

Queensland Law Reform Commission

**Non-fatal strangulation: Section 315A review: A
holistic review of the non-fatal strangulation offence**

Consultation Paper April 2025

Submission by Family Law Services, Legal Aid Queensland

23 June 2025

Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to provide a submission to the Queensland Law Reform Commission ('QLRC') addressing the questions raised in the Consultation Paper *'Non-fatal strangulation: Section 315A review'*.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the State". Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ's lawyers in the day-to-day application of the law in courts and tribunals.

This submission calls upon the experience of LAQ's lawyers in Family Law Services, incorporating the specialist Violence Prevention and Women's Advocacy (VPWA) Team. VPWA represents persons who have experienced domestic and family violence, including sexual assault, in family law, civil domestic violence and child protection matters.

Submission

Proposal 1

Section 315A of the Criminal Code should be repealed and replaced with three new offences:

- **Offence 1:** unlawfully doing particular conduct that restricts respiration and/or blood circulation in the context of a domestic setting. This offence would prescribe a maximum penalty of 14 years' imprisonment.
- **Offence 2:** unlawfully doing particular conduct in the context of a domestic setting. This offence would prescribe a maximum penalty of 7 years' imprisonment.
- **Offence 3:** unlawfully doing particular conduct that restricts respiration and/or blood circulation. This offence would prescribe a maximum penalty of 10 years' imprisonment.

Question 1: What are your views on proposal 1?

LAQ's Family Law Services (FLS) is broadly supportive of proposal 1. It is the view of FLS that the proposed model encompassing three separate offences is appropriate. Retaining the use of the term 'domestic setting' in two of the three proposed sentences acknowledges the specific risk and direct link to lethality that the act of non-fatal strangulation poses to the victim-survivor in a domestic relationship.

FLS recognises the seriousness of non-fatal strangulation in relationships or encounters that fall outside the definition of a 'domestic relationship' and agrees that a specific offence should attach to these actions. However, the extensive experience of FLS working with victim-survivors of domestic violence, particularly those who have experienced coercive control, has reinforced that non-fatal strangulation is one of the highest risk indicators of future domestic and family related homicides. Including a standalone offence that deals specifically with matters outside of a domestic relationship, whilst maintaining specific offences for actions which occur within the domestic setting, is an appropriate acknowledgement of the different contexts in which non-fatal strangulation can occur.

FLS is also supportive of the division in the proposed model between an offence for "unlawfully doing particular conduct that restricts respiration and/or blood circulation" and an offence for "unlawfully doing particular conduct". The observations in the Consultation Paper about the difficulty often experienced by victim-survivors in obtaining evidence of restricted respiration and/or blood circulation¹ concur with the practice experience of FLS' lawyers and social workers. Non-fatal strangulation is an act of violence that occurs most often within the home, without the presence of witnesses. Victim-survivors very often do not disclose their experiences for some time and often do not seek medical assistance until well after the incident, if at all. In some cases, it may take years for the victim-survivor to process their traumatic experience and understand and name the act of violence perpetrated against them. As noted in the Consultation Paper, the impact of trauma on memory may result in the victim-survivor being unable to particularise the restriction to their breath and/or circulation. Taking all of this into account, FLS considers that it is appropriate to introduce an offence which criminalises the act of non-fatal strangulation without the need to prove restriction to respiration and circulation.

¹ Paragraph 132, page 31, QLRC Consultation Paper: *Non-fatal strangulation: Section 315A review*, April 2025.

FLS notes, however, that there is no equivalent offence for acts of non-fatal strangulation occurring outside the domestic setting. That is, victims of non-fatal strangulation in a non-domestic relationship must prove that there was a restriction of their respiration and circulation. In the view of FLS, many of the same circumstances that make it difficult to evidence restriction of respiration and circulation (the offence taking place in a private setting, the likely absence of witnesses, the impact of trauma on the victim-survivor's memory) apply equally to cases of non-fatal strangulation outside of the domestic sphere. FLS suggests that strong consideration be given to the creation of an equivalent offence for "unlawfully doing particular conduct" in a non-domestic relationship.

Question 2: What conduct should each of the three new offences criminalise?

FLS recommends the adoption of wording similar to that used in section 20A of the *Criminal Law Consolidation Act 1935 (SA)*. This provision refers to a person who "chokes, suffocates or strangles" another person; crucially, however, the Act goes on to define those terms in section 20A(4). This section reads as follows:

(4) A reference in this section to –

(a) "Choking" or strangling" a person means the applying of pressure to the person's neck to an extent that is capable of affecting the breath or the flow of blood to the head of the person; and

(b) "Suffocating" a person includes a reference to –

(i) Obstructing, to any extent, any part of the person's respiratory system; or

(ii) Interfering, to any extent, with the operation of the person's respiratory system; or

(iii) Impeding, to any extent, the person's respiration.

In the view of FLS, this set of definitions would adequately cover all manner of potential scenarios where choking, suffocating, or strangling may occur. It is important that the definitions encompass instances where perpetrators use an implement (for example, an item of clothing, or a necklace) to choke, suffocate or strangle. The above definition would also fit the example given in the Consultation Paper of an object being lodged in someone's throat.²

FLS notes the concern raised in the Consultation Paper³ that some prosecutors believe they must nominate one term in their particulars for the indictment, creating uncertainty and complexity in the charging process. FLS suggests that this potential confusion could be alleviated by adopting the term "chokes, suffocates and/or strangles" for the wording of the offence.⁴

² Paragraph 117, page 30, QLRC Consultation Paper: *Non-fatal strangulation: Section 315A review*, April 2025.

³ Paragraph 111, page 29, QLRC Consultation Paper: *Non-fatal strangulation: Section 315A review*, April 2025.

⁴ FLS notes 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 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

Question 3: What are your views about consent, including:

- **Whether the 'without consent' requirement should be removed or retained?**
- **The circumstances in which the requirement should apply?**
- **Whether lack of consent should be an element or defence?**
- **How consent should be defined?**

FLS is supportive of the 'without consent' requirement being removed, particularly in the proposed new offences related to domestic relationships. It is FLS's view that the inherent nature of violent, controlling and coercive relationships is such that true, informed consent cannot be given by the victim-survivor. Additionally, as noted above, there is an acknowledged link between non-fatal strangulation and lethality; the act of strangulation carries a serious risk of immediate or long-term injury or can even result in death. It is the view of FLS that these factors render the qualification of 'without consent' inappropriate, and FLS supports it being withdrawn from the proposed offences.

FLS submits that adopting a similar set of conduct definitions to those outlined above (in line with section 20A(4) of the *Criminal Law Consolidation Act 1935 (SA)*) will assist to clarify whether there are any circumstances in which it is acceptable to engage in non-fatal strangulation. In FLS's view, if the circumstances feature "the applying of pressure to the person's neck to an extent that is capable of affecting the breath or the flow of blood to the head of the person", or "obstructing...interfering...or impeding" the operation of the person's respiratory system, then it must be concluded that the action is so high-risk to a person's safety as to be unacceptable. In the same manner as a person cannot consent to grievous bodily harm under the *Criminal Code*, FLS considers that strangulation which meets these definitions should not feature consent as either an element or a defence. Rather than a focus on the issue of consent, it is FLS's submission that clearly defining the parameters of conduct that constitute non-fatal strangulation is the critical issue in reviewing and reforming section 315A.

FLS notes, however, that seeking to define the parameters of conduct should not be taken as requiring the conduct to be aligned with medical definitions of these terms. It is the role of medical practitioners to observe and report evidence; it is the role of police and prosecutors to consider whether the evidence supports a charge of non-fatal strangulation as defined in the proposed offences. Education and training for police, prosecutors and medical professionals will be necessary if the proposed offences become law, so as to ensure that all participants in the criminal justice process are aware of how to appropriately respond to matters of non-fatal strangulation.

Question 4: When should non-fatal strangulation be lawful?

Of the examples provided in which the law permits the use of force, FLS agrees that non-fatal strangulation should be lawful when performing a surgical operation or medical treatment. FLS agrees that in some cases, non-fatal strangulation may be lawful when used in self-defence or in defence of others. However, FLS suggests that the circumstances of each case need to be considered carefully. In considering whether the act was lawful, an assessment should be made as to whether the use of force by the person performing the act of strangulation was proportionate to the level of risk posed by the person being strangled.

observed that the Not Now, Not Ever Report used the words 'choke', 'suffocate' and 'strangle' interchangeably.

FLS is not supportive of non-fatal strangulation being considered lawful when used by law enforcement and corrective services officers in the course of their duties; in executing a sentence, process, or warrant, making an arrest, or preventing an escape from arrest; or to prevent a breach of the peace. In FLS's view, the act of strangulation carries too many risks to be safely utilised in these scenarios, particularly given that law enforcement officers and the like have many other options available to protect themselves and other members of the public.

Proposal 2

The existing defences in the Criminal Code of provocation to assault (s 269), prevention of repetition of insult (s 270), and domestic discipline (s 280) should not apply to the three new offences.

Question 5: What are your views on proposal 2?

FLS is supportive of proposal 2. FLS considers that the existing defences in the Criminal Code of provocation to assault (section 269), prevention of repetition of assault (section 270), and domestic discipline (section 280) should not apply to the three new offences. The act of strangulation is, in FLS's view, too high risk and carries consequences too serious to justify the use of any of these defences.

Question 6: Are there other defences you think should not apply to one or more of the new offences?

FLS does not seek to comment specifically on this question. FLS notes only the view that, given the high risk of lethality associated with strangulation, any defence raised against a charge of non-fatal strangulation should be required to demonstrate that the use of force by the person performing the act of strangulation was proportionate to the level of risk posed by the person being strangled.

Proposal 3

Adult perpetrators who plead guilty should be sentenced in the Magistrates Court:

- unless the perpetrator elects otherwise
- subject to the Magistrate's overriding discretion.

Legally represented child perpetrators should continue to be able to consent to have their case tried or sentenced in the Childrens Court (Magistrate).

Question 7: What are your views on proposal 3?

FLS is supportive of proposal 3. FLS considers that allowing adult perpetrators who plead guilty to be sentenced in the Magistrates Court, unless they elect otherwise and subject to the overriding discretion of the Magistrate, is a proposal that recognises the impacts that a prolonged and uncertain court process can have on defendants and victim-survivors alike. FLS notes, however, that it will be critical for the views of the victim-survivor to be sought and considered before decisions are made about the progress of a court matter.

FLS also suggests that, if this proposal is adopted, non-specialised Magistrates Courts would benefit from training about their ability to exercise discretion in these matters. This would ensure that all Magistrates are aware of the range of penalties available for non-fatal

strangulation and can utilise their discretion to ensure adequate punishment for the perpetrator.

Question 8: What reforms to practice and procedure are needed to ensure just and effective operation of the three new offences?

FLS is supportive of the reforms proposed in the Consultation Paper. FLS particularly emphasises the need for evidence-based education and training at all levels of the system to increase understanding of non-fatal strangulation and its effects. Criminal justice system personnel, police officers, medical professionals and perpetrators would all benefit from increased education.

As a specific critique of the existing system, FLS suggests that an improved process for victim liaison is of high and urgent importance. While there are Victim Liaison Officers (VLOs) within the Office of the Director of Public Prosecutions (ODPP) whose role is to act as an intermediary between the victim-survivor and the prosecution, it is the experience of FLS practitioners that the direct communication between VLOs and victim-survivors is often inconsistent, incomplete, and lacking in detail. For example, in matters where the victim-survivor has provided a victim impact statement (VIS), FLS practitioners have observed that the victim-survivor is often left unsure as to whether the VIS has been put before the court and considered in sentencing.

FLS suggests that a review of the VLO role, potentially in consultation with the Victims Commissioner, would be of great benefit. Such a review should include consideration of what qualifications and expertise would best suit the VLO role (for example, legal training and/or social work experience) and whether it would be possible for the VLO role to encompass a more holistic approach that includes supporting the victim-survivor and linking them in with available services as well as communicating with them about the court process.

Finally, it is the view of FLS that public education, not only about the effects of non-fatal strangulation but also about consent more broadly, is crucial. FLS emphasises the need for appropriate education in schools about consent and healthy relationships; in FLS's view, this is an essential prerequisite for achieving change on a societal level.

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