



# Non-fatal strangulation: Section 315A review

A holistic review of the  
non-fatal strangulation offence

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Consultation paper

April 2025

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QLRC, 'I just want to be heard': The voices of strangulation victim-survivors (Research Report 1, April 2025)

**Reference to legislation:**

All legislation referred to applies to Queensland, unless otherwise indicated.

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# Content warning

This paper contains material that may be confronting and may cause sadness or distress, or trigger traumatic memories for people, particularly those who have experienced violence and abuse themselves. For some people, this can feel overwhelming. If you need to talk to someone, we encourage you to reach out to your own support network or contact any of the following support services:

**Red Rose Foundation:** (07) 3065 9043

**1800RESPECT:** 1800 737 732

**DV Connect:**

**Women's line:** 1800 811 811

**Men's line:** 1300 789 978

**13YARN:** 13 92 76

**Lifeline:** 13 11 14

**Beyond Blue:** 1300 224 636

**Rainbow SDFV Helpline:** 1800 497 212

# Language used in this paper

We understand the importance of language and acknowledge that what is the 'right language' will sometimes be contested. We have chosen the following language to use in this paper.

We use the term **Aboriginal peoples and Torres Strait Islander peoples** to refer to Aboriginal peoples and Torres Strait Islander peoples of Australia or Queensland, individually or collectively. We recognise the diversity of cultures, languages and communities throughout Queensland and Australia. We also recognise and respect the distinct cultural identities of Aboriginal peoples and Torres Strait Islander peoples. We recognise that different language preferences exist and use these terms with the utmost respect.

Currently, s 315A criminalises choking, suffocation and strangulation. We acknowledge that medically each of these terms involves different conduct, but all affect a person's respiration and/or blood circulation in some way. To avoid medicalising the offence and to assist the reader, we use the term **non-fatal strangulation** or **strangulation** to describe choking, suffocation and strangulation, unless specificity is required. We make proposals about the language used in the non-fatal strangulation offence to ensure that what must be proved is clear.

We use the term **perpetrator** to describe the person who used non-fatal strangulation, regardless of whether the person has been charged with an offence (when the term 'defendant' is sometimes used) or convicted (when the term 'offender' is sometimes used). We chose to use the term perpetrator for consistency and convenience, and because of the holistic nature of our review.

We use the term **victim-survivor** when referring to a person who has experienced non-fatal strangulation. The criminal justice system refers to this person as a complainant until the perpetrator has been found guilty. We do not confine the term victim-survivor in this way. We chose to use this term:

- because our review is looking at the issue holistically from a social policy perspective, rather than solely from a legal standpoint
- for consistency, given different language may be used to describe people who have experienced non-fatal strangulation at different points in the justice process (for example, a person alleged to have experienced violence, complainants, victims or applicants)
- because it recognises that s 315A is currently restricted to domestic settings and as such adopts the language used in the Queensland Government's Domestic and Family Violence: Common Risk and Safety Framework.<sup>1</sup>

Not all people who have experienced non-fatal strangulation identify as victims and/or survivors. However, we chose this language because it acknowledges the harm this conduct causes and the efforts of victim-survivors to protect themselves.

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# List of consultation proposals and questions

## Our proposed model

### Proposal

- P1** 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.

### Questions

- Q1** What are your views on proposal 1?

#### Conduct and results of conduct

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

#### The role of consent

- 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?
  - how consent should be defined?

#### Non-fatal strangulation might be lawful in some circumstances

- Q4** When should non-fatal strangulation be lawful?

## Defences

### Proposal

**P2** 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.

### Questions

**Q5** What are your views on proposal 2?

**Q6** Are there other defences you think should not apply to one or more of the new offences?

## Forum

### Proposal

**P3** 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

**Q7** What are your views on proposal 3?

## Practice and procedure

### Question

**Q8** What reforms to practice and procedure are needed to ensure just and effective operation of the three new offences?

# Introduction

1. We have been asked to examine and make recommendations about the offence of ‘Choking, suffocation or strangulation in a domestic setting’ in s 315A of the Criminal Code (the ‘non-fatal strangulation offence’), and applicable procedural rules and practices.
2. We have been asked to recommend whether:<sup>2</sup>
  - the terms ‘chokes’, ‘suffocates’ and ‘strangles’ should be defined generally or for the specific purposes of the offence and, if so, in what way
  - the requirement that the choking, suffocation or strangulation must occur ‘without the other person’s consent’ should be removed or amended
  - the offence should apply to conduct that is not committed between those in a ‘domestic relationship’ or is not ‘associated domestic violence’ under the Domestic and Family Violence Protection Act 2012
  - the current maximum penalty of seven years’ imprisonment reflects the gravity of the conduct
  - the offence should be able to be finalised in the Magistrates Court.

For adult perpetrators, the non-fatal strangulation offence must currently proceed to a higher court for trial or sentence.<sup>3</sup> The offence cannot be tried or sentenced in the Magistrates Court. If the perpetrator is a legally represented child, this offence may be tried or sentenced summarily, in the Childrens Court, if the child consents.<sup>4</sup>

3. This consultation paper introduces **three proposals** for reform and poses **eight questions** about potential reforms. It also considers our original research findings, which have informed those proposals and questions.
4. We have not formed concluded views at this stage. The proposals are preliminary ideas developed for public discussion and input.
5. We propose a new three-offence model for non-fatal strangulation in the Criminal Code to replace s 315A. Two of those offences would apply in domestic settings and one would apply beyond domestic settings.
6. We consider the reasons that an offence that applies beyond domestic settings may be appropriate and discuss what would need to be proved for each offence. We propose that all three offences should require proof of particular conduct. We seek your views on what that conduct should be. For two offences, we propose that proof of certain results of conduct — restriction of respiration and/or blood circulation — should also be required. We seek your views on the role of consent in the new offences and when non-fatal strangulation should be lawful.
7. We propose that the defences of provocation to assault, prevention of repetition of insult, and domestic discipline should not apply to the three new offences and ask whether any other defences should not apply.
8. We also propose that non-fatal strangulation charges against adult perpetrators who plead guilty should be sentenced in the Magistrates Court unless the perpetrator elects otherwise, subject to the Magistrate’s overriding discretion. We do not propose any changes for child perpetrators.



9. Finally, we examine potential reforms to practice and procedure relating to the issues under review. Practice and procedure reforms could support non-fatal strangulation prosecutions, including by combating evidence issues and improving victim-survivors' experiences of the criminal justice process. We seek your views on what practice and procedure reforms are needed to ensure safe, just and effective operation of the three new offences.

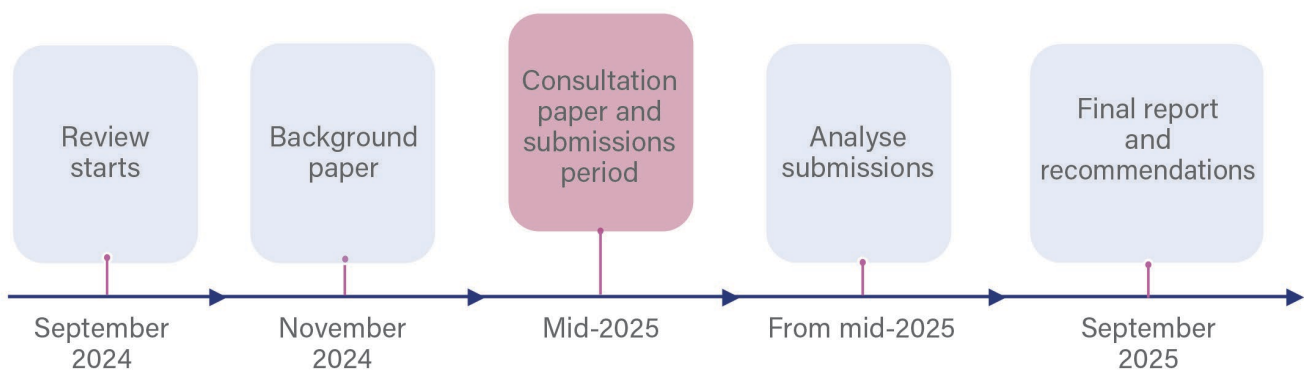
## Making a submission

10. We invite your feedback on the consultation proposals and questions, other reform options you identify and any other issues you believe are important for our review. We will genuinely consider all views and your submission will help us to develop workable and implementable final recommendations.
11. You can send us your written submissions through our [website](#) or by email to [qlrc-nfsreview@justice.qld.gov.au](mailto:qlrc-nfsreview@justice.qld.gov.au).
12. There will also be opportunities to attend meetings and forums to share your views in April, May and June 2025. We will share details of these forums on our [website](#) and [LinkedIn](#) page, and through our newsletters. You can sign up to receive our newsletters by visiting our [website](#).
13. We prefer to receive public submissions as they provide important evidence in our review. Our [submissions policy](#) explains how we treat and may use submissions we receive. We treat all submissions as public unless you clearly ask for it to be kept confidential. Public submissions will be published on our website.

Submissions close on **6 June 2025**.

## Our review

Figure 1: Review timeline



14. Our review started on 5 September 2024. Our terms of reference ask us to have regard to:
- the findings and recommendations of the Special Taskforce on Domestic and Family Violence,<sup>5</sup> the Women's Safety and Justice Taskforce<sup>6</sup> and the Queensland Audit Office<sup>7</sup>
  - the experiences of victims, survivors and their families in the criminal justice system

- 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
  - developments, equivalent laws and research in other jurisdictions
  - the compatibility of recommended reforms with the Human Rights Act 2019 (including balancing the rights of victims and accused persons).
15. The full terms of reference are available on our [website](#).
  16. We have undertaken preliminary consultation. We have held more than 40 meetings with a wide range of stakeholders, including members of the judiciary, lawyers, police, forensic medical officers, health professionals, academics, victim-survivors and support services. The support services we have consulted include Aboriginal and Torres Strait Islander, DFV, sexual assault, sex worker, LGBTIQ+ and youth support services.
  17. In our [background paper](#), we outlined our terms of reference and five guiding principles (see Figure 2), described the current law and background to the review, and explained the review’s key issues in more detail. It was accompanied by [supporting resources](#) which examined non-fatal strangulation offences in other Australian jurisdictions, maximum penalties for other Queensland offences, and Queensland developments relating to non-fatal strangulation.
  18. We have also published a research report, ‘I just want to be heard’: The voices of strangulation victim-survivors ([research report 1](#)), which presents the results of our original research.
  19. In the coming months we will publish additional research reports related to each of our projects described below at [26].
  20. We will give our final report with recommendations to the Attorney-General by 30 September 2025.

Figure 2: Our guiding principles



## Human rights

21. Human rights are fundamental rights and freedoms that apply to all human beings. They include a wide variety of rights under both domestic and international law, including the right to life, the right to liberty and security, the right to freedom from torture and inhuman treatment, and the right to a fair trial.
22. The criminal law plays a crucial role in protecting human rights by safeguarding individual rights, ensuring fair trials, setting limits on law enforcement, promoting accountability and balancing community safety and individual security and liberty.
23. Queensland's human rights framework is set by the Human Rights Act 2019. It requires public entities, including the Commission, to act in a way and make decisions that are compatible with human rights.<sup>8</sup> Human rights affect how we conduct our review, including how we consult and promote participation in our work. We must consider the compatibility of our recommendations with the Act.<sup>9</sup>
24. The Human Rights Act 2019 protects 23 human rights. Other instruments, such as the Charter of Victims' Rights, also contain rights relevant to our review. In our [background paper](#), we named several human rights that are potentially relevant to the review. We will include a complete human rights analysis in our final report.

## Our research

25. Our recommendations must be evidence-based. We need to understand how the non-fatal strangulation offence operates in Queensland. To better understand this, we are conducting original research. We have also relied on the Queensland Sentencing Advisory Council's research for its Sentencing Spotlight on the non-fatal strangulation offence.<sup>10</sup>
26. We developed three research projects for this review:
  - Research project 1 — Victim-survivor research: semi-structured interviews with, and a survey of, strangulation victim-survivors to understand their experiences of the criminal justice process in Queensland and their views on how the system could respond better.
  - Research project 2 — Investigating, prosecuting and defending non-fatal strangulation: semi-structured interviews and focus groups with police, prosecutors, defence lawyers and counsel to understand how non-fatal strangulation is investigated, prosecuted and defended in Queensland, focusing on issues raised by our terms of reference.
  - Research project 3 — Court data research: analysis of Courts Performance and Reporting Unit data from recent years for the non-fatal strangulation offence and comparison of that to data for s 339 of the Criminal Code (assault occasioning bodily harm (domestic violence offence)) and s 315 of the Criminal Code (disabling in order to commit an indictable offence).
27. In addition to those research projects, we will analyse selected trial transcripts and sentencing remarks involving the non-fatal strangulation offence.
28. Research project 1 is complete and the report is published.<sup>11</sup> We have partially completed research projects 2 and 3. The reports for these projects will be published in the coming months.

29. In this paper, we present key findings from research project 1, and early findings from research projects 2 and 3, to help inform responses to our proposals and questions. Findings presented for research projects 2 and 3 reflect the analysis completed at the date of this paper. We discuss the court data findings first to provide context for the findings from research projects 1 and 2.

## Court data research: Early findings

30. For adult perpetrators, police lodge non-fatal strangulation charges in the Magistrates Court. These charges are then usually committed to the District Court for trial or sentence, unless they are dismissed or withdrawn in the Magistrates Court. The offence will only proceed in the District Court where the Office of the Director of Public Prosecutions ('ODPP') present an indictment. We discuss the criminal justice process in non-fatal strangulation cases further below from [59].
31. For child perpetrators, police lodge non-fatal strangulation charges in the Childrens Court (Magistrate). The Magistrate may finalise the charge by way of summary trial or sentence if the child is legally represented and consents for this to occur.<sup>12</sup> Proceeding this way is subject to the Magistrate's overriding discretion.<sup>13</sup> Otherwise, non-fatal strangulation charges are usually committed to the Childrens Court of Queensland ('CCQ') for finalisation, unless such charges are dismissed or withdrawn in the Childrens Court (Magistrate). Matters that are committed will only proceed to the CCQ where the ODPP present an indictment.
32. From July 2022 to June 2024, 2,243 non-fatal strangulation charges were lodged in the Magistrates Court. Of those, 82.8% (n = 1,858) were committed and 16.7% (n = 375) were dismissed or withdrawn. Of the charges dismissed or withdrawn, almost all were withdrawn because the prosecution offered no evidence for the charge.
33. In the same period, 41 non-fatal strangulation charges were lodged in the Childrens Court (Magistrate). Of those, 19.5% (n = 8) were committed to the CCQ, 34.1% (n = 14) were dismissed or withdrawn, and 46.3% (n = 19) pleaded guilty. Of the charges dismissed or withdrawn, all but one were withdrawn because the prosecution offered no evidence for the charge.
34. Figure 3 shows the outcomes of non-fatal strangulation charges lodged in the Magistrates Court and Childrens Court (Magistrate) from July 2022 to June 2024.
35. From July 2022 to June 2024, there were 1,856 non-fatal strangulation charges on indictment in the District Court.<sup>14</sup> Of those, 54.3% (n = 1,008) resulted in a plea of guilty and 7.1% (n = 131) went to trial. The majority of charges that went to trial (n = 110) resulted in a finding of not guilty. The remaining 37.9% (n = 704) of charges on indictment in the District Court were dismissed or withdrawn by the prosecution.
36. During the same period, there were 16 charges on indictment in the CCQ.<sup>15</sup> Of those, 50% (n = 8) resulted in a plea of guilty, 18.7% (n = 3) went to trial resulting in findings of not guilty and 31.3% (n = 5) were dismissed or withdrawn by the prosecution.
37. Figure 4 shows the outcomes of non-fatal strangulation charges lodged in the District Court and CCQ from July 2022 to June 2024.

Figure 3: Outcomes of non-fatal strangulation charges at Magistrates Court level, July 2022 to June 2024

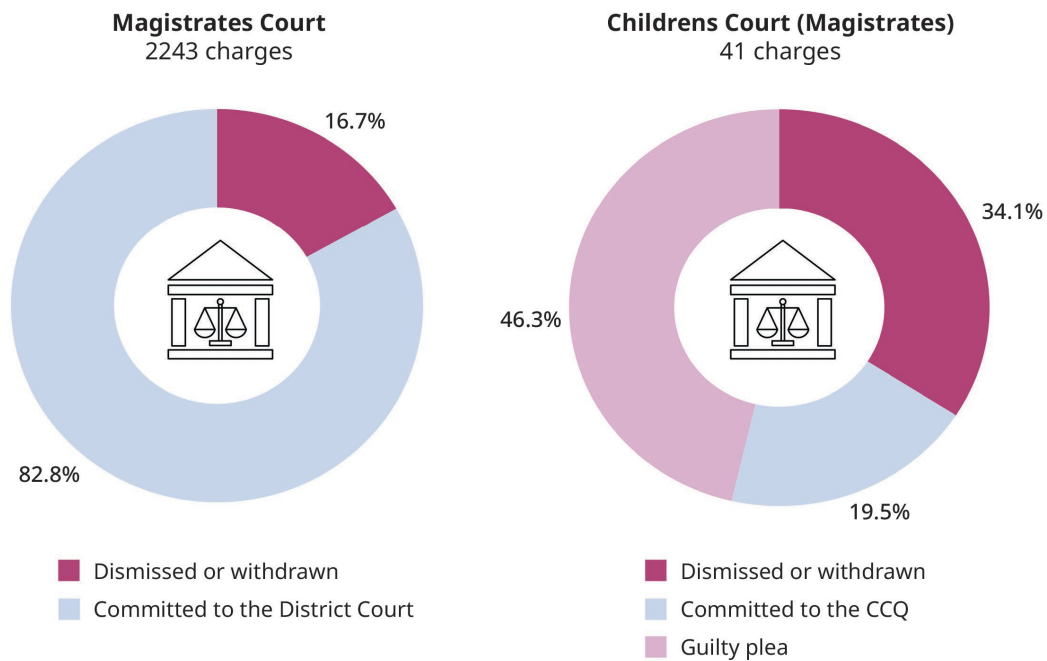
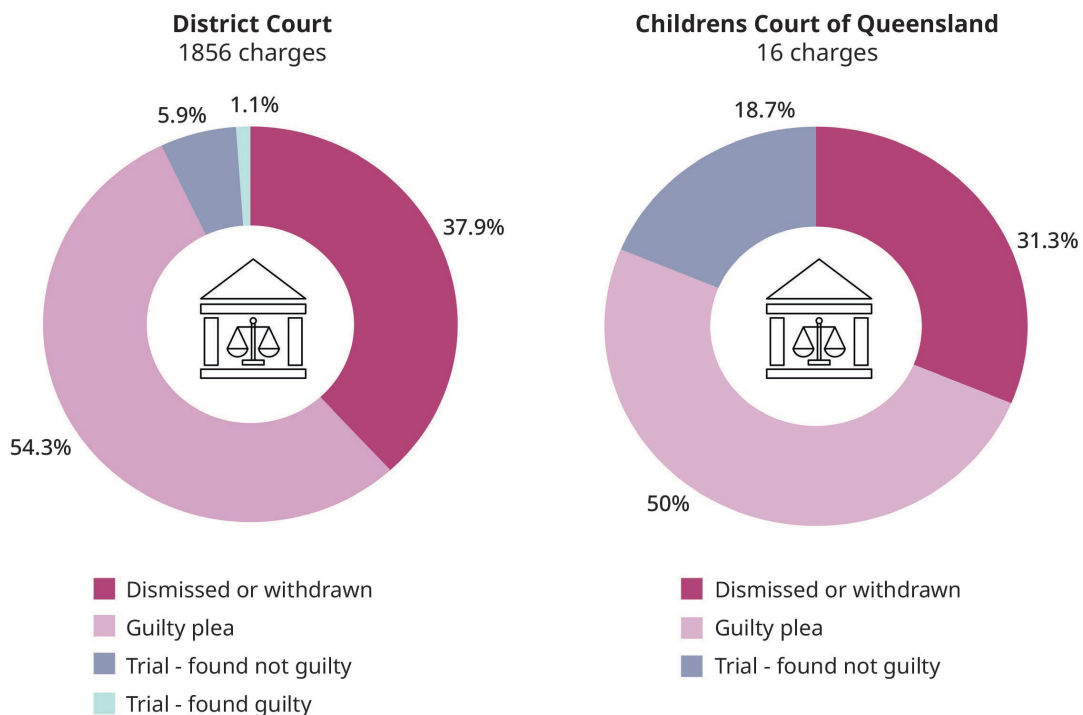


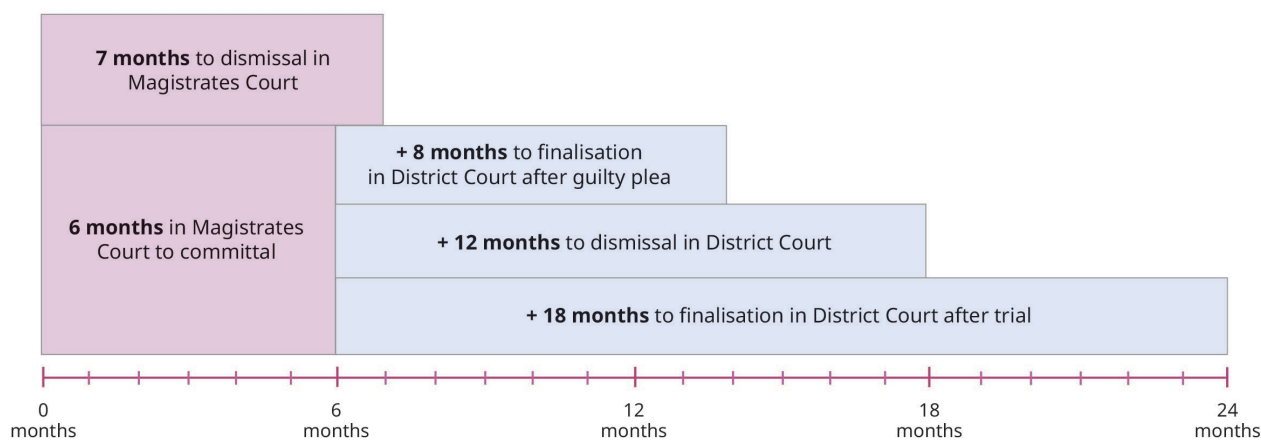
Figure 4: Outcomes of non-fatal strangulation charges on indictment at District Court level, July 2022 to June 2024



38. For charges that were finalised in either the Magistrates Court or District Court between July 2023 and June 2024, the average time from lodgement in the Magistrates Court to finalisation was 443 days (just over 14 months).<sup>16</sup> The median time to finalisation was 388 days (just over a year), with finalisation times ranging from 5 days to 1,958 days (or just over 5 years and 4 months).<sup>17</sup>

39. The average time non-fatal strangulation charges spent in the Magistrates Court was 191 days (about 6 months). Charges that were dismissed in the Magistrates Court were finalised, on average, within 211 days (almost 7 months). Charges that were committed to the District Court spent 186 days (about 6 months) on average in the Magistrates Court.
40. Once committed to the District Court, the average time from lodgement in the Magistrates Court to finalisation in the District Court was 501 days (just over 16 months). If dismissed in the District Court, that occurred, on average, within 559 days (about 18 months). Charges that resulted in a guilty plea were finalised faster — on average, within 448 days (just over 14 months). Charges that proceeded to trial took the longest to finalise, with an average time of 702 days (almost 2 years).
41. Average finalisation times for non-fatal strangulation charges finalised between July 2023 and June 2024 are shown in Figure 5.

Figure 5: Approximate time to finalisation of non-fatal strangulation charges after lodgement in the Magistrates Court, charges finalised July 2023 to June 2024



## Victim-survivor research: Key findings

42. We conducted research with victim-survivors. The research methodology and detailed findings are available in [research report 1](#). We summarise key themes below.

### Key themes

#### 1. 'They let me down': Most victim-survivors had negative experiences with police

Many victim-survivors did not have a good experience with police. Some were unable to report strangulation to police because stations were unattended or officers were too busy. This significantly affected some victim-survivors who decided not to return to report the conduct to police.

For the victim-survivors who did report the strangulation to police, complaints were sometimes minimised, dismissed or disbelieved. Some victim-survivors felt that police treated them differently because they are Aboriginal or come from a culturally and linguistically diverse background.

Victim-survivors also told us that police did not always do enough to collect evidence or refer victim-survivors on for medical treatment. Some victim-survivors ended up collecting their own



evidence or seeking their own medical care. Sometimes, police chose not to charge the perpetrator for strangulation because there was insufficient evidence.

**2. 'They ensured I was safe': The victim-survivors had better experiences with medical and support services**

Victim-survivors had better experiences with medical professionals and support services. However, some noted that medical professionals did not always have an adequate understanding of strangulation and its effects nor keep accurate records.

**3. 'The system does it to you all over again': The criminal justice system re-victimised the victim-survivors**

Victim-survivors felt disempowered and disappointed that the system appeared to protect the perpetrator instead of them. Some victim-survivors were told that they were not a credible witness. For those perpetrators charged with non-fatal strangulation, we were told that there were limited convictions. Almost all victim-survivors were dissatisfied with the length of time it took to resolve their case. They felt the criminal justice process re-victimised them.

**4. 'They don't tell me anything': The victim-survivors were not given sufficient information**

Victim-survivors often told us that they did not receive enough information throughout the process. This included information from police and medical professionals about what to do following strangulation as well as information about criminal justice and court processes, court dates, outcomes of hearings and what to expect at court. This left victim-survivors feeling confused and unsafe, and made it difficult for them to make decisions about their involvement in the case.

**5. 'Why can't there be a better system?': The victim-survivors think the system could respond better**

Victim-survivors made a number of suggestions to improve the police, court, medical and support service response.

## Investigating, prosecuting and defending non-fatal strangulation: Early findings

43. We conducted research with police and lawyers. The research methodology and detailed findings will be available in research report 2. We summarise preliminary themes below.

### Preliminary themes

**1. Lack of definitional clarity still creates confusion**

There is still confusion about what choking, suffocation or strangulation mean. We were told that the conduct for most charges usually involves pressure to the neck. It is rare for charges to be laid where there is pressure to the chest. Sometimes charging of this offence extends to conduct that may be considered outside the scope of the original legislative intent, for example, when used defensively rather than as a means of control.

**2. Consent is usually not an issue**

We were told that consent rarely comes up, potentially because most of the non-fatal strangulation offences charged or prosecuted are not in sexual contexts.

### **3. Proving domestic setting is usually not an issue**

We were told that the question of whether the domestic setting element is met is rarely raised. However, there are some circumstances that this element usually does not include, such as dating relationships and casual sexual encounters. Some think that some relationships that are not the target of the laws, such as conduct between brothers, are being captured.

Interviewees told us that where children were charged, it was usually in the context of intimate partner relationships, although sometimes the domestic setting element was difficult to establish.

### **4. Victim-survivor reluctance impacts charging and prosecution rates**

We were told that victim-survivor reluctance is one of the reasons that charges may not be laid. It is a significant factor in withdrawal of prosecution, whether that be where non-fatal strangulation charges are replaced with another charge or withdrawn entirely. Where charges are replaced with another charge, they are usually replaced by common assault or assault occasioning bodily harm.

Interviewees thought that victim-survivors withdraw for many reasons, including: delay in proceedings, lack of understanding or engagement, being subjected to pressure from the perpetrator and/or their family, moving on, not wanting to go to court, considerations regarding children, and their relationship with the perpetrator.

### **5. The requirement to proceed to a higher court is the biggest factor in the time to finalise non-fatal strangulation charges and impacts on decisions to plead guilty**

The numerous steps required to proceed from charge in the Magistrates Court to finalisation in a higher court is the main reason interviewees cited for the length of time required to complete non-fatal strangulation matters. This occurs with other matters that must also proceed this way.

We were told that this process also affects perpetrators' decisions to plead guilty, as they often make a 'commercial decision' to do so after spending significant time in pre-sentence custody.

### **6. Although non-fatal strangulation perpetrators largely plead guilty, trials do occur**

We were told that perpetrators of non-fatal strangulation largely plead guilty. Where trials do occur:

- they usually focus on undermining the victim-survivor's version of events
- they sometimes challenge whether the restriction of breath element has been proved
- sometimes defences are raised (for example, self-defence, defence of property, prevention of repetition of insult, or mistake of fact as to consent).

### **7. Decision-making about non-fatal strangulation**

Despite the statewide policy for the Criminal Investigation Branch to investigate all non-fatal strangulation charges, there are regional variations. Decisions that General Duties officers make as to how to classify an event can impact on the level of investigation.

We were told that as non-fatal strangulation involves DFV, there is a stigma attached which impacts defendants', police and prosecutors' decision-making.

Police prosecutors are less amenable than the ODPP to negotiating facts, agreeing to alternative charges or withdrawing s 315A charges entirely — although there is some regional variation.

Most non-fatal strangulation offences proceed via registry committal (explained below at [63]). It is rare for police prosecutors to agree to cross-examination at committal and it is rare for



Magistrates to permit cross-examination of victim-survivors. On some occasions, matters were not committed. There is some regional variation.

#### **8. Knowledge has improved but further training is required**

From what we were told, knowledge about non-fatal strangulation and trauma-informed practice has improved among police and those in the legal system, but specific training about non-fatal strangulation and further trauma-informed practice training would be advantageous to:

- improve the victim-survivor experience and support victim-survivor cooperation throughout the process
- conduct effective investigations of non-fatal strangulation and ensure that evidence is not undermined
- assess evidence for adequacy in decisions about charging or indicting, and withdrawing, replacing, prosecuting and defending charges.

#### **9. Over-representation of Aboriginal peoples and Torres Strait Islander peoples**

Interviewees thought that the over-representation of Aboriginal peoples and Torres Strait Islander peoples as perpetrators and victim-survivors of non-fatal strangulation (see the discussion below from [68]) related to over-representation more generally. However, the perception that Aboriginal peoples and Torres Strait Islander peoples are over-represented as non-fatal strangulation perpetrators and victim-survivors was not a statewide view.

While the wide interpretation of 'domestic relationship' has the potential to unfairly impact Aboriginal peoples and Torres Strait Islander peoples, we were told that experience generally is that police and prosecution do not exceed fair limits.

The over-representation of Aboriginal peoples and Torres Strait Islander peoples on remand for non-fatal strangulation offending was thought to partly be due to the difficulties people from remote communities had in getting bail.

## Reform context

44. In this section, we explore key issues that have informed our examination of law, practice and procedure reform options for this review:
- the dangers of strangulation
  - the role of the criminal law
  - the criminal process
  - the over-representation of Aboriginal peoples and Torres Strait Islander peoples in Queensland's criminal justice system.

## The dangers of strangulation

45. Strangulation is inherently dangerous. It can result in a variety of short- and long-term physical, neurological, cognitive and psychological consequences (see Figure 6), even with brief or partial restriction of breathing or blood flow.<sup>18</sup> Unconsciousness can occur within seconds and death within minutes.<sup>19</sup>

46. Despite the numerous potential consequences of strangulation (including death), up to 50% of strangulation victims show no external injuries.<sup>20</sup> Otherwise, injuries may only arise days, weeks, months or years after the event.<sup>21</sup> If injuries are visible, they are usually minor (such as red marks, abrasions or bruising) and can be ‘ambivalent’ as to whether strangulation was the cause.<sup>22</sup> This can make proving strangulation difficult.
47. Proving the offence can also be difficult because of the effects of strangulation on victim-survivors’ memory. The hippocampus — which plays a crucial role in encoding and recalling memories — is particularly sensitive to lack of oxygen.<sup>23</sup> This means victim-survivors may not be able to remember aspects of the strangulation event clearly or at all, or their accounts of the event may be inconsistent over time.

Figure 6: Physical, neurological, cognitive and psychological consequences of strangulation

Physical	Neurological	Cognitive	Psychological
<ul style="list-style-type: none"> <li>• Sore throat or neck</li> <li>• Voice changes</li> <li>• Redness, bruises or abrasions</li> <li>• Trouble swallowing</li> <li>• Changes in breathing</li> <li>• Petechiae (pinpoint bleeding)</li> <li>• Miscarriage</li> <li>• Swelling of the neck or brain</li> <li>• Cardiac arrest</li> <li>• Stroke</li> <li>• Structural damage to the neck</li> <li>• Thyroid storm</li> <li>• Respiratory occlusion or failure</li> </ul>	<ul style="list-style-type: none"> <li>• Dizziness or light-headedness</li> <li>• Vision disturbances</li> <li>• Slurred speech</li> <li>• Tinnitus or issues with hearing</li> <li>• Loss of sensation</li> <li>• Weakness or tremors</li> <li>• Imbalance</li> <li>• Headaches</li> <li>• Eyelid or facial droop</li> <li>• Sleep disturbances</li> <li>• Fatigue</li> <li>• Incontinence</li> <li>• Loss of consciousness</li> <li>• Seizures</li> <li>• Paralysis</li> <li>• Brain injury</li> <li>• Dementia</li> </ul>	<ul style="list-style-type: none"> <li>• Problems with memory</li> <li>• Executive dysfunction</li> <li>• Problems with attention and processing speed</li> <li>• Impacts on judgment and reasoning</li> <li>• Confusion or disorientation</li> </ul>	<ul style="list-style-type: none"> <li>• Anxiety</li> <li>• Depression</li> <li>• Suicide ideation</li> <li>• Insomnia</li> <li>• Nightmares</li> <li>• Hypervigilance</li> <li>• Hyperarousal</li> <li>• PTSD</li> </ul>

48. Strangulation poses an additional risk to DFV victim-survivors. In such contexts, non-fatal strangulation is one of the best predictors of future violence and homicide. One study found that the risk of future homicide was more than seven times higher for women who had been strangled by their intimate partner, compared to women who had not been strangled.<sup>24</sup>
49. While this research focused on intimate partners, there is some evidence that people in other types of domestic relationships, such as relatives or children, are at risk of homicide following

strangulation.<sup>25</sup> However, further research is needed. One victim-survivor who participated in our research told us that their son had strangled them multiple times.<sup>26</sup>

50. Research shows that non-fatal strangulation occurs frequently in the context of DFV, with an estimated lifetime prevalence amongst DFV victim-survivors of 27% to 68%.<sup>27</sup> DFV victim-survivors who are strangled are often strangled more than once, with the effects of these injuries accumulating over time.<sup>28</sup> They also experience more negative health consequences than DFV victim-survivors who have not been strangled.<sup>29</sup> They often experience non-fatal strangulation in addition to other forms of violence.<sup>30</sup>
51. Non-fatal strangulation can be a dangerous form of coercive control that perpetrators use to demonstrate their power over the victim-survivor's life.<sup>31</sup> Strangulation has been likened to waterboarding and torture because it is used to assert dominance and authority, creates intense fear, potentially results in death, and can be used repeatedly.<sup>32</sup> Because of this, non-fatal strangulation can be an extremely traumatic event, especially if it occurs in the context of DFV.<sup>33</sup>

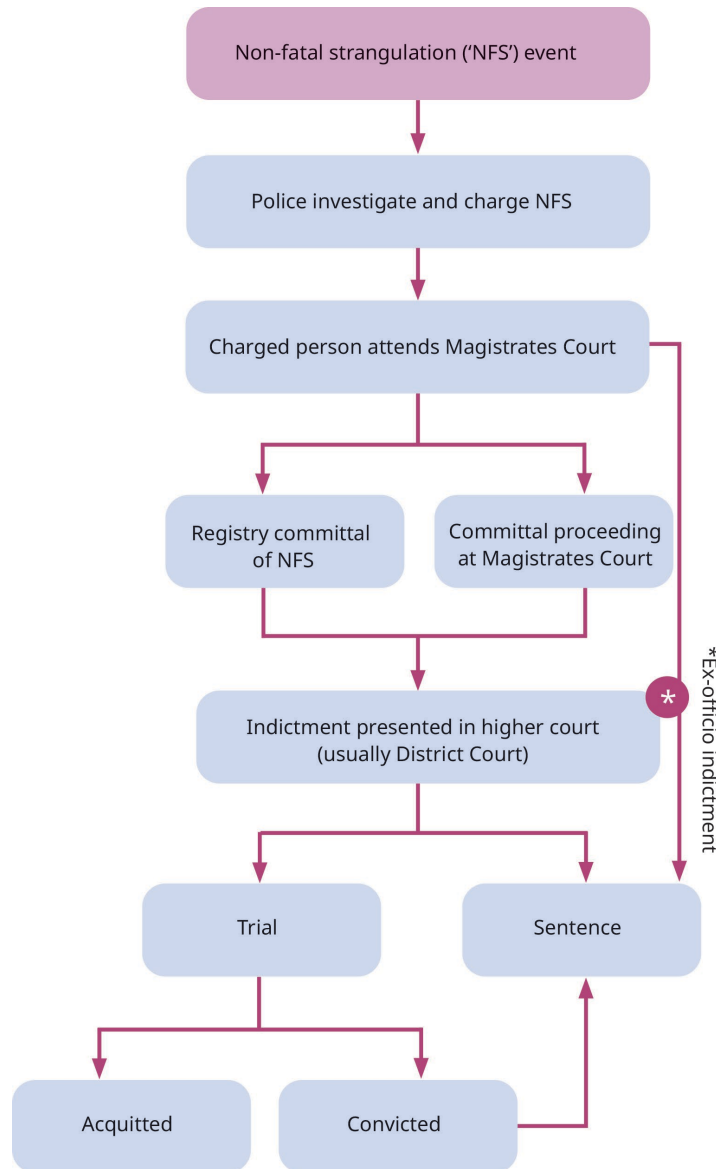
## The role of the criminal law

52. Given the inherent dangers of non-fatal strangulation and our terms of reference, which ask us to consider whether the offence should extend beyond domestic settings, we need to consider the role of the law, particularly the criminal law, in regulating such conduct.
53. Previously, aspects of private conduct were sometimes thought to be beyond the reach of the law. This originally included conduct that happened in the home, such as DFV.<sup>34</sup> Extending the law to protect women and children from violence that happened in the home was not thought to be a state responsibility.<sup>35</sup> This left women and children vulnerable.
54. One way to potentially address this concern is to criminalise particular conduct. Making conduct criminal places responsibility in the state's hands. It can:<sup>36</sup>
  - serve to declare the conduct wrongful and socially unacceptable, denouncing its use
  - facilitate investigation, prosecution, conviction and punishment, which may bring a perpetrator to justice and protect the community.
55. The shift to criminalising conduct within the home has sometimes been criticised. This is particularly so when criminalisation is pursued regardless of other social costs, such as the impact that prosecution (and potentially imprisonment of the perpetrator) may have on the family dynamic and their financial situation, and the associated pressure on public services.<sup>37</sup>
56. The criminal law is sometimes described as a blunt tool.<sup>38</sup> In the context of DFV and non-fatal strangulation, it has been criticised for prioritising accountability over victim-survivor safety and continuing to contribute to the over-representation of Aboriginal peoples and Torres Strait Islander peoples.<sup>39</sup>
57. However, the criminal law has been recognised as playing a role in at least increasing system awareness about the dangers of non-fatal strangulation.<sup>40</sup> Further, some suggest that criminalisation is not the problem if the laws are effectively embedded, resourced and enforced.<sup>41</sup>
58. Expanding the non-fatal strangulation offence beyond domestic settings may also raise issues of privacy and personal autonomy. Sexual conduct is still often thought of as being private in nature, with people having a right to bodily integrity. What is acceptable in the sexual sphere is often regulated informally through social norms. However, this may be problematic in the context of young people, where sexual strangulation is normalised.<sup>42</sup> In such contexts, some of our stakeholders noted that the criminal law may not be the appropriate educative tool.

Education through schools or other avenues, including public awareness campaigns, may be more appropriate. However, other stakeholders stressed the need for alignment between law and education to encourage primary prevention and sustained service responses.

## The criminal process

Figure 7: The criminal justice process for non-fatal strangulation offences



59. There are various ways police may become involved following a non-fatal strangulation event. Often, the first police officers to become aware of non-fatal strangulation conduct will be General Duties police officers. If a General Duties officer classifies a matter as involving non-fatal strangulation, they are required to refer the matter to the Criminal Investigation Branch for investigation. Following investigation, a decision will be made as to whether there is sufficient evidence to charge the offence of non-fatal strangulation. Research report 2 will include further detail about the police process and actors involved.
60. As with all other criminal charges, a perpetrator charged with non-fatal strangulation must first appear in the Magistrates Court. They may appear in custody after being remanded by police, or police may have given them police bail or a notice to appear. Often, the case may be

adjourned for a defence lawyer to take instructions, request material from the police and to potentially make submissions.

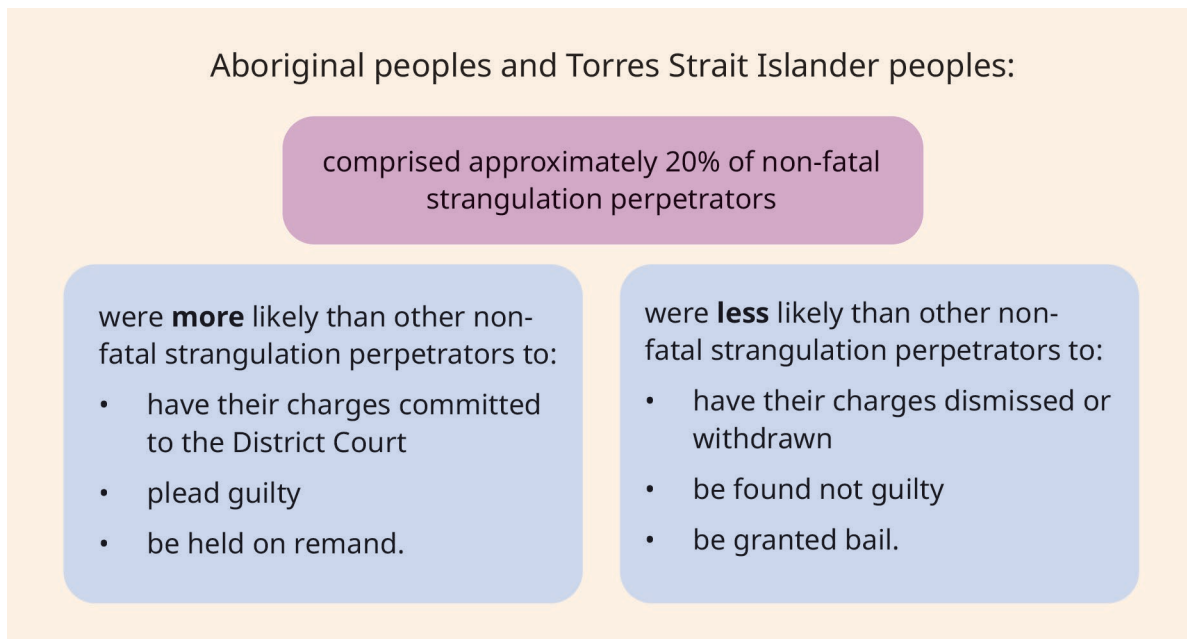
61. The defence may not make submissions until the prosecution has given them a brief of evidence. The submissions may suggest the offence of non-fatal strangulation be withdrawn completely or replaced with a different charge that can be finalised in the Magistrates Court, such as common assault or assault occasioning bodily harm.<sup>43</sup> At this stage in the process, police prosecutors usually prosecute the case and make decisions, except in Ipswich and Brisbane where the ODPP is responsible for committals.
62. If the non-fatal strangulation offence is replaced with a charge that can be dealt with in the Magistrates Court, this charge may potentially proceed as a trial or sentence.
63. If the non-fatal strangulation charge is not withdrawn or replaced with a different charge, it must proceed to a higher court. It can proceed via registry committal in certain circumstances or, less often, via a committal proceeding in the Magistrates Court. In a committal proceeding, witnesses may be required to give evidence and the Magistrate decides whether there is sufficient evidence to commit the matter to a higher court. The Magistrate may decide to commit or not commit the non-fatal strangulation offence entirely, or they may choose to commit a different offence available on the evidence.
64. After an offence is committed to the relevant higher court (usually the District Court for non-fatal strangulation), the ODPP takes over any prosecution. The ODPP has six months to indict any offence in the District Court. The defence may submit that the offence should not be indicted or another offence should be preferred.
65. The committal process can be bypassed if, while at the Magistrates Court level, the perpetrator or their legal representative requests an ex-officio indictment (an indictment presented directly to a higher court). However, to do so the perpetrator must indicate they will plead guilty and the ODPP must consent.<sup>44</sup>
66. Once an indictment is presented in a higher court, there may be adjournments to obtain further disclosure or to allow submissions to be made and considered. The perpetrator will indicate whether they will plead guilty and be sentenced by a judge in the District Court, or whether they will plead not guilty and proceed to trial.
67. When a matter proceeds to trial, there may be pre-trial hearings about various issues. Eventually a trial date will be set. The ODPP can continue to accept submissions up until the perpetrator is convicted. If submissions are not accepted and the matter proceeds to trial, the perpetrator will be sentenced if found guilty. If they are found not guilty, they will be acquitted.

## Over-representation

68. As we have previously noted, despite comprising only 4.6% of Queensland's population, Aboriginal peoples and Torres Strait Islander peoples are over-represented in the State's criminal justice system as both offenders and as victims.<sup>45</sup> The same is true for the non-fatal strangulation offence.
69. The Queensland Government has committed to the National Agreement on Closing the Gap, which includes targets to reduce the rate of Aboriginal and Torres Strait Islander:<sup>46</sup>
  - adults held in incarceration by at least 15% by 2031
  - young people (10–17 years) in detention by at least 30% by 2031.
70. Queensland is not on track to meet these targets. Over-representation of Aboriginal peoples and Torres Strait Islander peoples in the criminal justice system is increasing.<sup>47</sup>

71. Closing the Gap commitments also include targets to reduce family violence and abuse against Aboriginal and Torres Strait Islander women and children by 50% by 2031.<sup>48</sup>
72. Our preliminary court data analysis shows the range of ways over-representation of Aboriginal peoples and Torres Strait Islander peoples can be observed for non-fatal strangulation: see Figure 8.

Figure 8: Preliminary court data analysis findings for adult perpetrators charged under s 315A, July 2022 to June 2024



73. Similar findings were made following an analysis of s 315A court data from 2017 to 2020.<sup>49</sup> That research also found that:<sup>50</sup>
  - 26% of non-fatal strangulation victim-survivors identified as either Aboriginal or Torres Strait Islander
  - Aboriginal peoples and Torres Strait Islander peoples were more likely to be prosecuted for non-fatal strangulation rather than alternative charges.
74. Preliminary findings from our court data research also indicate that Aboriginal children and Torres Strait Islander children are over-represented at some stages of the criminal justice process in non-fatal strangulation cases. For example, Aboriginal children and Torres Strait Islander children:
  - comprised approximately 60% of child non-fatal strangulation perpetrators
  - were more likely than other non-fatal strangulation child perpetrators to plead guilty and less likely to be found not guilty
  - were less likely than other non-fatal strangulation child perpetrators to be granted bail and more likely to be held on remand.
75. The overwhelming majority of non-fatal strangulation perpetrators were men, regardless of Indigenous status. However, adult Aboriginal women and Torres Strait Islander women appear to be over-represented within the small cohort of women perpetrators. Adult Aboriginal women and Torres Strait Islander women:
  - comprised approximately 25% of adult non-fatal strangulation women perpetrators

- were less likely than other non-fatal strangulation adult women perpetrators to have their charges dismissed or withdrawn in the District Court
- were more likely than other non-fatal strangulation adult women perpetrators to plead guilty
- were less likely than other non-fatal strangulation adult women perpetrators to be granted bail and more likely to be held on remand.

76. Fitzgerald and others have previously highlighted the delicate tensions created by the criminal response to non-fatal strangulation. In particular, they noted the need for systems to recognise the severity of violence against Aboriginal peoples and Torres Strait Islander peoples, while also being aware of the disproportionate rate at which Aboriginal peoples and Torres Strait Islander peoples are imprisoned.<sup>51</sup>

77. Some of these issues were raised in our research with police and lawyers. As one of the participants explained:

I think [over-representation for non-fatal strangulation] is tied to the same reason why Aboriginal and Torres Strait Islander people are over-represented in every element of our criminal justice system — intergenerational trauma and socio-economic inequalities. I think that the socio-economic inequalities ... and remoteness ... can make it more difficult to get bail ... I think that then has the flow on effect of people just pleading guilty to get out of jail.

....

And research has shown that First Nations women are often likely to be misidentified as perpetrators. I've had matters where First Nations women are charged with choking, which is something that I've not seen nearly as commonly outside of those remote communities.<sup>52</sup>

# Our proposed model

## Proposal

**P1** Section 315A 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.

78. Currently, there are two non-fatal strangulation offences in the Criminal Code, s 315A and s 315. Figure 9 shows this offence framework.
79. Section 315A criminalises unlawful choking, suffocation or strangulation done without the other person's consent. It only applies to conduct that occurs between those in a 'domestic relationship' or that is 'associated domestic violence' under the Domestic and Family Violence Protection Act 2012.<sup>53</sup> The offence has a maximum penalty of 7 years' imprisonment.

### 315A Choking, suffocation or strangulation in a domestic setting

- (1) A person commits a crime if—
- (a) the person unlawfully chokes, suffocates or strangles another person, without the other person's consent; and
  - (b) either—
    - (i) the person is in a domestic relationship with the other person; or
    - (ii) the choking, suffocation or strangulation is associated domestic violence under the Domestic and Family Violence Protection Act 2012.
- Maximum penalty—7 years imprisonment.
- (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.
- (2) An assault is not an element of an offence against subsection (1).

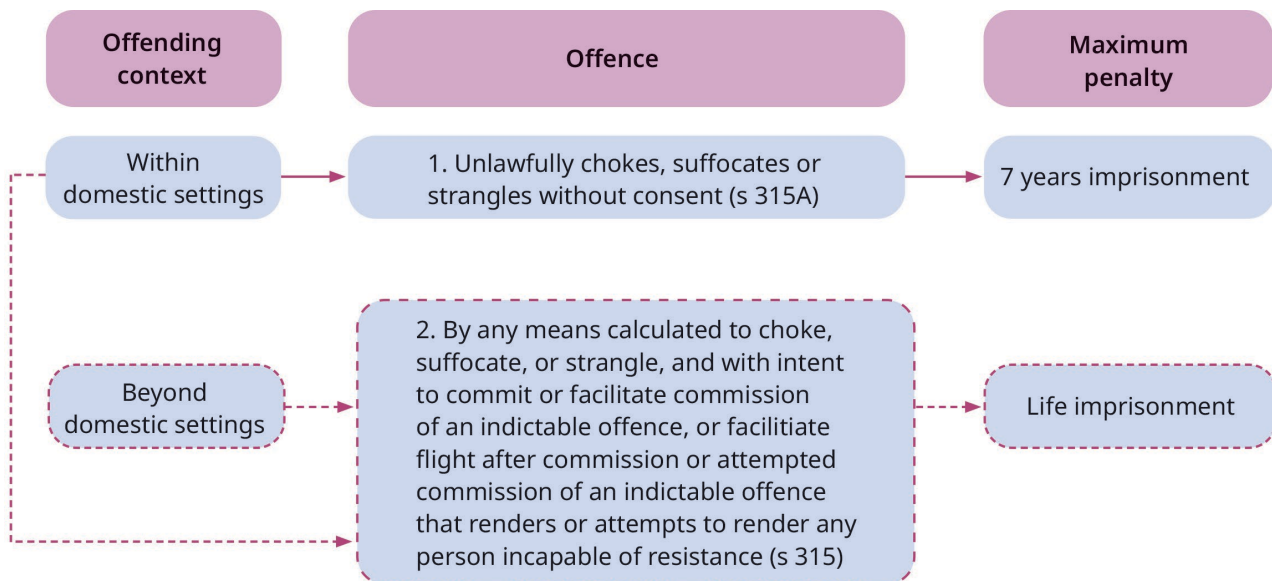
80. Section 315 is not restricted to domestic settings. It applies where the perpetrator engages in conduct likely to choke, suffocate or strangle with intent to commit or facilitate commission of an indictable offence, or facilitate flight of a perpetrator. It requires the perpetrator to have rendered or attempted to render the other person incapable of resistance. The offence has a maximum penalty of life imprisonment.



### 315 Disabling in order to commit indictable offence

Any person who, by any means calculated to choke, suffocate, or strangle, and with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, renders or attempts to render any person incapable of resistance, is guilty of a crime, and is liable to imprisonment for life.

Figure 9: Current non-fatal strangulation offence framework



81. We propose replacing s 315A with three non-fatal strangulation offences. Section 315 would operate alongside these three new offences. The proposed framework is displayed in Figure 10.
82. Proposed new offence 1 would criminalise unlawfully doing particular conduct that restricts respiration and/or blood circulation within domestic settings. It would have a maximum penalty of 14 years' imprisonment. Proposed new offence 2 would not require proof the conduct restricted respiration or blood circulation. To reflect this, it would have a lower maximum penalty of 7 years' imprisonment.
83. Proposed new offence 3 would apply beyond domestic settings. It would criminalise unlawfully doing particular conduct that restricts respiration and/or blood circulation and would have a maximum penalty of 10 years' imprisonment.

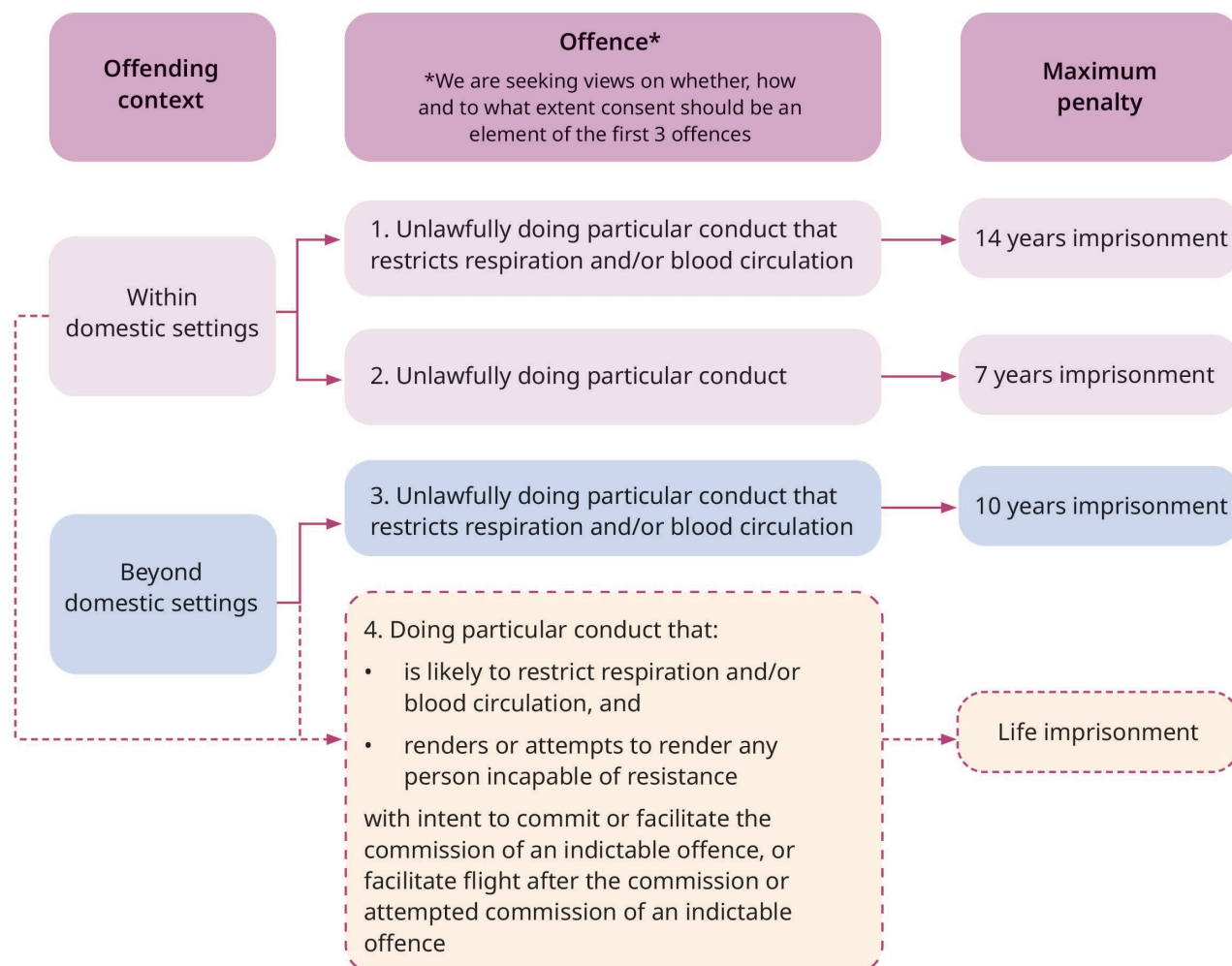
## Question

**Q1** What are your views on proposal 1?

84. Below we will ask further questions about the proposed new offences, including about:
  - what conduct the offences should criminalise
  - consent
  - when non-fatal strangulation should be lawful.

85. Further on we will also discuss proposals and ask questions about:
- defences
  - the forum for finalising matters
  - practice and procedure.

Figure 10: Proposed non-fatal strangulation offence model



## A standalone offence beyond domestic settings

86. A non-fatal strangulation offence broadly equivalent to s 315A might be justified beyond domestic settings for a number of reasons.
87. First, as explained above at [45], strangulation is inherently dangerous, regardless of the circumstances in which it occurs. It can result in serious health consequences even with brief or partial restriction of breathing or blood circulation. Adverse health consequences may be delayed and can occur even with no visible external injuries. External injuries, if present, are often minor and create ambiguity as to whether strangulation was the cause.
88. Second, some stakeholders raised concern about the scope of the terms 'domestic relationship' and 'associated domestic violence' as used in s 315A. These terms come from the Domestic and Family Violence Protection Act 2012. A 'domestic relationship' means a 'relevant relationship' under that Act.<sup>54</sup>

89. Some stakeholders are concerned that the terms may not extend to dating relationships, one-night stands, casual sexual encounters, 'friends with benefits', some relationships started over social media, or household members. It was expressed that this may particularly impact young people, members of the LGBTIQ+ community and people experiencing homelessness. Some of the victim-survivors who participated in our research told us they were in a current or former dating relationship with the perpetrator, had engaged in casual sex with them, or were current or former housemates or lived together.
90. Dating relationships are explicitly excluded from the scope of 'domestic relationship'.<sup>55</sup> Judicial commentary indicates that such relationships are a 'precursor to the establishment of a couple relationship'.<sup>56</sup> A couple relationship does fall within the definition of domestic relationship.<sup>57</sup>
91. Judge Morzone has noted that a couple relationship is a relationship that is well established beyond mere dating. Specifically, a couple relationship:<sup>58</sup>
- entails mutual respect, trust, communication, shared experiences, a deep understanding of one another, spending time together, mutual support and commitment, emotional intimacy and mature physical intimacy, mature emotional intimacy and commitment to a future together.
92. In one case, a couple who met on a dating site were held to be in a couple relationship because they had dated on 10 to 15 occasions for about seven to eight months, almost invariably having sex.<sup>59</sup> In another case, the court held that, although the pair had little dependence, a couple relationship existed because they had regular sexual contact and a degree of trust.<sup>60</sup>
93. However, in a case involving two 12-year-olds, the court considered a couple relationship did not exist, even though the children considered themselves to be in a relationship.<sup>61</sup> Courts have noted that whether or not two people are in a couple relationship is an objective test and, as such, the court 'ought not to rely on subjective perceptions of how the parties themselves view, define or describe' their relationship.<sup>62</sup>
94. Police and lawyers told us of examples of relationships where non-fatal strangulation was found not to fall within a domestic setting:
- A schoolyard relationship, where the victim-survivor and perpetrator had been 'going out' for a couple of weeks. In that case, police prosecutions accepted a submission to withdraw a non-fatal strangulation offence as those involved were 15-years-old and were not living together nor sharing finances, so the relationship did not meet the threshold of a couple relationship.
  - A six-week relationship initiated through Tinder. The non-fatal strangulation charge did not proceed because the victim-survivor said they lived interstate, were just 'hooking up' with the perpetrator and were not connected.
  - Another relationship where the perpetrator strangled the victim-survivor a couple of weeks after meeting over Tinder and going on a couple of dates. Police did not record it as strangulation because the victim-survivor and perpetrator were not in a 'relevant relationship'. However, four months later when the perpetrator strangled the victim-survivor again, the offence was charged because police could establish that there had been a 'relevant relationship'.
95. Some of the lawyers we interviewed expressed concern that the offence criminalises non-fatal strangulation in relationships that were not the legislative target. For example, they expressed that the offence was being misused in situations between relatives, such as between brothers who get in a fight where one holds the other against the wall. These lawyers suggested the offence should be confined to intimate personal relationships.

96. Non-fatal strangulation offences in some other Australian and overseas jurisdictions include these types of relationship.<sup>63</sup> However, as noted above at [49], further research is needed to establish the risk of future violence and homicide posed to people other than intimate partners who experience non-fatal strangulation.
97. As discussed in our [background paper](#), non-fatal strangulation is increasingly used in the context of sexual assaults and sexual violence.<sup>64</sup> Section 315A does not include non-consensual sexual strangulation that occurs outside 'domestic relationships' or 'associated domestic violence'.
98. In our interviews, police and lawyers told us that if non-fatal strangulation is used during sexual assault, it may not be charged as a separate offence. We heard that this may be because of concerns that the non-fatal strangulation charge would distract the jury or result in potentially inconsistent verdicts, or because including a non-fatal strangulation charge would make little difference to the penalty. This minimises the inherent dangerousness of non-fatal strangulation.
99. The limitations of the definitions of 'domestic relationship' and 'associated domestic violence' are an issue for any offence that uses them. Further consideration may be required generally about whether those terms should be amended.
100. Further, the offences other than s 315A that may capture non-fatal strangulation conduct are limited. In our interviews, prosecutors expressed frustration at not being able to charge perpetrators with an offence that adequately reflects the criminality of non-fatal strangulation in situations beyond domestic settings. In such contexts, non-fatal strangulation is often charged as common assault or assault occasioning bodily harm. These offences do not adequately recognise the inherent seriousness of non-fatal strangulation.
101. The evidentiary issues that arise when someone is strangled (see the discussion above at [46]) mean existing offences may be difficult to prove. For example, there may be difficulties proving assault occasioning bodily harm if injuries are not visible, are too minor to amount to 'bodily harm' or develop over time.
102. While non-fatal strangulation beyond domestic settings is already an offence under s 315, it is infrequently used and charges are rarely successful. Between July 2022 and June 2024, only 51 s 315 charges were laid. Of those, only 9 resulted in a conviction. We have heard that this is because certain elements of the offence can be difficult to prove, in particular, the requirement for intent.
103. Our proposed new offence 3 would operate alongside s 315. It does not require the person to have engaged in non-fatal strangulation with intent to commit or facilitate commission of an indictable offence, or facilitate flight of an offender. Proposed offence 3 would also not require the person to have done so to render or attempt to render the person incapable of resistance.
104. The non-fatal strangulation offences in New South Wales, the Australian Capital Territory, Western Australia, Tasmania, England and Wales, Ireland, Canada, New Zealand and some United States jurisdictions are not limited to domestic settings.<sup>65</sup>

## Non-fatal strangulation in domestic settings carries added risk

105. The added risks posed to DFV victim-survivors who are strangled (see above at [48]), beyond the inherent dangers of strangulation, may justify keeping an offence for non-fatal strangulation that occurs between those in 'domestic relationships' or that is 'associated domestic violence'.

106. A separate offence for non-fatal strangulation in domestic settings allows a distinction to be drawn between penalties for this conduct in different contexts (see the discussion below from [180]). It would also maintain policy and resources for non-fatal strangulation that occurs in a DFV context.
107. Non-fatal strangulation offences that are limited to domestic settings exist in Victoria, South Australia, the Northern Territory and some United States jurisdictions.<sup>66</sup> In Western Australia and the Australian Capital Territory, non-fatal strangulation in DFV contexts is a circumstance of aggravation that increases the maximum penalty available.<sup>67</sup> We consider that the risk of future lethality in DFV contexts makes it more appropriate for non-fatal strangulation in such contexts to be a separate offence, rather than a circumstance of aggravation.

## What must be proved must be clear

108. Section 315A(1) provides that it is unlawful to choke, suffocate or strangle. Subsection (1A) provides a non-exhaustive definition of these terms:

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.
109. 'Choke', 'suffocate' and 'strangle' are also used in s 315, although they are not defined for the purposes of that section.
110. In our interviews with police and lawyers, we heard that lack of definitional clarity still creates confusion about what constitutes choking, suffocation or strangulation. These terms are often considered from a medical perspective. Those we have consulted, including medical professionals, have raised concerns that this inappropriately medicalises s 315A.
111. Some of the prosecutors we interviewed believe the use of those terms in s 315A means they must nominate one term in their particulars for the indictment. In the absence of clearly defining what must be proved, this creates uncertainty and complexity in the charging process. However, some counsel thought that, in practice, this did not create a problem as the indictment could be amended.
112. To address these issues we propose removing 'choke', 'suffocate' and 'strangle' from the text of the non-fatal strangulation offences. Instead, definitions of the terms could be incorporated within the offence elements. This approach is taken in Western Australia, New Zealand and Minnesota in the United States.<sup>68</sup>
113. The terms could continue to be used in the offence names to facilitate charging and record-keeping. Other offences in the Criminal Code already take this approach — for example, burglary in s 419 and repeated sexual conduct with a child in s 229B.
114. To ensure consistency within the Criminal Code, s 315 could also take this approach, potentially including this offence as the fourth offence in the new non-fatal strangulation offence model (see Figure 10).

## Conduct and results of conduct

115. We propose that the elements of offences 1 and 3 should include both 'conduct' and 'results of conduct'. Offence 2 should only include conduct, without a requirement to prove a result.

### Conduct

Conduct refers to the physical act that the offences criminalises. For example, applying pressure to the neck or covering the nose or mouth. We have not made any proposal about the conduct element and seek your views on what conduct should be criminalised.

### Results of conduct

Results of conduct are the consequences that flow from the criminalised conduct. We propose that it should mean restriction of respiration and/or blood circulation. We do not propose that it should include other results such as unconsciousness or harm.

## Conduct

116. Conduct is defined differently across jurisdictions. In Queensland, the Northern Territory, Victoria, Western Australia, the Australian Capital Territory, Northern Ireland and some United States jurisdictions, conduct refers to applying pressure to the neck.<sup>69</sup> Pressure could be applied by various means, including using body parts or other items.
117. The Northern Territory, Victoria and the Australian Capital Territory offences refer to obstructing or interfering with the respiratory system or accessory systems of respiration as conduct.<sup>70</sup> This appears to be a non-exhaustive element which might include, for example, lodging something down someone's throat. Western Australia, New Zealand and some United States jurisdictions include blocking the nose and/or mouth as conduct.<sup>71</sup>
118. Some stakeholders have raised concerns that s 315A does not adequately cover the restriction of respiration that occurs through application of pressure to the chest. Several victim-survivors who participated in our research told us that someone had pinned them down, sat on their chest, or squashed or compressed their chest so it was difficult to breath. Conduct extends to applying pressure to the chest or torso in United States jurisdictions such as West Virginia, Indiana and Kansas.<sup>72</sup>
119. While there is not much information about the risk of lethality from applying pressure to the chest as opposed to the neck, a number of Queensland coronial inquests found that people died from of this kind of conduct, often when pressure was applied to the back while the deceased was lying face down.<sup>73</sup>
120. Some police and prosecutor interviewees told us that applying pressure to the chest is often only charged as common assault. This downplays the seriousness of this mechanism of restricting breath. As one police prosecutor explained, 'diaphragm constriction is highly effective' to deprive a person of their breath.<sup>74</sup>
121. To address this issue, conduct could include applying pressure to the chest or torso. If this approach was taken, how should 'chest' or 'torso' should be defined?
122. This approach may significantly broaden the offence's scope. For example, the offence could apply in a wider range of sporting or medical contexts, or to leisure activities such as massages.



123. Requiring proof of particular ‘results of conduct’ may limit the offence’s application, as may other elements of the offence (such as unlawfulness and consent) and applicable defences.

## Question

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

## Results of conduct

124. We propose that results of conduct should mean restriction of respiration and/or blood circulation.
125. This is consistent with existing definitions of ‘chokes’, ‘suffocates’ and ‘strangles’. In all Australian jurisdictions (except Tasmania) as well as New Zealand, England and Wales, and some United States jurisdictions, results of conduct refers to restricting respiration.<sup>75</sup> In Queensland, New South Wales, Western Australia, New Zealand and some United States jurisdictions, restricting blood circulation is also included as a result of conduct.<sup>76</sup>
126. The approach aligns with medical literature on choking, suffocation or strangulation — all involve some kind of conduct which obstructs oxygen to the brain, whether by restricting respiration or blood circulation.<sup>77</sup>

## Offences 1 and 3 — conduct and results of conduct

127. We propose that offences 1 and 3 require conduct and results of conduct to ensure the offences do not criminalise results alone and to provide flexibility in the evidence needed to prove the offences.
128. We consider that if the offences did not include a conduct element, they would be too broad. There may also be some ambiguity about the kind of conduct targeted. Including both conduct and results of conduct better reflects what is involved when someone is choked, suffocated or strangled. Western Australia, New Zealand, England and Wales, and some United States jurisdictions take this approach.<sup>78</sup>
129. Some stakeholders have raised concerns that requiring results of conduct might mean it is necessary to rely heavily on medical evidence, for example, to prove restriction of blood circulation. This may medicalise the trial process and may be difficult to prove if medical evidence cannot be obtained.
130. Other stakeholders and some police we interviewed raised concerns that proving restriction of respiration (a result of conduct) as well as conduct may place an inappropriate burden on the victim-survivor’s testimony. For example, one police officer described a situation where ‘even though it was caught on CCTV, without her being able to particularise that impediment to her breath, we had to go with common assault.’<sup>79</sup>
131. Some victim-survivors who took part in our research decided not to pursue charges because they did not want to testify and others reported negative experiences testifying at trial. This is consistent with findings from other research, including the Commission of Inquiry into Queensland Police Service Responses to DFV and the Women’s Safety and Justice Taskforce.<sup>80</sup>
132. Further, strangulation victim-survivors, including those we interviewed, have reported being unable to remember the event clearly and to have given inconsistent accounts over the course of the investigation and trial process. Prosecutors we interviewed recognised this problem. For example, one prosecutor noted the reliance on:<sup>81</sup>

women, who have gaps in memory ... which we know is a direct physiological response to the offending. They don't necessarily remember in detail, did I lose consciousness, could I breathe?

133. This has affected police and prosecutors' decisions, including whether to charge or continue to prosecute non-fatal strangulation.
134. Reforms to practice and procedure may reduce the difficulties associated with victim-survivors' testimony. Some of these potential reforms are discussed from [230].

## Offence 2 — conduct

135. We propose that offence 2 should not require proof that respiration or blood circulation were restricted. Our initial assessment is that an offence based on conduct alone may be justified because of the added risk to DFV victim-survivors who are strangled (discussed above at [48]). Victoria, the Australian Capital Territory and the Northern Territory include offences that refer only to the conduct involved (for example, applying pressure to the neck).<sup>82</sup>
136. Some stakeholders have suggested that s 315A was intended to include the act of strangulation, specifically, grabbing the neck or covering the mouth or nose. In DFV contexts, this not only poses a danger to victim-survivors, but also demonstrates the perpetrator's desire to take the victim-survivor's life in their hands. The terrorising effect of that conduct is achieved regardless of restriction of respiration or blood circulation.
137. In our interviews with police and lawyers, we were told that perpetrators are sometimes charged with common assault or non-fatal strangulation charges are changed to common assault later when it is hard to establish restriction of respiration. Such a charge does not adequately recognise the risk of future homicide, nor the terrorising impact of the conduct.
138. Offence 2 would be based on conduct alone, so a lower maximum penalty may be more appropriate than the penalty prescribed for offence 1 (discussed below at [184]).

## The role of consent

139. We have been asked to recommend whether the 'without consent' requirement in s 315A should be removed or retained. We seek your views on:
  - whether the 'without consent' requirement should be removed or retained
  - the circumstances in which the requirement could apply
  - consent as an element or defence
  - how consent is defined.

## Removing consent

140. It may be appropriate to remove the 'without consent' requirement for a number of reasons.
141. In a DFV context, some consider the 'without consent' requirement problematic as non-fatal strangulation is a dangerous form of coercive control.<sup>83</sup> The victim-survivor's ability to give informed consent is 'likely to be highly constrained'.<sup>84</sup> This may affect the prosecution's ability to prove lack of consent, opening the door to cross-examination about the victim-survivor's willingness to be strangled, especially if it occurred during sex.<sup>85</sup>
142. In our interviews with police and lawyers, most participants' experiences related to non-fatal strangulation committed as acts of violence not during sexual conduct. Consistent with this, participants told us that consent was not usually raised as an issue. However, there were some instances where consent to strangulation was accepted as having been given as part of sexual



activity in domestic settings, including where there had been previous domestic violence orders.

143. Some suggest that no one should be able to consent to strangulation and that inclusion of a 'without consent' requirement undermines the seriousness of the act and its consequences, including serious, potentially long-term, adverse health effects or even death.<sup>86</sup> In consultations we have heard that there can be problems providing or withdrawing consent during the act because of the loss of speech, breath and motor function that can occur during non-fatal strangulation.
144. Removing the 'without consent' requirement is consistent with the placement of s 315A within Chapter 29 of the Criminal Code (offences endangering life or health). Chapter 29 includes offences to which consent generally cannot be given, unlike the offences in Chapter 30 (assaults) to which a person can consent.
145. The non-fatal strangulation offences in Western Australia, the Australian Capital Territory, Tasmania, New Zealand and most United States jurisdictions do not include a 'without consent' requirement.<sup>87</sup>

## Applicable circumstances

146. We seek your views on whether there are circumstances in which it is acceptable to engage in non-fatal strangulation.
147. For example, in sporting contexts consent to risk of injury less than grievous bodily harm is permitted when playing a socially approved and lawful sport, if it is within the rules of the game.<sup>88</sup> Sometimes consent to injury that occurs outside the rules of the game is also permitted.<sup>89</sup>
148. Non-fatal strangulation may fall within the rules of some sports, such as martial arts and wrestling where certain chokeholds are acceptable. If conduct is defined to include pressure to the chest, the proposed new offences could apply to a wider range of sports.
149. It may also be appropriate to recognise consent to non-fatal strangulation that occurs during sex. Such conduct has become normalised, particularly among young people.<sup>90</sup> We discuss this issue in our [background paper](#). The question about how consent should be defined (discussed below at [161]) is particularly critical.
150. Concerns may be raised about requiring lack of consent in sexual contexts within DFV relationships, particularly those characterised by coercive control. During consultations, we heard from some stakeholders that victim-survivors, including those in domestic settings, should have the autonomy to be able to consent to sexual strangulation. However, this consent may not be truly free and voluntary or, if it is, may be used to imply consent beyond sexual encounters.
151. One way to respond could be to provide that when considering consent, whether as an element or a defence (see below at [156]), regard may be had to relevant evidence of domestic violence under s 103CA of the Evidence Act.
152. There are other circumstances where it may not be appropriate to be able to consent to non-fatal strangulation, for example, where such conduct results in a particular level of bodily harm. Under the Criminal Code, a person cannot consent to grievous bodily harm.<sup>91</sup> Queensland case law indicates that a person can consent to bodily harm less than this threshold, although the level of bodily harm to which a person can consent is unclear.<sup>92</sup> In most other Australian jurisdictions, a person cannot consent to any level of bodily harm.<sup>93</sup>
153. In Victoria, consent is not a lawful excuse to a charge of non-fatal strangulation if injury was intended and caused.<sup>94</sup> 'Injury' has been defined to mean temporary or permanent physical

injury or harm to mental health, including unconsciousness, disfigurement, substantial pain, impairment of bodily functions and psychological harm.<sup>95</sup> In England and Wales, consent is only a defence if serious harm was not intended or caused.<sup>96</sup>

154. It might be appropriate to provide that consent cannot be given for the purposes of the proposed offences if serious bodily harm, or some other level of harm, was intended and/or caused. This may be necessary given the inherent dangers of strangulation, which may arise even without visible injury or may be significantly delayed. Careful thought would need to be given to the level of harm prescribed due to potential difficulties proving harm in non-fatal strangulation cases.
155. If lack of consent continues to be required, the defence of honest and reasonable, but mistaken, belief as to consent may be raised.<sup>97</sup> It may be suggested that this defence may be unduly difficult for the prosecution to disprove.

## Consent as an element or a defence

156. We seek your views about whether lack of consent should be an element of the new offences or whether it could be raised as a defence to the charges.
157. If lack of consent is an element, the prosecution is required to prove that there was no consent in every case, beyond reasonable doubt. This may encourage police to collect evidence about the victim-survivor's lack of consent in all non-fatal strangulation cases. The non-fatal strangulation offences in South Australia, New South Wales and the Northern Territory include 'without consent' as an element.<sup>98</sup>
158. If consent was instead made a defence, further considerations arise. Once there is some evidence of consent before the court, who should bear the burden of proof? Should the perpetrator be required to prove, on the balance of probabilities, that the victim-survivor consented to non-fatal strangulation or should the prosecution be required to disprove this, beyond reasonable doubt?
159. Where consent is a defence, the prosecution would only need to prove lack of consent where there was some evidence of consent before the court. This may reduce the number of cases in which victim-survivors are questioned about their willingness to be strangled. It may also affect police decisions to charge, particularly when there are concerns about whether a jury will believe the victim-survivor did not consent.
160. In Victoria, England and Wales, consent is a lawful excuse to non-fatal strangulation that does not and was not intended to cause harm.<sup>99</sup>

## Defining consent

161. The Criminal Code does not define consent for the purposes of s 315A. Some stakeholders consider that consent should be defined. Consent could be defined as informed consent or affirmative consent.
162. A number of stakeholders suggested that, if lack of consent remains a requirement, it should be informed consent because of the inherent dangers of strangulation. Informed consent would require the person to understand the dangers and risks associated with strangulation and give their free and voluntary consent to such conduct.
163. Informed consent is required in medical contexts. Caselaw indicates that it may also be necessary when consenting to, for example, the risk of infection with a fatal disease such as HIV.<sup>100</sup> It is not, however, explicitly used in non-fatal strangulation offences in other Australian jurisdictions.

164. An informed consent requirement may facilitate non-fatal strangulation prosecutions. Even if there was evidence to suggest that the victim-survivor consented to be strangled, the prosecution would have the opportunity to prove that such consent was not fully informed.
165. If the 'without consent' requirement is changed to a without informed consent requirement, a public awareness campaign may be necessary to educate about strangulation and its effects. Given the inherent dangers of non-fatal strangulation, a public awareness campaign may be appropriate regardless of any reforms (see below at [248]).
166. When non-fatal strangulation occurs during, or is, a sexual activity, it may be appropriate to apply the affirmative consent model as defined in ss 348 and 348AA of the Criminal Code. This model defines consent as 'free and voluntary agreement' rather than consent which is 'given'. This is the Victorian approach.<sup>101</sup> Several victim-survivors who participated in our research told us that they had been strangled during sex.
167. Affirmative consent could operate alongside informed consent, requiring those engaged in non-fatal strangulation during sexual activities to understand the dangers and risks associated with strangulation and freely and voluntarily agree to participate.
168. If the affirmative consent model is adopted, additional requirements would apply under the Criminal Code which may provide further protections for victim-survivors, particularly those in DFV relationships. For example, the Criminal Code states that a person does not consent if they participate because of force, harm of any type or a fear of these, or because of coercion.<sup>102</sup> This would cover situations involving coercive control. In addition, if the perpetrator raises a defence of honest and reasonable, but mistaken, belief in consent, additional requirements apply beyond those that apply to non-sexual offences.<sup>103</sup>

## Question

- 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?
  - how consent should be defined?

## Non-fatal strangulation might be lawful in some circumstances

169. We propose that each of the three new offences should only apply to 'unlawful' conduct. The non-fatal strangulation offences in Western Australia, the Australian Capital Territory and Tasmania require the conduct to be 'unlawful'.<sup>104</sup> The South Australian offence provides that conduct that is 'justified or excused by law' cannot amount to an offence.<sup>105</sup> Similarly, the offences in Victoria require the conduct to be 'without lawful excuse'.<sup>106</sup>
170. We seek your views on when non-fatal strangulation should be lawful. A defence can make otherwise unlawful conduct lawful. From [187], we consider whether particular defences or excuses should be excluded.
171. There are circumstances in which the law permits the use of force, which could potentially include non-fatal strangulation. This includes force used, for example:
  - in defence of a dwelling, premises or property<sup>107</sup>

- to prevent repetition of an act or insult or in response to provocation (although provocation is not currently available to a charge under s 315A)<sup>108</sup>
  - in self-defence or defence of others<sup>109</sup>
  - for domestic discipline<sup>110</sup>
  - when performing a surgical operation or medical treatment<sup>111</sup>
  - in executing a sentence, process or warrant, making an arrest, or preventing escape from arrest<sup>112</sup>
  - to prevent a breach of the peace or to suppress a riot<sup>113</sup>
  - to prevent commission of an offence<sup>114</sup>
  - to prevent involuntary patients or forensic disability clients from doing violence to persons or property<sup>115</sup>
  - by law enforcement and corrective services officers in the course of their duties (this does not extend to security officers).<sup>116</sup>
172. In these circumstances, however, the force used is only lawful if it was reasonable, reasonably necessary and/or proportionate. Given the inherent dangers of strangulation, should such conduct ever be considered 'reasonable', 'reasonably necessary' or 'proportionate', and therefore 'lawful'?
173. In some of the above listed circumstances, the force used cannot be intended, or be likely, to cause death or grievous bodily harm.<sup>117</sup> However, this may not adequately apply to non-fatal strangulation, given the uncertainties about when such results may occur following strangulation.
174. Where a person uses more force than is justified by law under the circumstances, such force is unlawful.<sup>118</sup>
175. There are examples of people in Queensland, particularly Aboriginal people and Torres Strait Islander people, who have died or been seriously injured following the use of a chokehold, carotid restraint and/or spit hood by law enforcement or corrective services officers.<sup>119</sup> In most cases, these officers have not been charged with a criminal offence and, if charged, have not been convicted.<sup>120</sup>
176. Recently, the Queensland Police Service ('QPS') banned the use of lateral vascular neck restraints and spit hoods.<sup>121</sup> While this ban exists in policy, it does not make such conduct 'unlawful'. Queensland Corrective Services has not introduced a similar ban. In South Australia, the use of spit hoods is a criminal offence punishable by up to two years' imprisonment.<sup>122</sup>
177. If non-fatal strangulation continues to be lawful in certain circumstances, reforms may be necessary to ensure lawyers, judges and juries give appropriate weight to the seriousness of such conduct when considering reasonableness. This could be achieved by including a non-exhaustive list of factors relevant to assessing reasonableness with the proposed new offences.
178. No Australian jurisdiction has such a provision. However, a similar provision to assess reasonableness for the purposes of self-defence is discussed in our Criminal Defences Review [consultation paper](#).<sup>123</sup> The Canadian Criminal Code includes such a provision for self-defence.<sup>124</sup>
179. A non-exhaustive list of factors could include some, or all, of the following:
- the nature of the force or threat
  - the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force

- whether retreat was a viable option
- the person's role in the incident
- whether any party to the incident used or threatened to use a weapon
- the size, age, gender and physical capabilities of the parties to the incident
- the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat
- any history of interaction or communication between the parties to the incident
- the nature and proportionality of the person's response to the use or threat of force.

## Question

**Q4** When should non-fatal strangulation be lawful?

## Setting the penalty

180. The current maximum penalty of 7 years' imprisonment for s 315A is the same as the maximum penalty for assault occasioning bodily harm.<sup>125</sup> Several stakeholders said that non-fatal strangulation is far more serious than assault occasioning bodily harm. As such, a maximum penalty more than 7 years may better reflect the gravity of this offending.
181. Beyond domestic settings, a maximum penalty of 10 years may be appropriate where respiration and/or blood circulation are restricted. Other more serious charges may be available if other serious harm occurs.<sup>126</sup>
182. When respiration and/or blood circulation are restricted within domestic settings, a maximum penalty of 14 years may more appropriately reflect the gravity of the offending, given the increased risk of future homicide. This is consistent with the maximum penalty for the new coercive control offence.<sup>127</sup>
183. While the non-fatal strangulation offences in Western Australia and South Australia have maximum penalties of 7 years' imprisonment, and those in the Northern Territory and Victoria have maximum penalties of 5 years, s 315A was introduced before the offences in other jurisdictions and may have set a benchmark for penalty.<sup>128</sup>
184. In domestic settings where respiration and/or blood circulation are not restricted, we propose a maximum penalty of 7 years' imprisonment. In the Australian Capital Territory, if a person applies pressure to another person's neck, to any extent, in circumstances involving family violence, the maximum penalty is 7 years' imprisonment.<sup>129</sup>
185. While in 2022–23 the average Queensland sentence for offending against s 315A was 2.7 years, sentences have ranged from 2 months to 6.5 years and have been increasing over time.<sup>130</sup>
186. Increasing the maximum penalty for non-fatal strangulation offences may reflect the potential for serious harm to result from strangulation, rather than responding to actual harm as is done for most other offences. This may be justified as injuries resulting from non-fatal strangulation may be significantly delayed or causation may be difficult to establish.

# Defences

## Proposal

**P2** 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.

187. As 'assault is declared to not be an element' of s 315A, the defence of provocation to assault in s 269 of the Criminal Code is not available.<sup>131</sup> Other relevant defences, many of which are listed above at [171], are available to a charge under s 315A.
188. We propose that, in addition to provocation to assault, the defences of prevention of repetition of insult in s 270 of the Criminal Code and domestic discipline in s 280 should not apply to the three new offences. We seek your views on whether there are other defences that should not apply.
189. Our Criminal Defences Review [consultation paper](#) contains a detailed analysis of defences to assault, including the defences of provocation to assault, prevention of repetition of insult and domestic discipline.<sup>132</sup>

## Questions

**Q5** What are your views on proposal 2?

**Q6** Are there other defences you think should not apply to one or more of the new offences?

## Provocation to assault and prevention of repetition of insult

190. Excluding application of the defence of provocation to assault to a s 315A charge was a deliberate policy decision based on the seriousness of this type of offending and the potential for such a defence to be an unintended barrier to prosecution when relationships involved coercive control.<sup>133</sup>
191. Prevention of repetition of insult is similar to provocation to assault. From our discussions with judges and legal practitioners, prevention of repetition of insult is one of the most common defences raised in non-fatal strangulation trials.

### **270 Prevention of repetition of insult**

It is lawful for any person to use such force as is reasonably necessary to prevent the repetition of an act or insult of such a nature as to be provocation to the person for an assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

192. Removing the defences of provocation to assault and prevention of repetition of insult from application to the new non-fatal strangulation offences would be consistent with community attitudes to defences to assault.

193. Our Criminal Defences Review conducted a [community attitudes survey](#) to help understand community attitudes to defences in cases of homicide and assault in Queensland.<sup>134</sup>
194. In this research, the defence of provocation to assault received limited community support. In a DFV assault scenario involving provocation, almost all (95.6%) respondents thought there should not be a defence, regardless of the victim's conduct or the degree of injury.<sup>135</sup> The community did not support a defence where the perpetrator's conduct was motivated by anger, jealousy or a desire for control, particularly in cases involving DFV, or if there was a risk of significant injury.<sup>136</sup>
195. In all other Australian jurisdictions, provocation is not available as a defence to a charge of non-fatal strangulation.<sup>137</sup>

## Domestic discipline

### 280 Domestic discipline

It is lawful for a parent or a person in the place of a parent, or for a schoolteacher or master, to use, by way of correction, discipline, management or control, towards a child or pupil, under the person's care such force as is reasonable under the circumstances.

196. The defence of domestic discipline justifies the use of physical force, which may include non-fatal strangulation, against a child for the purposes of 'correction, discipline, management or control'.
197. Some police and prosecutors told us that the domestic discipline defence sometimes operated as a bar to successfully prosecuting non-fatal strangulation.
198. In our interviews, a police officer expressed frustration about a case where a teacher used the lateral vascular neck restraint to the point of unconsciousness against four primary school students.<sup>138</sup> The teacher could not be charged with the offence of non-fatal strangulation because the conduct occurred beyond a domestic setting. Instead, the teacher was charged with common assault. The Magistrate dismissed these charges on the basis of domestic discipline.
199. This is consistent with information in our Criminal Defences Review [consultation paper](#). It noted that in one recent prosecution, a parent was acquitted of various assaults, including non-fatal strangulation, likely on the basis of domestic discipline.<sup>139</sup> The Criminal Defences Review's preliminary analysis of QPS data also indicates that the defence of domestic discipline may operate as a bar to prosecuting non-fatal strangulation.<sup>140</sup>
200. We propose that the domestic discipline defence should not apply to the new non-fatal strangulation offences for three reasons.
201. First, research shows that children and young people can experience significant injuries from non-fatal strangulation with only limited pressure and these may not necessarily be externally visible. This includes neurological injuries (such as cerebral oedema and hypoxic and ischaemic injuries) and scarring and narrowing of the airways (although this is rare).<sup>141</sup> Neurological injuries can impact behaviour and development.<sup>142</sup> Despite the serious injuries that can result, evidence of non-fatal strangulation in children, particularly young children, can be difficult to identify.<sup>143</sup>
202. Furthermore, practitioners and health guidance material indicates that:<sup>144</sup>
- children, toddlers and babies tend to experience non-fatal strangulation by a parent or caregiver in the context of accidental suffocation, ongoing DFV or excessive discipline



- teenagers can experience non-fatal strangulation in the context of intimate partner DFV or sexual violence.
203. Second, in New South Wales the domestic discipline defence does not apply to force applied to any part of the child’s head or neck, unless it is trivial or negligible.<sup>145</sup> In England, the defence is expressly excluded from applying to the non-fatal strangulation offence.<sup>146</sup>
204. Third, removing application of the defence would be consistent with contemporary community attitudes. The Criminal Defences Review [community attitudes survey](#) found that participants were generally supportive of a defence being available for parents where they use minimal force to discipline a child, but were more likely to say a parent should be found guilty of assault if the perceived or potential harm was greater.<sup>147</sup> However, participants favoured increased social support rather than a criminal justice response in cases involving minimal force.<sup>148</sup>
205. Where the person using force was a teacher, participants supported a defence being available only where very low levels of force were used for the purposes of management or control, but not where force was used for the purposes of discipline or correction.<sup>149</sup> In such circumstances, participants strongly condemned the availability of a defence.
206. The community attitudes survey findings were generally consistent with views expressed during a focus group with young people.<sup>150</sup>

## Forum

### Proposal

**P3** 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).

207. Currently, s 315A charges against adult perpetrators must be tried and sentenced in a higher court, not the Magistrates Court.<sup>151</sup> Legally represented child perpetrators can consent to have their case tried or sentenced in the Childrens Court (Magistrate).<sup>152</sup> We have been asked to recommend if the offence should be able to be finalised in the Magistrates Court and, if so, in what circumstances.
208. We propose that adult perpetrators who plead guilty to one of the three new non-fatal strangulation offences should be sentenced in the Magistrates Court except in two circumstances. First, if the perpetrator elects otherwise under s 522B of the Criminal Code. Second, if the Magistrate abstains from dealing with the matter under s 552D of the Criminal Code because they consider the perpetrator may not be adequately punished on summary conviction. A Magistrate can only award a penalty of up to three years’ imprisonment.<sup>153</sup>
209. We do not propose any changes to the existing model as it applies to child perpetrators.



## Question

**Q7** What are your views on proposal 3?

210. We propose allowing non-fatal strangulation charges against adult perpetrators to be sentenced in the Magistrates Court for two main reasons.
211. First, this approach may reduce delays in finalising some matters. The preliminary findings from our court data research show that it can take a long time to finalise s 315A charges. As discussed above at [38], charges finalised in 2023–24 took just over 14 months on average to be finalised after being lodged in the Magistrates Court.
212. On average, charges spent about six months in the Magistrates Court. Once committed to the District Court, average time to finalisation from lodgement in the Magistrates Court differed depending on how the matter progressed. Charges that resulted in a guilty plea took just over 14 months to finalise. Charges that were dismissed in the District Court took about 18 months to finalise. Charges that proceeded to trial took almost 2 years to finalise.
213. In our police and lawyer research, the requirement to proceed to a higher court was found to be the biggest factor in the delay to finalising non-fatal strangulation offences.
214. The longer a matter takes, the more likely victim-survivors will disengage from the criminal justice process. In our interviews, we heard that a major reason that s 315A charges fail is because the victim-survivor withdraws from the process. Many of the reasons given for victim-survivor withdrawal relate to delays. One prosecutor explained that victim-survivors become frustrated with the process because:<sup>154</sup>
- it may be a long time between when the complaint's made to police, the charges are laid, it goes ... through the [Magistrates] Court and then it gets committed to the District Court and then there's a whole heap of mentions before there's ... a pre-record ... or the trial.
215. While waiting for finalisation, victim-survivors may, for example:
- become frustrated at not being kept adequately informed of the process or having to take time from their lives to appear at different points in the court process
  - move on and not want to re-live the trauma
  - be subject to pressure from the perpetrator or the perpetrator's family
  - have resumed the relationship
  - need the perpetrator for financial or other support.
216. Allowing non-fatal strangulation charges against adult perpetrators to be finalised in the Magistrates Court in some circumstances may reduce delays to finalise matters, which may reduce victim-survivor attrition. It may also provide certainty to perpetrators sooner. Our interviews with defence lawyers suggest perpetrators often seek certainty as to their release.
217. Second, our proposed approach would allow Aboriginal perpetrators and Torres Strait Islander perpetrators to be sentenced in the Murri Court. As discussed above from [68], Aboriginal peoples and Torres Strait Islander peoples are over-represented as both victim-survivors and perpetrators in non-fatal strangulation cases.
218. All Australian jurisdictions (except South Australia) permit non-fatal strangulation cases to be tried and sentenced summarily in lower courts, although each jurisdiction has different threshold requirements. For example, in New South Wales and Western Australia, non-fatal strangulation charges must be tried and sentenced summarily unless the perpetrator or

prosecutor elect otherwise.<sup>155</sup> In the Australian Capital Territory and Victoria, the prosecution must elect for non-fatal strangulation trials or sentences to be disposed of summarily.<sup>156</sup> In the Northern Territory, both the prosecution and defence must consent for the matter to be tried or sentenced summarily.<sup>157</sup> In South Australia, lower-level courts can sentence non-fatal strangulation matters but cannot hear trials.<sup>158</sup>

219. We propose taking a similar approach to South Australia, allowing non-fatal strangulation charges against adult perpetrators to be sentenced in the Magistrates Court following a guilty plea. This approach is taken for the new coercive control offence in Queensland.<sup>159</sup>
220. The main reason that we propose requiring a guilty plea is that this may incentivise perpetrators to plead guilty in appropriate cases, as they would likely have their matter dealt with sooner. When perpetrators plead guilty, victim-survivors are not required to give evidence and protracted investigations can be avoided. This would reduce victim-survivor re-traumatisation and decrease strain on the criminal justice system, including by limiting reliance on resources required for trials.
221. However, requiring a guilty plea may increase pleas of convenience by perpetrators who want their matter dealt with faster. In our defence lawyer interviews, we heard that many perpetrators plead guilty once indicted and after being held on remand to get out on time served.
222. We do not consider it appropriate for the Magistrates Court to try non-fatal strangulation charges against adult perpetrators because this could reduce the perceived seriousness of such offending. Concerns may also be raised about whether police prosecutors have the resources necessary to run such matters to trial.
223. We propose that when adult perpetrators plead guilty to a non-fatal strangulation charge, such matters should be sentenced in the Magistrates Court unless the perpetrator elects otherwise under s 552B of the Criminal Code. There are a number of reasons for this.
224. First, giving the prosecution the election for matters to be sentenced summarily may disincentivise perpetrators from pleading guilty.
225. Second, in our interviews we heard that police prosecutors already have a high workload and are concerned about making decisions in non-fatal strangulation matters. This may discourage them from electing summary disposition.
226. Some stakeholders are concerned that giving the election to the defence may 'weaponise' the process. Under our proposed approach, all trials would have to be conducted in higher courts. This is no different to the current situation. However, non-fatal strangulation charges could be dealt with in the Magistrates Court if the perpetrator pleads guilty and does not elect to be sentenced in a higher court under s 552B, and the Magistrate does not exercise their overriding discretion under s 522D. Under that system, it is unlikely a perpetrator who pleads guilty would elect for their matter to be sentenced in a higher court to delay proceedings.
227. Third, this approach is taken for a number of other similar Queensland charges. For example, charges for assault occasioning bodily harm and stalking must be heard and decided summarily unless the perpetrator elects otherwise.<sup>160</sup> Charges for sexual offending against victim-survivors over 14 years old, without a circumstance of aggravation, must also be sentenced summarily when the perpetrator has pleaded guilty.<sup>161</sup> However, the coercive control offence takes a different approach — such charges can be sentenced summarily on a guilty plea if the prosecution elects for this to occur under s 552A of the Criminal Code.<sup>162</sup>
228. Some stakeholders are concerned that allowing non-fatal strangulation charges against adult perpetrators to be finalised in the Magistrates Court may reduce average sentences imposed. Average sentence lengths (in 2022–23, 2.7 years' imprisonment)<sup>163</sup> are within the existing

upper penalty limit of the Magistrates Court’s jurisdiction. However, concerns have been raised about how Magistrates Court finalisation would operate alongside any increase in maximum penalty.

229. Under our proposed model, Magistrates would retain their overriding discretion to abstain from dealing with a matter summarily if they consider the perpetrators would not be adequately punished. Increasing the maximum penalty, particularly in DFV contexts, may mean that many non-fatal strangulation matters may still need to be sentenced in a higher court. Reforms to practice and procedure may be necessary to address problems that arise with finalising such matters in higher courts, including delay.

## Practice and procedure

230. Our terms of reference ask us to examine procedural rules and practices that apply to non-fatal strangulation offence proceedings, and to make recommendations on any other matters we consider relevant to the referral’s issues.<sup>164</sup>
231. In criminal law, ‘practice and procedure’ means the rules and processes through which the law is applied, including the processes for investigating, charging, prosecuting and defending criminal cases, pre-trial and trial processes, sentencing and appeals.<sup>165</sup> It is contained in multiple laws, guidelines and policies about criminal procedure and sentencing.<sup>166</sup>
232. Below we consider potential changes to practice and procedure that may improve:
- understanding of non-fatal strangulation and its effects
  - evidence collection
  - victim-survivors’ experiences of the criminal justice process
  - verdict options.
233. These changes could support non-fatal strangulation prosecutions and the experiences of victim-survivors. We seek your views on the potential changes discussed below and want to hear any other suggestions you have to reform practice and procedure.

### Question

- Q8** What reforms to practice and procedure are needed to ensure just and effective operation of the three new offences?

## Improve understanding of non-fatal strangulation and its effects

234. Information from our interviews, consultations and other research suggests that there is a general lack of understanding about non-fatal strangulation, its risks (including as a lethality indicator in DFV contexts), and its effects.<sup>167</sup> This lack of understanding appears to extend to police officers, lawyers, other criminal justice system personnel, perpetrators and the general public.
235. Although we found that knowledge about non-fatal strangulation has improved, further specific evidence-based training and education on non-fatal strangulation and its effects may be needed. We seek your views on how such education could be implemented effectively.

## Training for criminal justice system personnel

236. It may be appropriate for all criminal justice personnel who work with non-fatal strangulation matters and victim-survivors (including General Duties police officers and civilian front counter staff within police stations) to receive dedicated, evidence-based training on non-fatal strangulation and its effects on children and adults. The Domestic and Family Violence Death Review and Advisory Board ('DFVDRAB') has made a similar recommendation.<sup>168</sup>
237. Some of the victim-survivors we interviewed said that police did not ask the right questions about non-fatal strangulation, collect the right evidence or proceed with charges following the strangulation event. Several victim-survivors thought that police needed more specific training about non-fatal strangulation.
238. Some of the police we interviewed thought they had adequate training on non-fatal strangulation, while others felt more was required. Some police said they did not receive dedicated training on non-fatal strangulation. More information will be available in research report 2.
239. Research suggests that lawyers may not have an adequate understanding of non-fatal strangulation and its effects.<sup>169</sup>
240. Lack of understanding by criminal justice personnel about non-fatal strangulation and its effects, as well as the charge elements, may be influencing decisions made throughout the process. These may include decisions about the investigations made, the evidence collected, whether to charge or withdraw charges, and how to treat victim-survivors. For example, some police officers said that they would not proceed with s 315A charges if the victim-survivor said that they could still talk or scream during the event, even though this may be possible when blood flow, and potentially even respiration, are restricted to some extent.
241. In addition to training on non-fatal strangulation, evidence-based training for criminal justice system personnel on trauma-informed practice may also be needed. While efforts have been ongoing in this space,<sup>170</sup> some consultees and interviewees noted room for improvement.
242. Not everyone experiences trauma the same way. Some victim-survivors may not be able to remember the event clearly, in chronological order, or at all.<sup>171</sup> Some may experience a heightened, others a depressed, emotional response.<sup>172</sup> Several victim-survivors said they had these kinds of experiences when they reported the strangulation event to police. Some victim-survivors felt they had or would have had poor experiences with police (especially attending or General Duties officers) and front counter staff because of their trauma response.
243. If police officers and front counter staff are not aware of how victim-survivors may present, they may be less willing to believe or assist them. Training about how to take a trauma-informed approach may improve the police and front counter staff responses to victim-survivors who are experiencing trauma, including strangulation victim-survivors.
244. Lack of knowledge about the impact of trauma upon victim-survivors may also affect prosecutorial decisions. For example, one police officer noted the need for improvement among police prosecutors:<sup>173</sup>

I think there needs to be more ... investigative understanding ... about the reliability of our victims and why they might be scattered, and why there might be some unreliability in their versions.
245. We seek your views on how training for criminal justice personnel could be implemented effectively. For example, it may be necessary for training to be adapted for particular agencies and roles, conducted in person, properly resourced, and for personnel to have rostered time off to complete compulsory training.

## Education for perpetrators

246. Some stakeholders said that education about the dangers of strangulation may be beneficial for perpetrators, especially young people. As one counsel explained, it may be that perpetrators perceive they are exhibiting restraint with this behaviour: 'many people actually, who put their hand around their partner's throat, actually see that as being a step that's less serious than punching them in the face.'<sup>174</sup>
247. It may be appropriate for those who have been convicted of a non-fatal strangulation offence or who proceed through restorative justice for non-fatal strangulation to be required to undergo a program that educates about the dangers of non-fatal strangulation.

## Public education

248. Because there seems to be a general lack of awareness about non-fatal strangulation, including in sexual contexts, a public awareness campaign may be appropriate to educate about the dangers of strangulation. Several consultees have suggested that such education is necessary alongside law reform.
249. The DFVDRAB has previously noted the need for increased community awareness about the dangers of strangulation.<sup>175</sup> A 2018 coronial inquest also recommended the Attorney-General consider if a public awareness campaign was necessary to educate about the dangers of neck compression in DFV cases.<sup>176</sup>

## Improve evidence collection

250. Findings from our interviews indicate that although there has been improvement, there may still be problems with obtaining the evidence necessary to prove a person was 'choked', 'suffocated' or 'strangled' and, in particular, whether their breathing was restricted. Difficulties may also arise proving restriction of blood flow because this is not something to which victim-survivors can directly speak.
251. The evidence uncovered in a thorough police investigation affects the outcomes of these matters. A number of defence lawyers and counsel noted that non-fatal strangulation perpetrators are more likely to plead guilty where there is evidence of injury, good preliminary complaint evidence or other witnesses, or if there is significant relationship evidence. This means that it is important that police are well trained about what evidence to collect.
252. We heard from Forensic Medicine Queensland that the more symptoms or findings that can be pieced together, the better forensic medical officers are able to say whether or not those symptoms or findings are consistent with non-fatal strangulation. To that end, evidence collection practices in non-fatal strangulation cases should focus on gathering as much information as possible. This includes information from victim-survivors and information about injuries.
253. We seek your views about the ideas below and their effective implementation.

## Evidence from victim-survivors

254. When responding to alleged or suspected non-fatal strangulation, first responders (including police and medical professionals) could ask clear screening questions about being choked, suffocated or strangled in language that victims understand. For example, instead of asking 'were you strangled or choked?', first responders could ask 'did the perpetrator put his hands or anything else around your neck?' or 'did the perpetrator block your mouth or nose with anything?'

255. Some police are already doing this. For example, one police officer noted the way they would usually frame the questions would be:<sup>177</sup>

‘Has he or she ... ever ... assaulted you in any way or placed their hands on you? Has it ever got physical?’ And then from there, depending on ... what they said it would lead into, ‘when you say he put his hands around your throat, can you describe what you mean by that or what happened?’ And ... it'd kind of go from there and then sometimes you start asking questions about, you know, ‘have you ever done anything in the bedroom that you feel that you didn't consent to?’

256. Some stakeholders told us that people can conceive ‘strangulation’ or ‘choking’ differently and may not resonate with certain language. Other people may be embarrassed to admit that they have been ‘strangled’ or ‘choked’, particularly if it occurred in sexual contexts. In our survey of victim-survivors, participants described their experiences in a number of different ways.

#### How some victim-survivors described their experience of strangulation

Someone...

- strangled me
- choked me
- suffocated me
- throttled me
- put their hands around my neck
- held me by my neck
- squeezed my neck
- grabbed my throat
- tied or put something around my neck
- held me in a chokehold
- put their hands or something over my mouth or nose
- smothered me
- gagged me
- tried to drown me
- pinned me down so it was difficult to breath
- sat on my chest so it was difficult to breath
- squashed or compressed my chest so it was difficult to breath

257. Stakeholders also told us that sometimes police do not ask the right questions about non-fatal strangulation, particularly of young people or Aboriginal peoples and Torres Strait Islander peoples. Some of the victim-survivors that we interviewed said that they thought police did not ask them specific questions about strangulation.

258. Some consider it is necessary for police and medical professionals to accurately and thoroughly document all signs, symptoms and victim-survivor statements, including by asking victim-survivors about their subjective experiences of non-fatal strangulation. Such evidence is particularly important where there are no visible injuries, visible injuries are harder to detect (such as on people with darker skin), or injuries do not show up on scans (because, for example, they are taken at the wrong time). Such evidence may also be important when victim-survivors report historical non-fatal strangulation cases.

259. For example, police and medical professionals could ask victim-survivors whether they felt dizzy or whether they experienced changes in vision or hearing. These experiences could be used as evidence of whether breathing or blood flow were restricted.

260. It may not be sufficient to only ask victim-survivors whether their breathing was restricted because this will not provide any information about restriction of blood flow. Further, given the nature of non-fatal strangulation, some victim-survivors may not remember whether their breathing was affected.



261. To adduce evidence of domestic violence under the Evidence Act,<sup>178</sup> police could also be required to ask victim-survivors about any history of domestic violence.
262. Some of the lawyers we interviewed thought that screening questions or checklists could be problematic because 'vulnerable people ... are easily led'.<sup>179</sup> One counsel noted that police should not ask leading questions such as 'did he strangle you? Did he take your breath away?' but instead should keep their questions open such as 'what did he do to you?'<sup>180</sup> This counsel warned that it was 'only a matter of time before [leading questions] result in the body worn camera footage being excluded'.
263. Answers to questions must be documented accurately. Some victim-survivors we interviewed said that medical professionals did not accurately record information about strangulation and this negatively affected their criminal case. We were also told this in consultations. It may be necessary for medical professionals to be trained on the information they need to collect and record to support non-fatal strangulation prosecutions. The DFVDRAB has previously recommended training for medical professionals and ambulance officers on non-fatal strangulation.<sup>181</sup>

## Evidence of injuries

264. In addition to victim-survivor evidence, police and medical professionals should comprehensively record evidence of any injuries. For example, police could be required to take a series of photographs of injuries over the course of a few days, given the types of visible injuries that can result from non-fatal strangulation may develop or change appearance over time.
265. Medical professionals can conduct further assessments which can be used for treatment purposes and to evidence non-fatal strangulation offending. Despite this, a number of victim-survivors we interviewed told us that police did not refer them to hospital. Some victim-survivors said they could not remember the event clearly but were told later that police did refer them at the time, although the victim-survivor declined to attend. In hindsight, these victim-survivors wished that they had been made to go, both so that they could be checked out by medical professionals and so that some kind of medical evidence was recorded.
266. We consider that making hospital attendance mandatory following non-fatal strangulation may unduly undermine individual autonomy. However, requiring police to call the ambulance to attend and assess the victim-survivor, while informing victim-survivors of the importance of presenting to hospital or a doctor, may be an appropriate balance. We note that some police interviewees indicated that it is already established policy that the ambulance should be called for non-fatal strangulation matters.
267. Where victim-survivors seek medical care, it may be appropriate for them to be referred on for other tests, assessments or scans where necessary and safe, although we note that this will not always be possible, particularly in rural or remote areas. The DFVDRAB has previously recommended the role of clinical forensic evidence in securing convictions for non-fatal strangulation be examined, with a view to improving and standardising processes.<sup>182</sup>

## Improve victim-survivors' experiences of the criminal justice system

268. Our victim-survivor research showed poor experiences with the criminal justice system. This included experiences with police, lawyers and courts. Our findings are consistent with findings from other research, including the Commission of Inquiry into QPS Responses to DFV and the Women's Safety and Justice Taskforce.<sup>183</sup>



269. Strangulation victim-survivors' experiences of the criminal justice system could be improved by:
- providing victim-survivors with more information
  - expanding the video-recorded evidence-in-chief ('VREC') pilot to non-fatal strangulation victim-survivors in proceedings statewide
  - making certain judicial directions mandatory in non-fatal strangulation cases
  - introducing a fast-track process for non-fatal strangulation matters that must proceed to higher courts
  - bolstering support for restorative justice in non-fatal strangulation matters
  - adopting certain proposals made in the Criminal Defences Review [consultation paper](#).
270. We seek your views on these potential reforms and want to hear ideas about how they could be implemented effectively.

## Information for victim-survivors

271. One of the key findings from our interviews with victim-survivors was that they did not receive sufficient information about a number of things, including:
- non-fatal strangulation, its potential consequences, and next steps in seeking medical or service support
  - the progress of the investigation
  - the criminal justice process and their role in the process
  - hearing dates and outcomes (including bail hearings)
  - safety options at court.
272. Victim-survivors told us that they wanted more information about these things.
273. The Women's Safety and Justice Taskforce recommended introducing victim advocates to help victim-survivors of sexual offences navigate the service and criminal justice systems, including to provide them with necessary information.<sup>184</sup> Recently, the Australian Law Reform Commission recommended introducing Justice System Navigators to advocate and provide support for sexual violence victim-survivors throughout the criminal justice system.<sup>185</sup>

## Video-recorded evidence-in-chief

274. For non-fatal strangulation, the VREC pilot allows video-recorded statements made by DFV victim-survivors to trained police officers to be used wholly or partly as the victim-survivor's evidence-in-chief in committal proceedings.<sup>186</sup> Recordings must have been made as soon as practicable after the events. The pilot currently only applies in Magistrates Courts in Ipswich, Southport and Coolangatta.<sup>187</sup>
275. It may be appropriate to expand the VREC pilot statewide to certain non-fatal strangulation victim-survivors. Using VREC may be a more trauma-informed approach to prosecuting non-fatal strangulation as victim-survivors would not be required to re-tell their story during evidence-in-chief. However, questions may arise about victim-survivors' abilities to give a clear account of the event at the time of the recording.
276. Our interview findings indicate that victim-survivor withdrawal is a large reason for s 315A charges not proceeding (because their evidence is needed to establish that breathing was restricted and that they did not consent). In particular, the police we interviewed told us that victim-survivors often choose not to give formal statements (and the notebook statement

police take is generally not admissible). This potentially presents a problem when trying to get such matters committed and we have been told that this is a reason some police prosecutors will not proceed with s 315A charges at this stage.

277. Expanding the VREC pilot may encourage more guilty pleas. Some consider that recorded statements made at or around the time of the event can be very powerful evidence.
278. The Commission of Inquiry into QPS Responses to DFV recommended that the VREC pilot be expanded across the State, pending a positive evaluation.<sup>188</sup>

## Judicial directions

279. Non-fatal strangulation has particular impacts on memory and can be a highly traumatic event, particularly when it occurs in the context of DFV (see above from [45]). As such, victim-survivors sometimes give inconsistent accounts or are unable to remember aspects of the event. They may also exhibit a trauma response when talking to others about the event, including police, lawyers or the court. A number of the victim-survivors that we interviewed said they had experienced these kinds of things. Some said that they thought police dismissed their reports of non-fatal strangulation because they came across as too emotional.
280. When victim-survivors could not recall the event clearly or their accounts were too inconsistent, some police and lawyer interviewees said that they would not proceed with s 315A charges. Others said that they would proceed with such charges but sometimes the defence would use these factors to create doubt about the prosecution's case.
281. Introducing judicial directions equivalent to those in sections 103ZY and 103ZV of the Evidence Act to non-fatal strangulation trials involving DFV and/or sexual offending may assist to explain the inconsistencies and/or gaps in victim-survivors' accounts as well as their emotional reactions when talking about the event. Not only may this be of benefit at the trial stage, but it may also have flow-on effects for police and lawyers' decisions.
282. In addition to those two judicial directions, it may also be appropriate for a direction similar to that in s 103ZU of the Evidence Act ('Direction on lack of physical injury, violence or threats') to be given in non-fatal strangulation cases.
283. During consultations and interviews we heard that when experts are engaged to give evidence in non-fatal strangulation trials, they most commonly give evidence about the absence of visible injuries and the associated implications. Given it is established in the literature that there may be no visible injuries following non-fatal strangulation (see above at [46]), this information may more effectively and efficiently be delivered as a judicial direction.

### **103ZY Direction on differences in complainant's account**

- (1) This section applies if evidence is given, or likely to be given, or a question is asked, or likely to be asked, of a witness that tends to suggest a difference in the complainant's account that may be relevant to the complainant's truthfulness or reliability.
- (2) The judge must direct the jury—
  - (a) that experience shows—
    - (i) people may not remember all the details of a sexual offence or may not describe a sexual offence in the same way each time; and
    - (ii) trauma may affect people differently, including affecting how they recall events; and
    - (iii) it is common for there to be differences in accounts of a sexual offence; and

- (iv) both truthful and untruthful accounts of a sexual offence may contain differences; and
  - (b) that it is up to the jury to decide whether or not any differences in the complainant's account are important in assessing the complainant's truthfulness and reliability.
- (3) In this section—
- difference***, in an account, includes—
- (a) a gap in the account; and
  - (b) an inconsistency in the account; and
  - (c) a difference between the account and another account.

### **103ZV Direction on responses to giving evidence**

The judge may direct the jury that—

- (a) trauma may affect people differently, which means that some people may show obvious signs of emotion or distress when giving evidence in court about a sexual offence, but others may not; and
- (b) the presence or absence of emotion or distress does not, of itself, mean that a person is not telling the truth about a sexual offence.

### **103ZU Direction on lack of physical injury, violence or threats**

The judge may direct the jury that—

- (a) people who do not consent to a sexual activity may not be physically injured or subjected to violence, or threatened with physical injury or violence; and
- (b) the absence of injury or violence, or threats of injury or violence, does not, of itself, mean that a person is not telling the truth about a sexual offence.

## **Fast-track process**

- 284. As discussed above from [38], s 315A charges currently experience significant delays to finalisation. In our interviews, we heard that many victim-survivors choose not to pursue non-fatal strangulation charges or to withdraw from the prosecution of such charges because of these delays.
- 285. If proposal 3 is implemented, this may reduce delays in certain cases where the perpetrator pleads guilty to a non-fatal strangulation charge. However, there would still be non-fatal strangulation matters that would have to proceed to higher courts because the Magistrate considers they cannot impose an appropriate penalty or the perpetrator pleads not guilty.
- 286. To reduce delays in those matters, a fast-track process could be introduced. We seek your views as to which matters such a process could apply (for example, those involving DFV and/or sexual offending only, or all non-fatal strangulation matters). We also seek your views on how to effectively implement this proposal.

287. The Sexual Violence Case Management Pilot is currently underway in Brisbane and Ipswich District Courts. This pilot introduced sexual violence lists for the court to actively case manage and monitor sexual violence offence proceedings.<sup>189</sup> It requires the court to aim to list the trial within eight months of indictment presentation.<sup>190</sup> A similar initiative could be introduced for non-fatal strangulation offences.
288. A fast-track initiative for DFV criminal matters was introduced into the Magistrates' Court of Victoria in 2014. The evaluation of that initiative was positive.<sup>191</sup>

## Restorative justice

289. In our interviews, we heard that victim-survivor withdrawal is a large reason why s 315A charges are not laid or are ultimately withdrawn. We were told of many reasons for adult victim-survivors to withdraw from the prosecution of non-fatal strangulation, including because they:
- do not want to go through the criminal justice process
  - have children with the perpetrator or resume the relationship with the perpetrator
  - do not want the perpetrator to be punished criminally but just want the conduct to stop
  - want to move on with their lives.
290. In such cases, an alternative to criminal prosecution, like restorative justice, may provide appropriate resolution. Restorative justice conferencing brings together the person harmed and the person who caused harm to talk about what happened, how they were impacted and what can be done to resolve the issue.<sup>192</sup> It is usually more timely than criminal justice processes and allows for more flexible outcomes. Restorative justice may be a more suitable alternative to the criminal justice process for offending that occurs in Aboriginal communities and Torres Strait Islander communities.
291. Currently, the QPS Operational Procedures Manual does not permit police or prosecutors (apart from the officer-in-charge of the Police Prosecutions Corps) to refer matters to adult restorative justice conferencing if the offence is a domestic violence offence, even if the victim-survivor expresses a willingness for that to occur.<sup>193</sup> The police are not restricted in this way for children's restorative justice processes.
292. QPS and ODPP policies may need to make clear that non-fatal strangulation matters can be referred to restorative justice conferencing if the victim-survivor wants this to occur.
293. However, some stakeholders have raised concerns about the appropriateness of restorative justice non-fatal strangulation matters, particularly in DFV contexts involving coercive control. Because of this, restorative justice organisations may need to be further resourced to deal with such matters and staff may need further training to appropriately deal with high-risk referrals, including to identify matters unsuitable for restorative justice.
294. The Australian Law Reform Commission recently made a number of recommendations about the availability of restorative justice in sexual violence matters. Recommendations included:<sup>194</sup>
- legislative amendments to make restorative justice widely available in such contexts
  - the development of national guidelines for the safe delivery of restorative justice in sexual violence matters
  - the provision of funding to design and deliver restorative justice programs for Aboriginal peoples and Torres Strait Islander peoples

- ensuring restorative justice is well resourced and supported by ‘wrap around’ services, including therapeutic treatment programs for perpetrators.

## Criminal defences review practice and procedure proposals

295. Certain proposals discussed in the Criminal Defences Review [consultation paper](#) may improve strangulation victim-survivors’ experiences of the criminal justice process. These include:
- introducing special protections for DFV victim-survivors during police interviews<sup>195</sup>
  - expressly recognising Aboriginal peoples and Torres Strait Islander peoples as special witnesses<sup>196</sup>
  - making certain DFV judicial directions mandatory (in addition to the judicial directions discussed above)<sup>197</sup>
  - practice and procedure proposals to improve access to justice for Aboriginal people and Torres Strait Islander people and their communities.<sup>198</sup>

## Improve verdict options

296. If an alternative verdict is legislated, juries can find a perpetrator guilty of the alternative offence rather than the offence that was charged. This can occur despite the prosecution choosing not to charge the offence in the alternative on the indictment.
297. Section 575 of the Criminal Code provides that, upon indicting a person for an offence committed with a circumstance of aggravation, the person may be convicted of an alternative offence established by the evidence and constituted by the conduct which is an element of that offence.
298. Non-fatal strangulation is not currently considered an aggravated version of assault occasioning bodily harm nor common assault because assault is not an element of the offence. As such, s 575 does not apply and a person cannot be convicted of assault occasioning bodily harm or common assault in place of non-fatal strangulation unless the indictment charged such offences in the alternative.
299. The only alternative verdict that could be given for s 315A charges is attempted non-fatal strangulation.<sup>199</sup>
300. In our interviews, prosecutors raised concerns were raised about charging assault occasioning bodily harm or common assault in the alternative on indictment. They were concerned that jurors may choose not to grapple with what may be a complex offence (non-fatal strangulation) and instead convict for one of the alternative offences. Prosecutors also said that they wanted jurors to focus on the main issue (the strangulation) and that sometimes it is not evident that there will be alternatives that could be charged at the time of indicting (but these may become evident during trial).
301. We seek your views on whether any charges should be listed as alternatives to a non-fatal strangulation charge in the Criminal Code. If this approach was implemented, careful consideration would need to be given to the defences available for both the primary (non-fatal strangulation) and alternative offences.

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- 14 Our dataset comprised all non-fatal strangulation charges finalised in either the Magistrates Court or the District Court between July 2022 and June 2024. Not all of the charges committed to the District Court in this period were finalised in that court in this period. This is why the number of charges committed to the District Court are different from the number of charges on indictment in that court.
- 15 Our dataset comprised all non-fatal strangulation charges finalised in either the Childrens Court (Magistrate) or the CCQ between July 2022 and June 2024. Not all of the charges committed to the CCQ in this period were finalised in that court in this period. This is why the number of charges committed to the CCQ are different from the number of charges on indictment in that court.
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