

[REDACTED]

From: CEQCorro [REDACTED]
Sent: Tuesday, 10 June 2025 8:31 AM
To: [REDACTED]
Subject: CEQ RESPONSE -- Queensland Law Reform Commission Review of non-fatal strangulation [REDACTED]
Attachments: nfs-roundtable-health-2025.pdf; Advice Note - Queensland Law Reform Commission Review of non-fatal strangulation.DOCX

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Good morning

The Office of the Chief Nurse Officer, CEQ forwarded on the below email inviting submissions for the consultation paper for the non-fatal strangulation review, released Friday, 11 April 2024.

Apologies for not meeting your due timeframe 6 June 2025.

Please see the attached Advice Note provided by the Office of the Chief Midwife Officer, CEQ.

In addition, please see below input provided by the Mental Health Alcohol and Other Drugs Branch, CEQ.

Start

QLRC's primary considerations are capturing non-fatal strangulation occurring in sexual encounters which aren't captured as domestic relationships and overcoming challenges in being able to adduce evidence of the physical impact of strangulation in domestic settings. However, there are a couple of issues of relevance in the MHAODS context.

Legislative Projects provides the following issues for consideration:

Issue 1:

Currently the non-fatal strangulation offence found in section 315A of the Criminal Code includes an element that the strangulation occurred without consent. QLRC is seeking stakeholder views on whether the consent requirement should be removed. It is considered problematic in the context of Domestic and Family Violence and coercive control and being able to consent is also inconsistent with other serious offences against the person in the Code. The paper suggests the adoption of the affirmative consent model.

If progressed, as it is with sexual offences, there would need to a mistake of fact defence available to persons who, because of their cognitive or mental health impairment, mistaken believed a person was consenting.

Issue 2:

QLRC is seeking views on the current definition of non-fatal strangulation due to confusion about what the Criminal Code Act requires. The current definition includes 'choke, suffocate and strangle'. The definition proposed includes 'conduct that results in the restriction of respiration and/or blood circulation' (including restriction of the chest as the mechanism for restricting respiration, not just neck as is currently the case). A 10-year imprisonment penalty is being proposed for the new offence. The amended definition may capture restraints in the context of application in an authorised mental health service under the Mental Health Act 2016, noting the Chief Psychiatrist Policy on Physical Restraint currently requires that wherever possible restriction of breathing or venous return be avoided. It is noted Section 266 of the Criminal Code would provide a defence, so long as the force used on an involuntary patient under the Mental Health Act 2016, which would otherwise constitute the offence, was reasonably necessary to prevent harm to persons or property.

If progressed, further consultation with the Office of the Chief Psychiatrist is requested.

Issue 3:

The review asks, “When should non-fatal strangulation be lawful?”. Discussion points on page 35-37 include reference to involuntary and forensic disability patients in context of an existing provision under the criminal code for lawful use of force.

Criminal Code s266: Prevention of crimes and offences for which an offender may be arrested without warrant—prevention of violence by particular persons

It is lawful for any person to use such force as is reasonably necessary in order to prevent the commission of an offence which is such that the offender may be arrested without warrant; or in order to prevent any act from being done as to which the person believes, on reasonable grounds, that it would, if done, amount to any such offence; or in order to prevent a person whom the person believes, on reasonable grounds, to be an involuntary patient under the Mental Health Act 2016 or a forensic disability client under the Forensic Disability Act 2011 from doing violence to any person or property.

While non-fatal strangulation is a serious act with significant risks, and any such incidents would be exceptionally rare in authorised mental health services, its lawful use in the context of restraint—where it is reasonably necessary to prevent imminent harm or violence by an involuntary patient or forensic disability client—should remain permissible under Criminal Code section 266, provided such force is proportionate, justified, and remains subject to strict safeguards.

End

Clinical Excellence Queensland would like to thank you for the opportunity to provide input.

Kind regards

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ADVICE NOTE

DATE: 22/05/2025

ADVICE FROM: Assistant Director Midwifery- Office of the Chief Midwife Officer Clinical Excellence Queensland

RE: Queensland Law Reform Commission Review of non-fatal strangulation

Request: QMNCN has been asked to provide feedback into the [consultation paper](#) for the Non-fatal strangulation offence: Section 315A review

Summary of Advice

The advice provided below addresses questions specific to proposal P1 and does not address P2 or P3 as they fall outside of the remit of midwifery practice.

Q1 What are your views on proposal 1?

It is unclear how changing 'choke, strangle or suffocate' to 'doing particular conduct' increases clarity or is of benefit.

The stipulation of 'domestic setting' in offences 1 and 2 are of concern as intimate partner violence is not restricted to relationships in which the parties live together or within a 'domestic setting'. If 'domestic setting' is referring to the relationship, suggest changing the stipulation to refer as such.

Offences 1 and 3 still rely on evidence of result which is difficult to obtain due to marks on neck often not being visible, the impact of hypoxia on memory (impacts the victim/survivors' ability to accurately remember the incident) and the fact that some impacts of strangulation/suffocation/choking may not be evident for weeks, months, or years however can be catastrophic ie dementia, dysfunctional thought processes, PTSD. Additionally, development/discovery of these symptoms may not be obviously linked to the strangulation/choking/suffocation by the victim/survivor or treating health professionals when the symptoms emerge.

It is unclear why offence 1 and 3 (which require evidence of result of conduct), do not carry the same maximum penalty of life imprisonment as section 315 (*the perpetrator engages in conduct likely to choke, suffocate or strangle with intent to commit or facilitate commission of an indictable offence, or facilitate flight of a perpetrator. It requires the perpetrator to have rendered or attempted to render the other person incapable of resistance. The offence has a maximum penalty of life imprisonment*).

Conduct and results of conduct

Q2 What conduct should each of the three new offences criminalise?

Criminalised conduct should include: obstructing or interfering with the respiratory system or accessory systems of respiration, including blocking the nose and or mouth, and/or restriction of the chest/diaphragm.

Results of conduct: The proposal that results of conduct should mean restriction of respiration and/or blood circulation – is ambiguous and would be very difficult to obtain/provide evidence of (as highlighted in response to Q1). All measures should be taken to recognise the extreme danger of the conduct particularly in the context of intimate partner violence and the potential invisibility of the result of the conduct.

The role of consent

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Q3 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 a defence?**

‘Without consent’ should be removed particularly given there is no definition for consent in the criminal code for the purpose of s315A.

There are no circumstances in which the onus should be on the victim/survivor to prove that consent was not given.

Non-fatal strangulation might be lawful in some circumstances

Q4 when should non-fatal strangulation be lawful?

Non-fatal strangulation/choke holds occur in the context of a number of sports such as Jiu Jitsu and wrestling, with safeguards embedded into training and competitions. In this context, it is reasonable for non-fatal strangulation to be lawful. Non-fatal strangulation is commonly taught as an effective self-defence, particularly for women as it enables the woman to subdue and escape from a larger/stronger person if being attacked. In cases of self-defence particularly when physical capability is disproportionate, non-fatal strangulation should be lawful.