting in loco parentis one is a child who normally or regularly resides or stays with the other they are siblings they are otherwise related through blood, marriage, domestic partnership or adoption; according to Aboriginal and Torres Strait Islander kinship rules; or are members of a culturally recognised family group one is the carer of the other 	7 years imprisonment
Northern Territory Criminal Code (NT) s 186AA	Choking, strangling or suffocating in a domestic relationship (1) A person commits an offence if:	'Chokes', 'suffocates' and 'strangles', a person, includes: <ul style="list-style-type: none"> applies pressure, to any extent, to the person's neck 	A person is in a 'domestic relationship' with another if the person: ⁴ <ul style="list-style-type: none"> is or has been in a family relationship <ul style="list-style-type: none"> current or former spouse or de facto partner 	5 years imprisonment

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(introduced in 2020)	<p>(a) the person is in a domestic relationship with another person, and</p> <p>(b) the person intentionally chokes, strangles or suffocates the other person, and</p> <p>(c) the other person does not consent to the choking, strangling or suffocation and the person is reckless in relation to that circumstance.</p> <p>Strict liability applies to subsection (1)(a).</p>	<ul style="list-style-type: none"> • obstructs, to any extent, any part of the person's: <ul style="list-style-type: none"> (i) respiratory system, or (ii) accessory systems of respiration • interferes, to any extent, with the operation of the person's: <ul style="list-style-type: none"> (i) respiratory system, or (ii) accessory systems of respiration • impedes, to any extent, the person's respiration. 	<ul style="list-style-type: none"> – is otherwise a relative (including someone who, according to Aboriginal tradition or contemporary social practice is a relative) of the other person or their child • has or had custody, guardianship or right of access to the other person, or was the subject of this • ordinarily or regularly lives or has lived with the other person or someone else who was in a family relationship with the other person • is or has been in an intimate personal relationship with the other person or a person with whom the other person was or is in an intimate personal relationship or intimate relationship <ul style="list-style-type: none"> – engaged to be married, including under cultural or religious tradition – have an intimate relationship whether or not sexual – engaged in sexual contact • is in a family relationship with a person with whom the other person is in an intimate personal relationship (or vice versa) • is or has been in a carers' relationship with the other person (dependent on the ongoing paid or unpaid care of the other person) 	

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<p>Victoria</p> <p>Crimes Act 1958 (Vic) ss 34AD, 34AE (introduced in 2024)</p>	<p>34AD Non-fatal strangulation intentionally causing injury</p> <p>(1) A person (A) commits an offence if—</p> <p>(a) A intentionally and without lawful excuse chokes, strangles or suffocates another person (B); and</p> <p>(b) A intends the choking, strangling or suffocation to cause an injury to B; and</p> <p>(c) the choking, strangling or suffocation causes an injury to B; and</p> <p>(d) A is a family member of B.</p> <p>A mistaken but honest and reasonable belief that A was not a family member of B is not a defence—see section 34AK.</p> <p>(2) For the purposes of subsection (1), it is not a lawful excuse that B consented to the conduct constituting the offence.</p> <p>(3) A does not commit an offence against subsection (1) if the conduct constituting the offence occurs in the course of a procedure carried out in good faith for medical or body modification purposes.</p> <p>34AE Non-fatal strangulation</p> <p>(1) A person (A) commits an offence if—</p>	<p>'Chokes', 'suffocates' and 'strangles' includes:</p> <ul style="list-style-type: none"> • applying pressure to the front or sides of a person's neck • obstructing any part of, or interfering with the operation of, a person's respiratory system or accessory systems of respiration • impeding a person's respiration. 	<p>'Family member' means:⁵</p> <ul style="list-style-type: none"> • a person who is or has been the person's spouse or domestic partner (de facto partner or couple who provide personal or financial commitment and support) • a person who has or had an intimate personal relationship with the person (whether or not sexual) • a person who is or has been a relative of the person <ul style="list-style-type: none"> – through blood, half-blood, marriage or adoption – a person who is a relative under Aboriginal or Torres Strait Islander tradition or contemporary social practice • a child who normally or regularly resides or previously resided with the person • a child of a person who has or had an intimate personal relationship with the person (whether or not sexual) • any other person who the person regards or regarded as being like a family member if it is or was reasonable to regard them as being like a family member having regard to the circumstances of the relationship 	<p>10 years imprisonment (s 34AD)</p> <p>5 years imprisonment (s 34AE)</p>

Jurisdiction and Legislation	Offence	Legislative definition of 'chokes', 'suffocates' and 'strangles'	Domestic setting term and definition	Maximum penalty
	<p>(a) A intentionally and without lawful excuse chokes, strangles or suffocates another person (B); and</p> <p>(b) A is a family member of B.</p> <p>A mistaken but honest and reasonable belief that A was not a family member of B is not a defence—see section 34AK.</p> <p>(2) For the purposes of subsection (1), if the conduct constituting the offence is a sexual activity, that B consented to that conduct is not a lawful excuse except to the extent provided for by section 34AF.</p> <p>(3) Nothing in subsection (2) or section 34AF prevents B's consent to the conduct constituting the offence from being a lawful excuse for the purposes of subsection (1) if that conduct is not a sexual activity.</p> <p>(4) Nothing in sections 34AG to 34AJ applies in relation to consent being a lawful excuse where the conduct constituting the offence is not a sexual activity.</p> <p>34AF Sexual activity and consent defence to offence of non-fatal strangulation</p> <p>(1) It is a defence to a charge for an offence against section 34AE(1) if—</p>			

Jurisdiction and Legislation	Offence	Legislative definition of 'chokes', 'suffocates' and 'strangles'	Domestic setting term and definition	Maximum penalty
	<p>(a) the conduct constituting the offence was a sexual activity; and</p> <p>(b) either—</p> <p>(i) B consented to the conduct; or</p> <p>(ii) A reasonably believed that B consented to the conduct.</p> <p>(2) In this section—</p> <p>consent has the meaning given by sections 34AG and 34AH.</p> <p>Sections 34AG and 34AH define consent to mean 'free and voluntary agreement' that is communicated.</p>			
<p>New South Wales</p> <p>Crimes Act 1900 (NSW) ss 37(1A), 37(2) (introduced in 2018 and 2014, respectively)</p>	<p>Choking, suffocation and strangulation</p> <p>(1A) A person is guilty of an offence if the person intentionally chokes, suffocates or strangles another person without the other person's consent.</p> <p>(1) A person is guilty of an offence if the person—</p> <p>(a) intentionally chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance, and</p> <p>(b) is reckless as to rendering the other person unconscious, insensible or incapable of resistance.</p>	<p>N/A.</p> <p>In <i>GS v R; DPP v GS</i> [2022] NSWCCA 65, the Court of Criminal Appeal held that 'intentionally chokes' means conduct 'capable of affecting the breath or blood flow to or from the head'.</p>	N/A.	<p>5 years imprisonment (s 37(1A))</p> <p>10 years imprisonment (s 37(1))</p>

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<p>Western Australia</p> <p>Criminal Code (WA) s 298 (introduced in 2020)</p>	<p>Suffocation and strangulation</p> <p>A person commits a crime if the person unlawfully impedes another person's normal breathing, blood circulation, or both, by manually, or by using any other aid —</p> <p>(a) blocking (completely or partially) another person's nose, mouth, or both; or</p> <p>(b) applying pressure on, or to, another person's neck.</p>	<p>'Chokes', 'suffocates' and 'strangles' are not used in the legislation, but rather the relevant conduct is integrated into the offence, namely:</p> <p>Impeding another person's normal breathing, blood circulation, or both, by manually, or by using any other aid:</p> <ul style="list-style-type: none"> blocking (completely or partially) another person's nose, mouth, or both; or applying pressure on, or to, another person's neck. 	<p>Conduct committed in a domestic setting is not an element of the offence. However, it is an aggravated circumstance for the purposes of sentencing.</p> <p>'Family relationship' means a relationship between two persons:⁶</p> <ul style="list-style-type: none"> who are or were married or in a de facto relationship who are or were related <ul style="list-style-type: none"> taking into consideration their cultural, social or religious backgrounds is related to the person's current or former spouse/de facto partner one is a child who ordinarily or regularly resides or resided, or stays or stayed, with the other one is or was a child and the other is a guardian who have or had an intimate personal relationship, or other personal relationship (personal relationship of a domestic nature in which the lives of the persons are or were interrelated and the actions of one affects or affected the other) one is the former spouse or de facto partner of the other person's current spouse or de facto partner 	<p>5 years imprisonment, or 7 years imprisonment if aggravated.</p> <p>An offence is aggravated if the offender is in a family relationship with the victim (unless the offender is a child), a child was present (unless the offender is a child), the conduct constituted breach of a restraining order, or the victim was of or over the age of 60 years.⁷</p>

Jurisdiction and Legislation	Offence	Legislative definition of 'chokes', 'suffocates' and 'strangles'	Domestic setting term and definition	Maximum penalty
<p>Australian Capital Territory</p> <p>Crimes Act 1900 (ACT) s 28(2)(a) (introduced in 2015)</p>	<p>Acts endangering health etc</p> <p>(2) A person who intentionally and unlawfully—</p> <p>(a) chokes, suffocates or strangles another person</p> <p>... is guilty of an offence ...</p>	<p>'Choke', a person, includes apply pressure, to any extent, to the person's neck.</p> <p>'Strangle', a person, includes apply pressure, to any extent, to the person's neck.</p> <p>'Suffocate', a person, includes the following:</p> <ul style="list-style-type: none"> • obstruct, to any extent, any part of the person's— <ul style="list-style-type: none"> (i) respiratory system, or (ii) accessory systems of respiration • interfere, to any extent, with the operation of the person's— <ul style="list-style-type: none"> (i) respiratory system, or (ii) accessory systems of respiration • impede, to any extent, the person's respiration. 	<p>Conduct committed in a domestic setting is not an element of the offence. However, it is an aggravated circumstance for the purposes of sentencing.</p> <p>'Family violence' means different types of abuse by a person in relation to a family member, or that a child hears, witnesses or is exposed to.⁸</p> <p>'Family member' means:⁹</p> <ul style="list-style-type: none"> • current or former domestic partner • current or former intimate partner • relative <ul style="list-style-type: none"> – currently or formerly related by blood or marriage – someone the person has responsibility for or an interest in in accordance with the traditions and customs of their Aboriginal or Torres Strait Islander community (and vice versa) – someone regarded and treated by the person as a relative – someone with whom the person has a family-like relationship – anyone else who could reasonably be considered to be or have been a relative 	<p>5 years imprisonment, or 7 years imprisonment if aggravated.</p> <p>An offence is aggravated if it involves family violence.¹⁰</p>

Jurisdiction and Legislation	Offence	Legislative definition of 'chokes', 'suffocates' and 'strangles'	Domestic setting term and definition	Maximum penalty
			<ul style="list-style-type: none"> child of a current or former domestic partner a parent of a child of the person 	
Tasmania Criminal Code (Tas) s 170B (introduced in 2022)	Strangulation etc. A person who intentionally and unlawfully chokes, suffocates or strangles another person is guilty of a crime.	N/A	N/A	21 years imprisonment

¹ Criminal Code Act 1899 (Qld) s 1 (definition of 'domestic relationship'); Domestic and Family Violence Protection Act 2012 (Qld) ss 13-20.

² Domestic and Family Violence Protection Act 2012 (Qld) s 9.

³ Criminal Law Consolidation Act 1935 (SA) s 20A(3).

⁴ Domestic and Family Violence Act 2007 (NT) ss 9-12.

⁵ Family Violence Protection Act 2008 (Vic) ss 8-10.

⁶ Restraining Orders Act 1997 (WA) s 4.

⁷ Criminal Code Act Compilation Act 1913 (WA) s 221.

⁸ Family Violence Act 2016 (ACT) s 8.

⁹ Family Violence Act 2016 (ACT) ss 9-11.

¹⁰ Crimes Act 1900 (ACT) s 48C.