

Improving Queensland's response to non-fatal strangulation: **Kim's story**





Introduction

In September 2025, we finished our review of the offence of 'Choking, suffocation or strangulation in a domestic setting' in section 315A of the Criminal Code (Qld). In this document, we call it the non-fatal strangulation offence. Our recommended reforms recognise:

- strangulation is dangerous and can increase the risk of death or future violence in some relationships
- strangulation happens in many different situations
- there are system barriers that can make convictions of non-fatal strangulation harder to achieve
- both public education and criminal law reform are needed.

You can find our 18 recommendations, and the reasons for them, in [*Education, accountability and support: Improving Queensland's response to non-fatal strangulation*](#).

Kim's story shows what our recommendations would mean in real life. It uses a hypothetical example. Kim* is a victim-survivor of strangulation.

We share Kim's story to show some problems with the current non-fatal strangulation offence and how our recommended reforms would lead to fairer outcomes in Queensland.

* Kim is a fictional character that we created. Any likeness to a real person is unintentional.

Kim's story does not cover every recommendation or every way strangulation can happen.

Currently, a person can only be convicted of the non-fatal strangulation offence when it happens in certain relationships. We recommend reforms to the relationship requirement for this offence. In Kim's story, Kim is married to the person who strangled her. That already meets the current requirement, so those reforms would not affect her. Our recommendations also cover strangulation beyond domestic settings and relationships involving coercion, control or domination.

We explain those recommendations further in our [final report](#). We do not discuss them further here.

We use plain language and simplify legal processes so Kim's story and our recommended reforms are easier to understand. Actual outcomes will depend on many factors, including some not covered in this story.

We start with Kim's story. We then look at how the offence might be proved in court, focusing on the conduct involved and the issue of consent. After that, we explain how the case moves through the criminal justice system and how our recommended reforms would improve Kim's experience.

Trigger warning

This story includes material about violence and abuse. It may be upsetting or distressing, especially for people who have experienced trauma. If you need support, please contact someone you trust or a support service (details on back cover).



Kim's story

Kim is 30 years old. Lee is her husband. They have two children: Hana, who is 8, and Jai, who is 3. The family mostly relies on Lee's income. Kim does not have family in Australia and speaks limited English. The family moved to Australia 6 months ago so Hana could attend school here and so they could live near Lee's family for support.

One night, neighbours reported a disturbance at Kim and Lee's house.

When police arrived, Kim and the children were inside. Kim was distressed and the children were crying. Some furniture in the lounge room had been knocked over. Police did not see any injuries on Kim or the children. In limited English, Kim told police that Lee had grabbed her, but no one was hurt and they should leave.

Lee was not at the house when police arrived. Hana told police he had just left and gone to stay at her grandmother's house.

Two days later, while Lee was at work, Kim went to hospital because she had trouble swallowing and pain in her neck. She told the doctor that someone had grabbed her around the neck. A hospital social worker then spoke with her using an interpreter. Kim said Lee had grabbed her around the neck and that it had happened before when they lived overseas. The social worker helped her make a complaint to police.

Police arrested Lee and charged him with non-fatal strangulation.

Proving non-fatal strangulation

Current law

Under the current law, police can charge a person with non-fatal strangulation only if there is evidence that the victim-survivor's breathing or blood flow was fully or partly restricted. In practice, that evidence often comes from the victim-survivor.

Even if there was a video showing what Lee did, or Hana said she saw him put his hand around Kim's neck, that still might not be enough to prove the non-fatal strangulation offence. Usually, Kim would need to describe how the pressure affected her breathing or circulation. She might say she could not breathe, felt dizzy, or thought she might pass out. But strangulation can affect memory. Kim may not clearly remember what happened, or she may be unwilling to give evidence for other reasons.

If there is no evidence that Kim's breathing or blood flow was restricted, Lee may not be charged with non-fatal strangulation. If Kim chooses not to give evidence in court, the charge may be withdrawn or dismissed. If her evidence is unclear, that may also make the charge harder to prove. Unless Lee is charged and convicted of another offence, he may not be punished for strangling Kim.

Apart from potential evidence from Kim, there is no other evidence that Lee injured Kim. That means the most serious charge may be common assault. Common assault has a maximum penalty of 3 years imprisonment, compared with 7 years for non-fatal strangulation. A sentence for non-fatal strangulation is almost always imprisonment. A sentence for common assault is less often imprisonment.

Our recommended conduct reforms

Under our recommended reforms, a person could be charged with non-fatal strangulation if they:

- do something 'capable of' restricting another person's breathing or blood flow, and
- are in a domestic relationship with that person, or a relationship involving coercion, control or domination, or where there is associated domestic violence.

Conduct 'capable of' restricting breathing or blood flow could include covering a person's nose or mouth or putting something around their neck. Evidence that Lee put his hand around Kim's neck may be enough to prove this part of the offence, even if Kim does not say her breathing or blood flow was affected.

Removing the need to prove actual restriction of breathing or blood flow would make the offence easier to prove and less dependent on Kim's evidence. It recognises that, in domestic or intimate relationships, this conduct can be used to terrorise and control a person and can cause serious trauma even when breathing or blood flow is not actually restricted.

We have not recommended changing the current maximum penalty of 7 years imprisonment for the non-fatal strangulation offence where the conduct is 'capable of' restricting breathing or blood flow. But we do recommend a more serious, aggravated form of the offence where breathing or blood flow is actually restricted. We recommend a higher maximum penalty of 14 years for that offence because it can cause serious health consequences or death.



Consenting to non-fatal strangulation

Current law

Under the current law, consent is relevant to every non-fatal strangulation charge, in both sexual and non-sexual contexts. To prove the offence, police must get evidence that Kim did not consent.

This usually means the victim-survivor, such as Kim, must say she did not consent, even if there is video evidence of the strangulation or if Hana says she saw Lee's hand around Kim's neck.

Police usually ask about consent when taking a statement. The statement will normally say that the victim-survivor did not consent.

If Kim does not give evidence that she did not consent, the non-fatal strangulation offence cannot be proved. The case may then be dismissed or withdrawn, and Lee would not be punished.

If the case goes to trial and Kim gives evidence, Lee's lawyers may suggest that she consented or that Lee mistakenly believed she consented. The jury may then have to decide whose evidence it accepts.

Without evidence that Kim did not consent, Lee may not be charged with non-fatal strangulation. If Kim decides not to give evidence in court, the charge may be withdrawn or dismissed. If she does give evidence, the jury may still not accept that she did not consent. Lee would then be found not guilty. Unless he is charged and convicted of another offence, he would not be punished for strangling Kim.

Our recommended consent reforms

Under our recommended reforms, consent would play a smaller role in non-fatal strangulation offences. The prosecution would not have to prove that Kim did not consent, but it would still need to prove the other elements of the offence. Kim may still need to give evidence if those elements could not be proved in another way.

Our recommended reforms provide a defence of consent only when the non-fatal strangulation offence happened in a sexual context. This recognises that adults may choose to engage in risky conduct in some circumstances, if that choice is genuine. In non-sexual contexts, consent would not be a defence. If Lee put his hands on Kim in a violent context, he could not defend the charge by saying Kim consented.

If Lee points to evidence of consent and the jury accepts the strangulation happened in a sexual context, he may be able to rely on that defence.

Our recommended reforms make it clear that consent to non-fatal strangulation in a sexual context must be affirmative consent. In other words, Lee's lawyers would need evidence of free and voluntary agreement between Kim and Lee to engage in strangulation. Consent would not be free and voluntary, for example, if:

- Kim did not say or do anything to consent on that occasion. Even if she had consented in the past, Lee could not assume she consented this time.
- Kim could not consent, or withdraw consent, because she was affected by alcohol or another drug, unconscious, or asleep.
- Kim agreed because of force, harm, or fear of force or harm. For example, she may have agreed because she was in a coercively controlling relationship and feared Lee would withdraw financial support or harm her or the children.

Also, if Lee actually restricted Kim's breathing or blood flow and was charged with the aggravated offence, our recommended reforms would presume there was no consent.

Our reforms would remove the need for the prosecution to prove lack of consent when laying a non-fatal strangulation charge.

Consent would only matter if the strangulation happened in a sexual context.

If a person raises consent as a defence in a sexual context, the consent would need to be 'free and voluntary', which is a higher standard of consent. This recommendation and the presumption of no consent where the offence involved actual restriction of breathing or blood flow would make it easier to convict a person of the non-fatal strangulation offence.

Proceeding through the courts

Current law

After Lee is charged, he will first appear in the Magistrates Court. Under the current law, every non-fatal strangulation charge must then go to the District Court to be finalised, whether Lee pleads guilty or not guilty.

Before the case can get to the District Court, several steps must happen. These steps can take a long time. Police give written statements to Lee's lawyers. As noted above, Kim's statement will likely be essential if the case is to continue.

After reading the statements, Lee may accept there is enough evidence for the case to go on. Or his lawyers may ask for witnesses, such as Kim, to give evidence in person in the Magistrates Court. They can then argue there is not enough evidence for the case to go to the District Court.

If the Magistrate decides there is not enough evidence, the charge will not go any further.

If the Magistrate decides there is enough evidence, the case goes to the District Court. Lee will then be sentenced if he pleads guilty, or have a trial if he pleads not guilty.

It can take a long time to finish a non-fatal strangulation case. Unless Lee gets bail, he will stay in custody while the case is being finalised. If he pleads guilty, he could be in custody for about 9 months before sentence. If he pleads not guilty, he could be in custody for about 2 years before the trial ends.

The long wait before Kim may have to give evidence could affect whether she decides to do so. Without Lee's income, she may struggle to support her children and pay for essentials such as food or rent. She may want to reconcile with Lee and restore the children's relationship with him. She may also feel pressure from Lee or his family not to give evidence. If Kim decides not to give evidence, the prosecution may withdraw the case and Lee may not be held accountable.

Our recommended reforms to the court process

We recommend that the Magistrates Court should sentence an adult who pleads guilty to non-fatal strangulation, unless the Magistrate decides the case should go to the District Court. If Lee wanted to plead guilty, he could do so from as early as his first appearance. That would allow the sentence to happen much earlier and may reduce pressure on Kim to give evidence. It may also help connect Kim with support services sooner.

Magistrates can currently impose prison sentences of up to 3 years. Regardless of whether the lawyers make a request, if a Magistrate thinks Lee should receive more than 3 years, the case must go to the District Court. We also recommend training for judicial officers, including Magistrates, so they better understand appropriate sentences for non-fatal strangulation and when a case should stay in the Magistrates Court or go to the District Court.

We also recommend that the Government investigate ways to fast-track non-fatal strangulation matters in the District Court.

Our recommended reforms would allow earlier sentencing for people who plead guilty to the non-fatal strangulation offence, but only where a Magistrate can impose an adequate sentence.

If Lee pleads guilty and is sentenced by a Magistrate, there would be no need for Kim to give evidence in court.

Training for Magistrates would help them give appropriate sentences and identify which cases should go to the District Court.





Kim's journey through the justice system

Our final report recommends improvements in three areas for non-fatal strangulation cases:

- collecting evidence
- victim-survivor experiences
- helping people make informed decisions.

If these reforms are implemented, they would affect every stage of Kim's experience.

Evidence collection

Police and health professionals do not always have the knowledge or resources they need to respond well when someone has been strangled. Inconsistent documentation and evidence gathering can affect whether offenders are prosecuted successfully. When police came to Kim and Lee's home, there were signs of violence, including Kim's distress, the knocked-over furniture and the children crying. Kim said Lee had grabbed her. But police did not identify the situation as one where strangulation might have happened.

Our recommended reforms aim to improve evidence collection by requiring regular review and updates to police training and guidelines on non-fatal strangulation. Police would also develop a consistent screening, documentation and response protocol for these cases.

We also recommend the development and regular review of training for health professionals on non-fatal strangulation. They would develop a tailored assessment and documentation protocol to improve evidence collection and provide reliable evidence in these cases.

Victim-survivor experiences

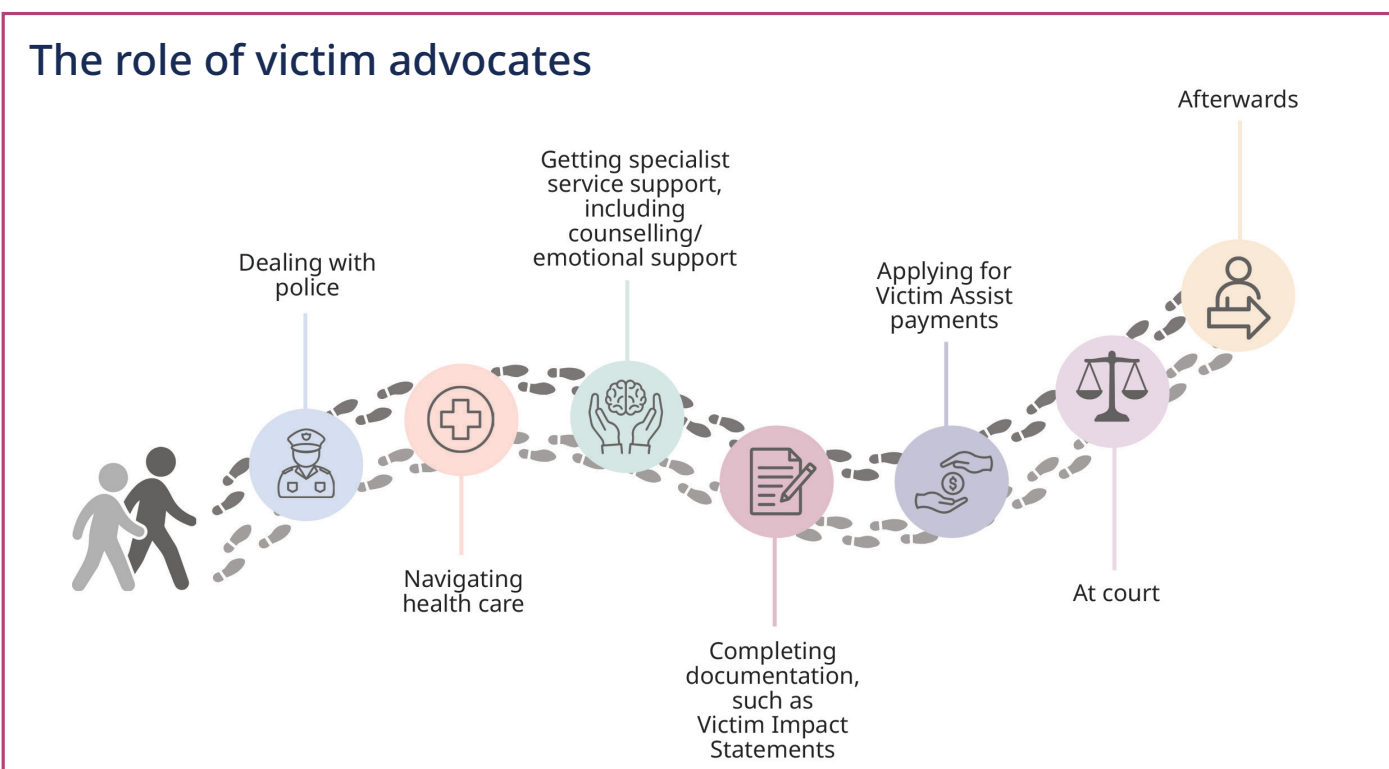
As a victim-survivor of strangulation, Kim may be retraumatised by the criminal justice process. It may be hard for Kim to get clear information about the process and possible outcomes, particularly given her limited English. She may feel confused and disempowered.

That may reduce her trust in the system and affect whether she decides to give evidence. She may also struggle to get appropriate health care because of inconsistent health responses to strangulation.

Our recommended reforms would improve victim-survivors' experiences of the justice system and access to health care. They would ensure the Government's new victim advocate service:

- provides individual, trauma-informed and culturally safe support
- has clear referral pathways and guidance
- prioritises people at highest risk of re-traumatisation or disengaging from the justice system
- works alongside existing services.

The diagram below shows how we recommend victim advocates would support victim-survivors through the system.



We also recommend the Government consider developing and funding strangulation health centres. These centres could give Kim access to gender-appropriate, trauma-informed and specialist healthcare. They could provide information about the effects of non-fatal strangulation, including delayed symptoms. Because Lee strangled Kim in a domestic relationship, Kim may also be experiencing domestic and family violence. Non-fatal strangulation is a warning sign for future killing in domestic and family violence. A health centre could provide ongoing social work support and refer Kim to appropriate domestic and family violence services. It could also refer her children to community support services because they may have witnessed the strangulation.

Informed decision-making

Research shows many people in the community do not understand strangulation or its effects. Misunderstandings can affect jury decisions in non-fatal strangulation trials. This can lead to unfair outcomes and make it harder to hold offenders accountable.

When police attended Kim and Lee's home, they did not see physical injuries on Kim. Kim said Lee had grabbed her, that no one was hurt, and that police should leave. But two days later, she told a doctor and social worker that Lee had grabbed her around the neck. A jury without a good understanding of non-fatal strangulation may think the lack of obvious injury and these different accounts mean Lee did not strangle her.

Our recommended reforms aim to improve jury decision-making and support fair outcomes. A public education and training program would increase community awareness of the risks of non-fatal strangulation. Specific jury directions would also help juries to understand that:

- the absence of visible injury does not mean non-fatal strangulation did not happen
- differences or inconsistencies in a victim-survivor's account are common because of trauma or the effects of strangulation
- trauma affects people in different ways, and a person's emotional presentation does not indicate whether they are telling the truth.

Conclusion

Our recommended reforms aim to:

- make it clear that strangulation is dangerous and challenge common misunderstandings about it
- modify the offence of non-fatal strangulation and relevant criminal justice processes so that more offenders are held accountable
- provide better support for people in situations like Kim's as they move through the criminal justice system.



Support services

Red Rose Foundation: 07 3065 9043
13YARN: 13 92 76
Lifeline: 13 11 14
Kids Helpline: 1800 55 1800
Beyond Blue: 1300 224 636
1800RESPECT: 1800 737 732

Rainbow SDFV Helpline: 1800 497 212
QLife: 1800 184 527
No to Violence: 1300 766 491
DV Connect:
• Women's line: 1800 811 811
• Men's line: 1300 789 978

Non-fatal strangulation review [www.qlrc.qld.gov.au](http://www qlrc qld gov au)