



QIFVLS

Queensland Indigenous Family Violence Legal Service

20 June 2025

Queensland Law Reform Commission

Non-fatal Strangulation Review Team

By Email: [REDACTED]

QIFVLS Submission – Non-fatal strangulation: Section 315A review

Dear Review Team,

The Queensland Indigenous Family Violence Legal Service (QIFVLS) welcomes the opportunity to provide a written submission to the Queensland Law Reform Commission's review of section 315A of the *Criminal Code*.

Our written submission, which accompanies our in person attendance at the Cairns Stakeholder consultation forum on 20 May 2025, comes from the point of view of an Aboriginal and Torres Strait Islander Community Controlled Organisation (ACCO) and Family Violence Prevention Legal Service (FVPLS), dedicated to ensuring that families and households are safe from domestic and family violence and sexual violence.

Non-fatal strangulation (NFS), particularly in domestic settings, is an exceedingly dangerous form of domestic and family violence (DFV). This terrifying act is a common tool of coercive control, used to instil fear, assert dominance, and silence victims. As the Commission's consultation paper importantly outlined, non-fatal strangulation often results in minimal visible injury – with up to 50% of strangulation victims showing no external marks on the neck, and only 15% having injuries visible enough to photograph. Consequently, many victim-survivors' accounts are met with scepticism or insufficient evidence, compounding their trauma.

Aboriginal and Torres Strait Islander victim-survivors face additional barriers: intergenerational trauma, fear and distrust of authorities, and systemic racism, resulting in many not reporting. Those who do seek justice are frequently faced with a lengthy and complex legal process, leading to frustration and withdrawal of cooperation, further diminishing trust of police and systems which have been touted as providing access to justice for victim-survivors.

It is in this context that QIFVLS strongly supports evidence-based reforms to non-fatal strangulation under section 315A of the *Criminal Code*. We applaud the Commission's preliminary view that multiple reforms are needed to ensure Queensland's response to non-fatal strangulation is safe, just and effective. Reforms must also account for the unique circumstances of Queensland Aboriginal and Torres Strait Islander victim-survivors of domestic and family violence, who are disproportionately impacted by non-fatal strangulation.

About QIFVLS

The Queensland Indigenous Family Violence Legal Services Aboriginal Corporation (QIFVLS) is a Family Violence Prevention Legal Service (FVPLS) and an Aboriginal and Torres Strait Islander

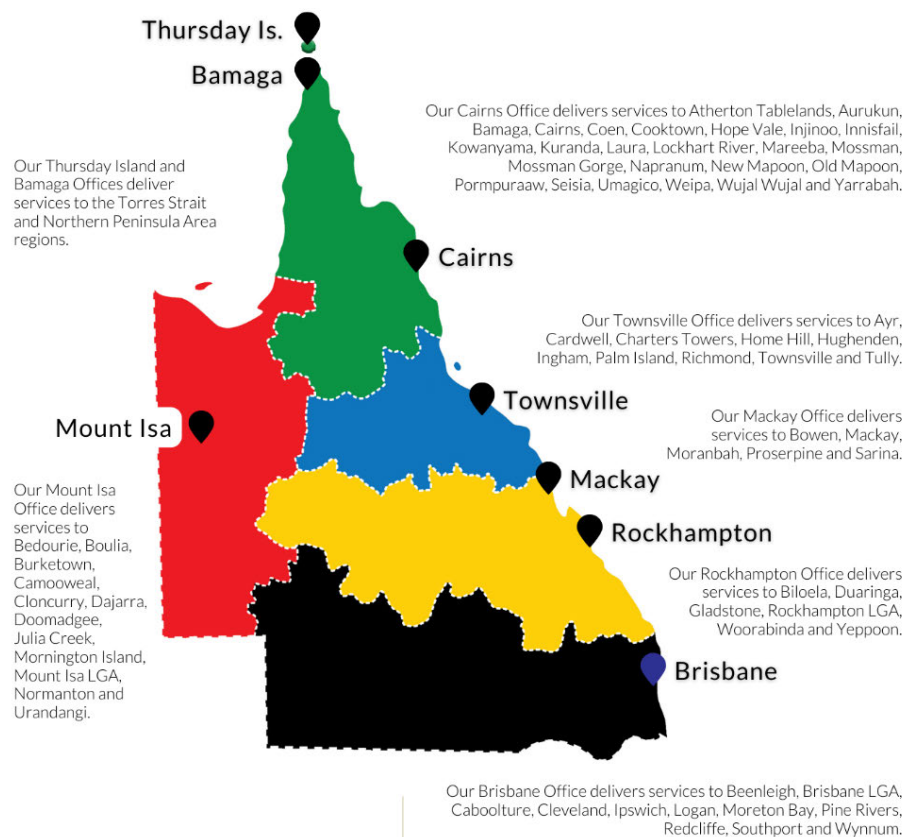


QIFVLS

Queensland Indigenous Family Violence Legal Service

Community Controlled Organisation (ACCO) that fills a recognised gap in access to culturally appropriate legal and wraparound support services for Aboriginal and Torres Strait Islander victim-survivors of family and domestic violence and sexual assault.

QIFVLS is primarily an outreach service. As can be seen from the map below, we operate out of eight offices across Queensland, delivering services to over 90 communities, from the urban south-eastern corner of the state, out west to communities surrounding Mount Isa, reaching the Northern Territory border, and north to the outer islands of the Torres Strait, neighbouring Papua New Guinea. Our services extend from domestic and family violence to family law; child protection; sexual assault and Victims Assist Queensland (VAQ) applications.



A key focus of our service delivery lies in our dedication to achieve the priority reforms and socio-economic targets outlined in the [National Agreement on Closing The Gap](#) (the National Agreement), particularly Target 13 (ensuring families and households are safe and that domestic and family violence against Aboriginal and Torres Strait Islander women and children is reduced by at least 50% by 2031 as we progress towards 0).

QIFVLS provides legal assistance and representation in the following areas --

- Domestic and family violence.
- Child protection.



- Family law.
- Victim Assist Queensland (VAQ) compensation applications.
- Minor civil assistance (including QCAT) in blue card matters for example.

Through the observations and experiences of our frontline staff, we witness family violence as a cornerstone or intersection that links an Aboriginal and Torres Strait Islander person's connection to the child protection system, the youth justice system, adult criminal justice system, housing and/or homelessness, health and the family law system.

As noted in the Commission's consultation paper, 26% of Queensland's strangulation victims identify as Aboriginal or Torres Strait Islander, far above Queensland's demographic breakdown. Indigenous women are also 34 times more likely to be hospitalized for violence-related injuries than non-Indigenous women, and 8 times more likely to be killed by violence. Any meaningful effort to close these gaps (Target 13) must include robust legal protections which simultaneously run alongside culturally safe and trauma-informed models of accessible support for Aboriginal and Torres Strait Islander victim-survivors.

Thus, in contrast to siloed government responses, QIFVLS consistently advocates for uniform, holistic, culturally safe and consistent strategies that will improve responses in the family violence, policing and criminal justice, child protection system, housing and corrective services. This approach aligns with achieving reductions in the Justice targets (Targets 10 and 11 read in conjunction with 12 and 13) of the National Agreement on Closing the Gap as well as meeting the overarching objectives of the 4 priority reform areas.

Proposal One

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.

We are broadly supportive of this proposal whereby three new offences would replace section 315A of the Criminal Code. This framework may potentially address several shortcomings that have impeded justice for Aboriginal and Torres Strait Islander victim-survivors of non-fatal strangulation offences. Currently, if an Aboriginal and/or Torres Strait Islander victim-survivor is strangled by someone outside a defined 'domestic relationship', the person using violence may only be charged with offences such as common assault or assault occasioning bodily harm.



These 2 particular offences do not adequately recognise the inherent seriousness of the physical act of strangulation and may be hard to prove where injuries are not visible and/or independently captured by the victim-survivor reporting to a medical/health care professional.

Something we have observed at QIFVLS is that non-fatal strangulation is an indication of an ongoing pattern of coercive control. When we first speak to our clients, this is not readily apparent as they are dealing with urgent and pressing issues, be it obtaining emergency housing, emergency food vouchers, emergency shelter or Child Safety applications for the removal of their children. As our clients begin to gain trust in us, we have observed that non-fatal strangulation is the gateway.

With a focus on the effects of domestic and family violence (DFV) and what the consultation paper outlines in terms of future lethality in DFV settings, having a standalone offence for non-fatal strangulation (NFS) in a domestic setting with a higher penalty distinguishes the pernicious nature of NFS in the context of DFV and how it is often used in ongoing patterns of abuse.

Additionally, the two proposed domestic offences (with and without proof of harm) would provide clarity. We would support a broader definition of 'conduct' along the lines of that adopted by the Northern Territory, Victoria and the ACT – *obstructing or interfering with the respiratory system or accessory systems of respiration*.

Offence to apply beyond domestic relationships

We also support expanding the offences such that they are not restricted to domestic relationships. We would support reviewing the definitions with the possibility of using 'couple relationships' or 'intimate personal relationships', as noted in page 27 of the Consultation Paper. Perhaps the scope of the relationship could be confined to domestic relationships and couple relationships. Other relationships may be considered on a case-by-case basis and resolved via charges of common assault, assault occasioning bodily harm (AOBH) or grievous bodily harm (GBH).

Consent

It is important to consider the role of consent under this proposal. The current Section 315A includes a requirement that the act be done without the other person's consent. QIFVLS is mindful that in the context of domestic violence, taking into account the insidious nature and impact of coercive control, true consent to being strangled is highly unlikely. There is also a risk that persons using violence will falsely claim the victim consented. Such claims can and often retraumatise victim-survivors.

On the other hand, we acknowledge that there are contexts, such as consensual sexual activities, where consensual choking may occur with no intent to harm. However, at QIFVLS, we have observed that more often than not, our clients disclose NFS in the lead up to non-consensual sexual assaults.

Balancing these factors, QIFVLS leans towards supporting removing the consent requirement for these offences or at least drafting legislation to presume a lack of consent in domestic



contexts. We would like to see this prevent abusive partners from misusing “consent” as a loophole or legal technicality to excuse or minimise their violent behaviours.

Proposal Two

The existing defences in the *Criminal Code* of provocation to assault (s269), prevention of repetition to insult (s270), and domestic discipline (s280) should not apply to the three new offences.

QIFVLS fully supports this proposal insofar as it seeks to close off defences that might otherwise be used to justify or diminish violent conduct against Aboriginal and Torres Strait Islander victim-survivors. We fear that allowing these defences would risk solidifying victim-blaming of victim-survivors and could particularly harm Aboriginal and Torres Strait Islander victims, whose actions or resistance are often misinterpreted due to lack of cultural competence.

Excluding these defences may also assist with streamlining prosecutions by removing opportunities to place a victim-survivor’s behaviour on trial. This is important for Aboriginal and Torres Strait Islander victims, who often already face unconscious bias, character judgments and stereotypes in court. We have witnessed too many occasions where an Indigenous woman’s retaliation during abuse or verbal anger becomes fodder for a provocation defence.

Proposal Three

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 Children’s Court (Magistrate)

QIFVLS supports this proposal as a pragmatic reform that can significantly improve access to justice for Aboriginal and Torres Strait Islander victim-survivors of domestic and family violence. One of the consistent complaints we hear from our clients is the lengthy delay in achieving outcomes under the current system. At present, Section 315A is an indictable offence that must typically be dealt with in the District Court by way of indictment. During this time, our clients are left in limbo – waiting for closure, possibly living in fear of the offender if bail is granted, or simply unable to move on emotionally. This is compounded by the fact that ordinarily the DPP can take up to the maximum of 6 months to present an indictment after the section 315A offence has been committed up from the Magistrate’s Court to the District Court.

Prolonged proceedings can also lead to victim-survivors disengaging and withdrawing their cooperation. Additional feedback from many of our clients also highlight that as complainants or relatives of complainants, they are often simply not informed about the progress of the prosecution, further entrenching distrust in the legal system to report violence in the first place.



By enabling Magistrates Courts to dispose of guilty pleas, this proposal potentially makes the criminal justice process faster and more victim-centric.

From the viewpoint of Target 13 (National Agreement on Closing the Gap), improving court response times contributes to access to justice, one of the measurable factors under the National Agreement's framework. Success is not only about the number of prosecutions, but whether Aboriginal and Torres Strait Islander victim-survivors can seek help without encountering additional harm from the system itself. In that regard, protracted and ongoing prosecutions when considering our clients' overall circumstances can be a form of systems-induced trauma.

Justice targets under the National Agreement on Closing the Gap

Our concern is that the justice targets (Targets 10 – 13) are not being met. Over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system is increasing, not decreasing. Hence QIFVLS' focus on:

- Expanding the capacity and capability of the Aboriginal and Torres Strait Islander Community Controlled sector to lead the way in providing culturally safe wraparound support for victim-survivors.
- Improving government agency responses from a cultural capability perspective and working in partnership to elevate overall responses in DFV, child protection, housing, health and education.

In this regard, we reiterate our previous statements that there is no magic legislative pill – we must have a dedicated focus around ensuring training which is ongoing and appropriate alongside investment in holistic wraparound supports led by Aboriginal and Torres Strait Islander Community Controlled Organisations.

Conclusion

We are thankful for the opportunity to add our voice to this process and trust that our viewpoint as both an Aboriginal and Torres Strait Islander Community Controlled Organisation and Family Violence Prevention Legal Service is appreciated.

Yours faithfully

Queensland Indigenous Family Violence Legal Service

Thelma Schwartz

Principal Legal Officer