

Submission to the Queensland Law Reform Commission

Non-fatal Strangulation Review

June 2025



Acknowledgement of Country

I pay my respects to the Aboriginal and Torres Strait Islander ancestors of this land, their spirits and their legacy. The foundations laid by these ancestors – our First Nations peoples – give strength, inspiration and courage to current and future generations towards creating a better Queensland.

Victim recognition

I respectfully recognise all victims of crime.

I see you. I believe you. I acknowledge the harm you have suffered.

I respect your choices in whichever path you may take. Your emotions and reactions are valid.

I see your strength, courage, resilience and vulnerabilities and support your right to self-determination, and to lead lives free from fear.

To loved ones of those who have died, I offer my condolences, and acknowledge the ongoing hurt and pain you experience.

I recognise the important role of people supporting and advocating for victims of crime, both personally and professionally.

I value the experiences you have shared with me as they shape my work.

Note on language

I use the terms 'children' and 'young people' throughout this submission to refer to Queenslanders who are under 18 years.

I use the terms 'victim' and 'victim-survivor' throughout this submission. I acknowledge the diverse preferences of individuals with lived experience of crime. I recognise that language plays a significant role in shaping narratives and that individuals may have varying preferences regarding their identities. Some individuals may prefer 'victim' as it emphasises their experience of harm, while 'victim-survivor' acknowledges the ongoing effects and harm caused by crime and highlights the strength and resilience of individuals with lived experience. By incorporating both terms, I hope to honour these perspectives and foster an inclusive dialogue.

I may also use the term 'victim' when referring to legislation because it is a term commonly used in legal frameworks.

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Recommendations

- 1) I **support** the QLRC's proposed expansion of the non-fatal strangulation offence to contexts beyond domestic relationships to recognise the potential for significant harm to be caused by such acts, and to ensure greater protection is provided to victim-survivors in 'dating relationships'.
- 2) I **recommend** that the definition of conduct captured by the choking, strangulation, suffocation offence be amended to include acts obstructing or interfering with the respiratory system, or accessory systems of respiration.
- 3) I **recommend** that 'without consent' be removed from the elements of an offence and consent not be available as a defence.
- 4) I **recommend** that section 348AA(2) of the *Criminal Code* be amended to include evidence of non-fatal strangulation as creating a rebuttable presumption against consent in sexual violence matters.
- 5) I **support** the QLRC's proposal to retain the offence title, 'choking, strangulation, suffocation' in the interests of community awareness and accessibility of language, even if the definition is expanded.
- 6) I **recommend** that a public education and health campaign, tailored to diverse cohorts and communities, be developed and delivered to ensure that the community is aware of any expansion of the offence and of the health impacts of non-fatal strangulation.
- 7) I **recommend** that the QLRC identifies the potential consequences of the proposed reforms in cases of misidentification in its final report.
- 8) I **recommend** that non-fatal strangulation be capable of being sentenced summarily on a guilty plea if the prosecution elects for this to occur under section 552A of the *Criminal Code*.
- 9) I **recommend** the QLRC undertake research into community expectations on the sentencing of non-fatal strangulation, to ensure these expectations are being considered in the development of recommendations concerning maximum penalties.
- 10) I **recommend** that the QLRC identify and report on how the experiences of victim-survivors may be impacted by the proposed reforms to ensure that their rights and needs are adequately considered and addressed throughout the reform process.
- 11) I **recommend** that the QLRC consider the role of a Judicial Commission, which could be responsible for providing ongoing professional development in relation to judicial officers' contemporary understanding of domestic and family violence, and sexual violence in relation to its recommendations.
- 12) I **recommend** the QLRC, in making any recommendations about training for police, lawyers or judicial officers, consider the scope and status of previous recommendations and the Independent Implementation Supervisor's fifth progress report.
- 13) I **recommend** that the QLRC consider amendments necessary to regulation 9 of the *Recording of Evidence Regulation 2018* (Qld) to allow a victim of a personal offence whose proceedings were finalised in the Magistrates Court to be entitled to one free copy of a record of a proceeding to ensure that all victim-survivors, regardless of which jurisdiction their matter is finalised in, can receive sentencing remarks.

- 14) Noting the existing publication scheme with respect to the Supreme and District Court sentencing remarks, I **recommend** that the QLRC consider the importance of timely publication of Magistrates Court of Queensland sentencing remarks when considering proposals which may increase the finalisation of matters in the Magistrates Court.
- 15) I **recommend** the Queensland Government provide a public update and clarification regarding the long-term plan for expansion of adult restorative justice in Queensland including scope, details of funding allocations and service delivery models and strategies to ensure equitable access across metropolitan, regional, and remote communities.
- 16) I **recommend** the Queensland Government clarify the status and progress of the development and implementation of a victim-centric legislative framework to support restorative justice. This should include, legislative milestones achieved to date, planned consultation processes and how the framework will ensure safety, voluntariness, and trauma-informed practice for victim-survivors.
- 17) I **recommend** specialist and culturally safe training for police and medical professionals on non-fatal strangulation, to be able to record evidence accurately and efficiently.
- 18) I **recommend** that public information be improved for victim-survivors to be able to identify the consequences of non-fatal strangulation.
- 19) I **recommend** the QLRC recommend the development of specialist training for medical professionals, including emergency practitioners and forensic medical services to recognise **symptoms**, ask appropriate screening questions, and use diagnostic tools effectively in relation to non-fatal strangulation presentations. This training should be developed with, and informed by, victim-survivors, and supported by appropriate funding for forensic medical services.
- 20) I **recommend** the Government review emergency department response procedures to ensure they **adequately** consider domestic and family violence, and non-fatal strangulation.
- 21) I **recommend** the QLRC recommend the development of a resource hub for non-fatal strangulation training and resources which is easily accessible for law enforcement, legal professionals, medical professionals and domestic and family violence support sector to contribute to knowledge sharing and uplift.
- 22) I **recommend** that the QLRC recommend that Queensland Police Service resources be updated to reflect current understandings of non-fatal strangulation to ensure timely and appropriate referral and information provision to victim-survivors when suspected non-fatal strangulation has occurred.
- 23) I **recommend** the Queensland Government report on its implementation of respectful relationship education across all Queensland schools, both public and private, and the extent to which it addresses pornography and the dangerousness of non-fatal strangulation.

Role of the Victims' Commissioner

My role is established under the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) (VCSVRBA) to promote and protect victims' rights.

Under section 6 of the VCSVRBA, a victim includes a person who suffers harm because a criminal offence (including domestic violence) is committed against the person. This includes:

- people who have a criminal offence committed against them directly
- family members or dependants of a person who have a criminal offence committed against them
- people who are harmed because they helped another person who had a criminal offence committed against them
- witnesses of crimes.¹

The VCSVRBA defines harm as including physical, psychological or emotional harm, damage to or loss of property, and financial or economic loss.² This definition recognises the range of impacts that a crime can have on an individual.

In my role I must act independently and in the public interest. I must also have particular regard to victims who may be vulnerable to harm due to certain characteristics, including women, girls and children.³

My functions include:

- to identify and review systemic issues relating to victims
- to conduct research into matters affecting victims, including particular cohorts of victims
- to consult on matters relating to victims, including a person's experience as a victim and their experience in the criminal justice system
- to deal with complaints about alleged contraventions of the Charter of Victims' Rights
- to publish information in relation to the criminal justice system
- to promote the Charter and rights of victims and to advocate on behalf of victims by making recommendations and providing advice, training, information or other help to government and non-government entities
- to provide advice to the Minister on issues affecting victims and the promotion of victims' rights, including making recommendations about improvements to government policy, practices, procedures and systems to support the rights of victims
- to monitor the implementation of recommendations made.

Through these functions, the purpose of my office is to ensure justice and victim support systems uphold the dignity and rights of victims of crime, within a culture of safety, transparency and accessibility.

The Charter of Victims' Rights

The Charter of Victims' Rights (the Charter) is set out in schedule 1 of the VCSVRBA. The Charter describes the ways in which a victim of violent crime should be treated, as far as practicable and

¹ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 6.

² *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 6.

³ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 11.

appropriate, by government and non-government entities. It sets out the rights of an affected victim⁴ that are to be upheld by prescribed persons⁵ when dealing with the victim.

Charter of Victims' Rights complaints

In September 2024, my office began receiving complaints from victims about their rights not being upheld under the Charter. Previously, the Victim Services Coordinator, Victim Assist Queensland had responsibility for receiving Charter of Victims' Rights complaints, however the powers and functions in relation to those complaints are significantly enhanced under the VCSVRBA.

From 2 September 2024 to 30 April 2025, over 375 Queenslanders have had contact with my office, with over 570 Charter of Victims' Rights complaints, enquiries and feedback. This represents a significant increase in engagement with the Charter, especially noting that Victim Assist Queensland received less than 40 Charter complaints during 2021-2023.⁶

Review of the Charter of Victims' Rights

In February 2025, I commenced a systemic review of the Charter of Victims' Rights, pursuant to my functions under section 9(a) of the VCSVRBA. The review aims to ensure the Charter of Victims' Rights effectively promotes and protects the rights of diverse victims of crime, in line with recommendations by the Taskforce⁷ and the Legal Affairs and Safety Committee's Inquiry into support provided to victims of crime.⁸ The review will be informed by engagement with victims of crime, their advocates, family members and professionals who work with victims of crime.

I will provide a report to the Minister for Youth Justice and Victim Support and Minister for Corrective Services by December 2026.

⁴ *Affected victim* includes a person who has suffered personal harm because of a violent crime or domestic and family violence committed against them, a family member or dependant of that person or a person who dies as a result of the offence, a person who is harmed when intervening to help another person who is harmed or dies because of the offence. See s 38 and 39 of the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) for more detail.

⁵ *Prescribed person* includes government entities, and non-government entities that are funded by government to provide support to victims as its primary function (s 40 and Sch 2 *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld)).

⁶ Department of Justice and the Attorney-General (Qld), *Departmental Briefing Paper #6639836 to Legal Affairs and Safety Committee, Inquiry into Support Provided for Victims of Crime* (30 March 2023) 8.

⁷ Women's Safety and Justice Taskforce, *Hear her voice – Report two - Women and Girls' Experiences Across the Criminal Justice System* (Report 2, Volume 1, 2021) 14, <https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/5b70727a-cc0e-4e08-8eda-e1434e6e0814/wsyt-hear-her-voice-report-2-volume-1.pdf?ETag=e7ff438db3d61317be5d683ce05e7023>.

⁸ Legal Affairs and Safety Committee, *Inquiry into Support Provided to Victims of Crime* (Report No. 48 to 57th Parliament, 2023) vi <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5723t648/5723t648-b045.pdf>.

Introduction

As the Victims' Commissioner, I am committed to supporting change that is considered and courageous, promotes the rights of victims, and contributes to safer communities. I strongly support measures aimed at improving the safety of individuals who live in fear or have experienced non-fatal strangulation and other forms of domestic and family violence, and strengthening responses that hold people using violence accountable.

It is my vision that all victims be respected, seen and heard in a justice system that anticipates their needs. To achieve this, we must consider how victims' needs are prioritised across five domains:

1. dignity, choice and control
2. accountability and learning
3. safety and protection
4. healing and support
5. system design.

While each victim has a unique understanding of what 'justice' means to them, access to justice and equity in justice are common threads in the experiences shared by victim-survivors with my office. Access to justice relates to victims having access to support following the harm they have experienced, as well as an ability to participate in the systems they have been propelled into. Equity means that, regardless of a victim's background or identity, their unique experiences and needs will be responded to, and their rights will be upheld.

In line with my statutory functions, my focus is on protecting and promoting victims' rights. In providing this submission, I seek to draw on what I have heard in my engagement with victims, their supporters and those who work with them.

This review

The Queensland Law Reform Commission's (QLRC) holistic review of the non-fatal strangulation offence follows a referral from the former Attorney-General in response to uncertainty as to whether the offence extended to the compression of a person's neck, in a manner that does not hinder breathing but does restrict or cut off blood flow.⁹

Non-fatal strangulation was introduced in 2016 in response to a recommendation from the Special Taskforce Domestic and Family Violence report, *Not Now, Not Ever*.¹⁰ The Taskforce acknowledged:

There are gaps in the existing Criminal Code. For example, the Taskforce was given evidence that showed that strangulation was a key predictor of domestic homicide. A dedicated offence for this serious and violent act needs to be added to the Code and an appropriate penalty applied that takes into account that the act of strangulation within a domestic and family violence situation is a predicator of escalation and increased risk to the victim.¹¹

I welcome the QLRC's intention in this review to examine and develop law reform options that acknowledge the vulnerability of domestic and family violence and our evolving understanding of domestic and family violence.

⁹ Queensland, *Miles Doing What Matters: Important Change to DFV Strangulation Offence* (Media Statement, 6 September 2024) <https://statements.qld.gov.au/statements/101278>.

¹⁰ Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Report, 2015)

¹¹ Special Taskforce on Domestic and Family Violence in Queensland (n10) 15.

I also note the research undertaken to support the review, including the research report engaging with lived-experiences of victim-survivors to understand their experiences of the criminal justice system and their views on how the system could respond better.¹² This represents a significant commitment to the QLRC's guiding principle of 'evidence-based', recognising that victim-survivors' experiences are evidence.

Many of the QLRC's key findings from their research with victim-survivors are echoed in what I hear from victim-survivors. They also echo what we have heard from the many victim-survivors who courageously made submissions to the Women's Safety and Justice Taskforce, the Commission of Inquiry into Queensland Police Service responses to domestic and family violence and the Queensland Sentencing Advisory Council review into sentencing for rape and sexual assault.

What we are hearing from victim-survivors is not new, though this does not diminish its importance. It continues to strengthen the case for urgent reform and action to address the systemic issues within our justice and support systems. The voices of victim-survivors consistently highlight the need for a justice system which promotes their access to justice, and equity in justice.

Accountability

Victim-survivors reasonably expect the person who harmed them to be held accountable.

Beyond domestic relationships

The definition of 'domestic relationship' does not extend to dating relationships. Noting recent data that shows more than half of young people are using strangulation during sex,¹³ and that a 'domestic relationship' may be difficult to establish between two young people,¹⁴ the current offence of non-fatal strangulation may fail to provide protection to young victim-survivors. As recognised by the QLRC, it may also fail to protect vulnerable cohorts including LGBTIQ+ community, and people experiencing homelessness.

The QLRC also referred to a case involving a teacher, whereby offences of common assault involving a lateral vascular neck restraint resulting in unconsciousness was dismissed on the basis of domestic discipline.¹⁵ While the domestic discipline defence may have been partially responsible for a failure to hold this individual accountable, the criminality of the acts may not have been adequately captured by the offence of common assault (maximum penalty of 3 years' imprisonment) or assault occasioning bodily harm (maximum penalty of 7 years' imprisonment), noting the inherent seriousness of non-fatal strangulation.

I recognise the importance of holding individuals who commit acts of non-fatal strangulation outside of a domestic relationship accountable, given the serious harm that such acts can cause to victim-survivors.

Expanding the scope of non-fatal strangulation to contexts beyond domestic relationships does not detract from the seriousness of such offences when they are committed in the context of domestic and family violence, nor the fact that when it is committed in such circumstances, it may be a lethality

¹² Queensland Law Reform Commission, 'I Just Want to Be Heard': The Voices of Strangulation Victim-Survivors – Research Report 1 (Report, April 2025) https://www.qlrc.qld.gov.au/_data/assets/pdf_file/0007/824605/I-just-want-to-be-heard-The-voices-of-strangulation-victim-survivors_-Research-Report-1.pdf

¹³ University of Melbourne, 'Study Finds Strangling During Sex Common, but Understanding Is Low' (News Article, July 2024) <https://www.unimelb.edu.au/newsroom/news/2024/july/study-finds-strangling-during-sex-common,-but-understanding-is-low>.

¹⁴ Queensland Law Reform Commission, *Consultation Paper - Non-fatal Strangulation* (Consultation paper, April 2025) 26-27.

¹⁵ Ibid.

indicator. As the QLRC has proposed, these factors could be recognised through a higher maximum penalty.

The creation of a new offence extended to non-domestic settings would also be consistent with offences in several other jurisdictions, as noted by the QLRC.

I query whether this has to be as a separate offence or could be in a single offence with circumstances of aggravation reflecting the harm caused, and the offence occurring in a domestic relationship. Though the QLRC suggests that the risk of future lethality in domestic contexts makes it more appropriate to be a separate offence, I am concerned that such an approach would affect the community's understanding of the inherent seriousness of such behaviours generally, and whether a circumstance of aggravation could appropriately recognise the lethality in domestic settings.

Recommendation

- 1) I **support** the QLRC's proposed expansion of the non-fatal strangulation offence to contexts beyond domestic relationships to recognise the potential for significant harm to be caused by such acts, and to ensure greater protection is provided to victim-survivors in 'dating relationships'.

Definition of conduct

The QLRC has heard from victim-survivors about the range of behaviours they experienced which impacted their ability to breathe or which impacted upon blood flow, including attempted drowning, being sat on, or being squashed. I have heard from victim-survivors who have reported towels or other instruments being used to restrict their blood flow – such instruments are also used so that they wouldn't leave marks or visible injury.

A definition of conduct which adequately criminalises the range of behaviours that victim-survivors experience, and which may be fatal, is appropriate. The QLRC could consider the approach taken in the Northern Territory, Victoria and the Australian Capital Territory which refer to 'obstructing or interfering with the respiratory system, or accessory systems of respiration'. Such a definition could extend to restriction of respiration that occurs through application of pressure to the chest. Consideration should also be had to whether specific reference to the circulatory system is necessary.

Recommendation

- 2) I **recommend** that the definition of conduct captured by the choking, strangulation, suffocation offence be amended to include acts obstructing or interfering with the respiratory system, or accessory systems of respiration.

Definition of results of conduct

Like other stakeholders, I am concerned that the emphasis on results of conduct relies heavily on a victim-survivor's recollection of events or increases the need to rely on medical evidence to prove restriction of blood circulation. I explore potential practice improvements below.

Consent

The importance of consent, bodily autonomy, and choice must be balanced with the inherent dangers of certain activities to which a person may consent, particularly choking, strangulation, or suffocation

as part of sexual activity. In determining whether consent should be either an element of the offence, or available as a defence, the following must be considered:

1. Criminal law does not recognise consent to serious levels of harm.¹⁶
2. Non-fatal strangulation is an inherently dangerous act. As outlined by the QLRC, it can result in serious short-and long-term physical, neurological, cognitive, and psychological consequences.¹⁷
3. Research generally shows that strangulation occurs within the context of a coercive and controlling relationship, meaning that consent may not be genuinely freely given or agreed to even if evidenced.¹⁸
4. To prove lack of consent to non-fatal strangulation erodes the seriousness of the act and its consequences on victim-survivors.¹⁹
5. There are challenges with affirmative consent as a definition of consent for this offence. Affirmative consent means that a person may withdraw consent to an act at any time. Consent can be difficult to withdraw when injured by non-fatal strangulation.²⁰
6. Obtaining informed consent may be challenging – and the information relied upon about non-fatal strangulation may be false.²¹

In outlining these factors, I recognise that some acts of strangulation or asphyxiation may not be underpinned by intentions of violence, control, harm or victimisation. It is not my intention to imply judgment or shame towards individuals who engage in acts of BDSM or erotic asphyxiation and I recognise there are diverse ways that people may choose to express their sexuality. However, the unknown risk of harm, the seriousness of the harm caused by non-fatal strangulation, and the emerging medical evidence mandates a legal response that guides us away from that harm.

While there is a need to balance a limitation of freedoms with a person's bodily autonomy and choice, the above factors support a position that no one should be able to consent to non-fatal strangulation. This is consistent with the offence being situated within Chapter 29 (offences endangering life or health) and assault not being an element to the offence.

I note that one of the amendments introduced in response to the Women's Safety and Justice Taskforce's *Hear her voice* Report 2 was section 348AA(2) of the *Criminal Code* which provides that if a sexual violence complainant suffers grievous bodily harm as a result of, or in connection with, the sexual offence that bodily harm is considered evidence of lack of consent on behalf of the complainant unless the contrary is proved. In recommending this amendment the Taskforce noted that it had heard in consultation of women and girls being subjected to non-consensual sexual violence from men and boys who were probably influenced by violent pornography.²² In consideration of the Taskforce's findings and recommendation in line with my reasons for supporting the removal of consent as an

¹⁶ Julia Tolmi, 'Coercive control: to Criminalise or Not to Criminalise' (2018) 18(1) *Criminology and Criminal Justice* 50. Also noting that the offence is placed within Chapter 29 of the Criminal Code (offences endangering life or health).

¹⁷ Queensland Law Reform Commission, Non-Fatal Strangulation: Section 315A Review – Consultation Paper (Consultation Paper, April 2025) 17 https://www qlrc.qld.gov.au/_data/assets/pdf_file/0010/824797/NFS-Consultation-Paper.pdf.

¹⁸ Heather Douglas and Robin Fitzgerald, 'Strangulation, Domestic Violence and the Legal Response' (2014) 36(4) *Sydney Law Review* 231.

¹⁹ Gael Strack and Casey Gwinn, 'On the Edge of Homicide: Strangulation as a Prelude' (2011) 26(3) *Criminal Justice* 32 <https://strangulationprevention.com.au/wp-content/uploads/2019/08/On-the-Edge-of-Homicide-Strangulation-as-a-Prelude-Strack-and-Gwinn-2011.pdf>.

²⁰ Ibid.

²¹ Leah S Sharman, Robin Fitzgerald and Heather Douglas, 'Domestic Violence, Sex, Strangulation and the "Blurry" Question of Consent' (2024) 88(1) *The Journal of Criminal Law* 48 <https://doi.org/10.1177/00220183241233455>.

²² Women's Safety and Justice Taskforce, *Hear Her Voice – Report 2, Women and Girls' Experiences across the Criminal Justice System* (Report, 2023) 213.

available defence and an increased penalty which aligns with the penalty for grievous bodily harm, I also recommend amending section 348AA(2) of the *Criminal Code* to include evidence of non-fatal strangulation as creating a rebuttable presumption against consent in sexual violence matters.

Recommendation

- 3) I **recommend** that 'without consent' be removed from the elements of an offence and consent not be available as a defence.
- 4) I **recommend** that section 348AA(2) of the *Criminal Code* be amended to include evidence of non-fatal strangulation as creating a rebuttable presumption against consent in sexual violence matters.

Defences

I **support Proposal 2** with respect to the identified exclusions and refer to my previous submission to the QLRC as part of the Review of Particular Criminal Defences.²³

Offence name

I note the importance of accessible language to enable community understanding of these offences and any amendments. I **support** an offence name which is easily understood by the community. Any amendments to the scope of the offence must be supported by a public education and health campaign.

Recommendation

- 5) I **support** the QLRC's proposal to retain the offence title, 'choking, strangulation, suffocation' in the interests of community awareness and accessibility of language, even if the definition is expanded.
- 6) I **recommend** that a public education and health campaign, tailored to diverse cohorts and communities, be developed and delivered to ensure that the community is aware of any expansion of the offence and of the health impacts of non-fatal strangulation.

Misidentification

I note the QLRC has explored the over-representation of Aboriginal and Torres Strait Islander people as both perpetrators and victims with respect to non-fatal strangulation. I am concerned about the impacts of the QLRC's proposals on First Nations women who are misidentified and urge the QLRC to specifically consider any reform through the lens of misidentification.

The QLRC has previously explored proposals to remedy misidentification in its review of particular criminal defences, including special protections for domestic and family violence victim-survivors during police interviews and requiring pre-charge consideration of victimisation and abuse history of the defendant.

²³ Beck O'Connor (Victims' Commissioner), Submission to Queensland Law Reform Commission: Review of Particular Criminal Defences (May 2025).

Recommendation

- 7) I **recommend** that the QLRC identifies the potential consequences of the proposed reforms in cases of misidentification in its final report.

Sentencing in the Magistrates Court

I note the QLRC's reasons for proposing that the offence of non-fatal strangulation be capable of being finalised in the Magistrates Courts, especially with respect to delay and the length of time that proceedings take to finalise.

However, I **recommend** that the approach taken for non-fatal strangulation mirror that of coercive control, being that such charges can be sentenced summarily on a guilty plea if the prosecution elects for this to occur under section 552A of the Criminal Code. This recognises the fact that there are some circumstances where summary prosecution is appropriate and would enable some of the benefits anticipated by the QLRC to be realised (concerning timeframes), while also addressing stakeholder concerns that defence election could be used to 'weaponise' the system. It may better reflect the seriousness of the offences, and the QLRC's proposed increased to maximum penalties.

Recommendation

- 8) I **recommend** that non-fatal strangulation be capable of being sentenced summarily on a guilty plea if the prosecution elects for this to occur under section 552A of the Criminal Code.

Current sentences for non-fatal strangulation and proposed penalties

I question whether the current sentences for non-fatal strangulation are actually meeting the community's expectations. I note there is no discussion of the community's expectations of current sentencing practices in the QLRC's consultation or background papers.

One of the central focuses of QSAC's research into sentencing of rape and sexual assault was the expectations of the Queensland community with respect to whether penalties imposed are appropriately reflecting the nature and seriousness of sexual assault and rape offences. QSAC noted victim-survivors, their support organisations and advocacy services, and some legal stakeholders are concerned the current system does not meet community expectations with respect to sentencing. I **recommend** the QLRC undertake research into community expectations on the sentencing of non-fatal strangulation, to ensure these expectations are being considered and this research can be reflected in any recommendation regarding maximum penalty.

I **support** the proposed maximum penalty of 14 years' imprisonment for offence 1, which reflects the lethality of the offence as it occurs in a domestic setting. I also support the proposed maximum penalty of 10 years' imprisonment for offence 3. I acknowledge the QLRC has proposed offence 2 would not require proof of restricted respiration or blood circulation, thus explaining its lower maximum penalty of 7 years' imprisonment. However, I suggest this does not adequately reflect the lethality of offence 2 as occurring in a domestic setting and propose it be increase to 10 years' imprisonment. This would more appropriately reflect the lethality of the conduct and align with the maximum penalty of offence 3.

Recommendation

- 9) I **recommend** the QLRC undertake research into community expectations on the sentencing of non-fatal strangulation, to ensure these expectations are being considered in the development of recommendations concerning maximum penalties.

Victim impact statements

I am concerned that without greater protections for victim-survivors in legislation such as the *Penalties and Sentences Act 1992*, that finalisation in the Magistrates Court may impact upon a victim-survivor's experience of the sentence proceeding in other ways. For example, the Queensland Sentencing Advisory Council's (QSAC) report, *Sentencing of Sexual Assault and Rape: The Ripple Effect (Final Report)*, identified significant shortfalls in the current VIS regime, particular in Magistrates Courts.²⁴

Providing a VIS is a right – and a choice.

However, in the interests of timeliness in the Magistrates Court, victim-survivors may not be given a choice to participate in the proceedings by way of providing a VIS. Under the Charter of Victims' Rights, victims of violent crime, including family members or dependants of those harmed or killed, have the right to make a VIS.²⁵ I have heard from victim-survivors how critical the ability to participate in the justice process and share their experience, in their own words, is to their empowerment and healing.

I cannot understate the importance of prioritising hearing victims' voices, notwithstanding the delay this may cause to a sentence proceeding. **Proposal 3** should not be considered without a comprehensive review of the VIS regime to ensure victims are seen and heard regardless of the court in which their offender is sentenced.

Recommendation

10) I **recommend** that the QLRC identify and report on how the experiences of victim-survivors may be impacted by the proposed reforms to ensure that their rights and needs are adequately considered and addressed throughout the reform process.

Accountability of systems

As well as the people who harmed them, victim-survivors reasonably expect accountability from the agencies they are interacting with in the justice system. There are longstanding issues with agency accountability which were identified by *Not Now, Not Ever* report,²⁶ the Women's Safety and Justice Taskforce (WSJT) reports²⁷ and the Commission of Inquiry (the COI) into Queensland Police Service responses to domestic and family violence.²⁸ In response to these issues, WSJT identified the need for a Judicial Commission to improve judicial accountability.

Victim-survivors, police and lawyers have told the QLRC that there needs to be further training about non-fatal strangulation, and trauma-informed practice generally.

I note that the Independent Implementation Supervisor's fifth progress report identified that, as at November 2024, many of the knowledge transfer recommendations across the Department of Justice and Attorney-General, Office of the Director of Public Prosecutions, Queensland Police Service, Queensland Health and Department of Child Safety, Seniors and Disability Services were not yet completed.

²⁴ Queensland Sentencing Advisory Council (QSAC), *Sentencing of Sexual Assault and Rape: The Ripple Effect (Final Report)*, December 2024) Key Finding 16 and Recommendations 21, 22.

²⁵ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) Schedule 1.

²⁶ Special Taskforce on Domestic and Family Violence in Queensland (n10).

²⁷ Women's Safety and Justice Taskforce, *Hear Her Voice - Report One - Addressing Coercive Control and Domestic and Family Violence in Queensland* (2021); and Women's Safety and Justice Taskforce (n7).

²⁸ Independent Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence, *A Call for Change* (Report, November 2022) 50

Recommendations relating to training for magistrates and judicial officers are also dependent on a decision as to whether a Judicial Commission will be established. A Judicial Commission would, amongst other responsibilities, be responsible for ensuring that domestic, family, and sexual violence education is readily available to, and undertaken by, judicial officers.

Recommendation

- 11) I **recommend** that the QLRC consider the role of a Judicial Commission, which could be responsible for providing ongoing professional development in relation to judicial officers' contemporary understanding of domestic and family violence, and sexual violence in relation to its recommendations.
- 12) I **recommend** the QLRC, in making any recommendations about training for police, lawyers or judicial officers, consider the scope and status of previous recommendations and the Independent Implementation Supervisor's fifth progress report.

Availability of sentencing remarks

For sentencing purposes such as denunciation and general deterrence to have an effect, the community must also be aware of the consequences. Sentencing remarks are an important public record which form part of a victim-survivor's experience with the criminal justice process, as 'victims often perceive that the length of a sentence reflects the way the court viewed the seriousness of the crime and the impact of the criminal act upon them'.²⁹

There are several barriers to victim-survivors attending court for a sentencing hearing, and when they do, they do not always understand or hear the reasons for the sentence outcome.³⁰ QSAC recommended improvements to how District and Supreme Court sentencing remarks are provided to victim-survivors of rape (and possibly sexual assault).³¹

Pursuant to the *Recording of Evidence Regulation 2018*, victims of personal offences who are the subject of a criminal proceeding in the Supreme Court or the District Court are entitled to one free copy of an existing transcription or an audio recording of a proceeding. There is no provision for victims of personal offences whose matters have been dealt with in the Magistrates Court to obtain free recordings. While the Supreme Court Library publishes Supreme and District Court sentencing remarks, it does not publish Magistrates Court sentencing remarks. This would impact victim-survivors under the QLRC's proposed model.

²⁹ QSAC (n23) 520

³⁰ Ibid.

³¹ Ibid.

Recommendation

- 13) I **recommend** that the QLRC consider amendments necessary to regulation 9 of the *Recording of Evidence Regulation 2018* (Qld) to allow a victim of a personal offence whose proceedings were finalised in the Magistrates Court to be entitled to one free copy of a record of a proceeding to ensure that all victim-survivors, regardless of which jurisdiction their matter is finalised in, can receive sentencing remarks.
- 14) Noting the existing publication scheme with respect to the Supreme and District Court sentencing remarks, I **recommend** that the QLRC consider the importance of timely publication of Magistrates Court of Queensland sentencing remarks when considering proposals which may increase the finalisation of matters in the Magistrates Court.

Dignity, choice and control

Dignity, choice, and control are fundamental principles that respect an individual's autonomy and empower individuals to make informed decisions about their next steps.

Restorative justice

I **support** the QLRC's proposals to expand the use of restorative justice as an alternative to traditional criminal prosecution.

Restorative justice offers timely, flexible, and culturally responsive outcomes particularly for Aboriginal and Torres Strait Islander communities, where conventional justice processes and procedures may not always be appropriate or effective. I note the WSJT recommendations to support the development of restorative justice including to establish a long-term funded plan to support restorative justice services and the development of a legislative framework.³² The plan to support restorative justice services has been delivered, with a report currently under government consideration.³³ The co-design of a victim-centric legislative framework for adult restorative justice is ongoing and remains outstanding.³⁴

It is essential that victims are provided comprehensive, accessible, and timely information about restorative justice including the nature of the process, potential outcomes, and associated implications to ensure they are fully informed and empowered with autonomy, choice, and control.³⁵

³² Women's Safety and Justice Taskforce (n7).

³³ Office of the Independent Implementation Supervisor, Progress Report 5 (Report, November 2024) 108
<https://www.publications.qld.gov.au/dataset/oiiwsjtreforms/resource/58d5b531-095a-4451-a99c-900aa060e84b>.

³⁴ Ibid 13.

³⁵ Women's Safety and Justice Taskforce (n7).

Recommendation

- 15) I **recommend** the Queensland Government provide a public update and clarification regarding the long-term plan for expansion of adult restorative justice in Queensland including scope, details of funding allocations and service delivery models and strategies to ensure equitable access across metropolitan, regional, and remote communities.
- 16) I **recommend** the Queensland Government clarify the status and progress of the development and implementation of a victim-centric legislative framework to support restorative justice. This should include, legislative milestones achieved to date, planned consultation processes and how the framework will ensure safety, voluntariness, and trauma-informed practice for victim-survivors.

System design

As the QLRC has noted, up to 50% of strangulation victims show no external injuries.³⁶ Timely access to medical services is critical for victim-survivors of non-fatal strangulation, both for health and evidentiary purposes.

Practices and procedures

Many victim-survivors I have spoken to describe feelings of isolation and confusion when navigating the criminal justice system. The QLRC canvassed a range of practice and procedural proposals and suggestions intended to overcome barriers domestic and family violence victim-survivors experience in accessing defences, as detailed in QLRC Criminal Defences Review.³⁷ I **support** the QLRC's exploration of safeguards to improve strangulation victim-survivors experiences of the criminal justice system.

Recent data from the Queensland Sentencing Advisory Council highlights a concerning rate of withdrawal and attrition in prosecutions for choking, suffocation, or strangulation in a domestic setting. Between 2015–16 and 2022–23, approximately 22.7% of charges under section 315A of the Criminal Code (Qld) were withdrawn or struck out.³⁸ This trend is often linked to charge negotiations, evidentiary challenges, and systemic barriers that discourage victim-survivor engagement. Victims may disengage due to the retraumatising nature of proceedings, including lengthy delays, cross-examination, and pressure from perpetrators or their families.

Several of the concerns raised by victim-survivors in the QLRC's research engage the Charter of Victims' Rights. For example, becoming frustrated at not being kept adequately informed of the process relates to an affected victim's right to be provided with updates about the investigation and prosecution.³⁹

As noted above, my office is currently undertaking a review of the Charter of Victims' Rights to understand whether it is meeting the needs of victims.

³⁶ Queensland Law Reform Commission (n18) 14.

³⁷ Queensland Law Reform Commission, Review of Particular Criminal Defences: Consultation Paper (Consultation Paper, 20 February 2025) [https://www.qlrc.qld.gov.au/_data/assets/pdf_file/0019/821143/20250219-qlrc-cdr-cp-final.pdf](https://www qlrc.qld.gov.au/_data/assets/pdf_file/0019/821143/20250219-qlrc-cdr-cp-final.pdf).

³⁸ Queensland Sentencing Advisory Council, Sentencing Spotlight on Choking, Suffocating or Strangulation in a Domestic Setting (Report, May 2024) https://www.sentencingcouncil.qld.gov.au/_data/assets/pdf_file/0010/797833/sentencing-spotlight-on-choking-suffocating-or-strangulation-in-a-domestic-setting-2024.pdf.

³⁹ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld), schedule 1.

Recording of evidence

Accurate and early recording of evidence is fundamental to the successful prosecution of non-fatal strangulation offences, which are often difficult to prove due to the lack of visible injuries.⁴⁰ Victim-survivors must be provided with clear, accessible information on how to identify and document symptoms and provided ways to document this evidence.

The QLRC rightly emphasises the need for ongoing, specialist training for police, legal practitioners, and medical staff, incorporating cultural safety and trauma-informed practice. This training must incorporate cultural safety, particularly considering the over-representation of Aboriginal and Torres Strait Islander women as both victims and accused persons in non-fatal strangulation cases.

I also note the proposed legislative amendments regarding video-recorded evidence-in-chief and refer the QLRC to my submission on this matter.⁴¹ As detailed, training is crucial for effectively taking evidence from individuals who may have experienced trauma, but also for ensuring that informed consent is properly obtained. This is especially important when working with vulnerable individuals, such as those who do not speak English as their first language, have communication difficulties, or live with intellectual disabilities. Without appropriate training, there is a risk that victims may not fully understand the process or implications of giving a recorded statement, potentially compromising both the quality of the evidence and the rights of the victim. Accordingly, the following recommendations may assist in shaping reforms that support early, accurate, and respectful evidence collection:

- Specialist training - ensuring only police officers with specialist training in domestic and family violence, take video-recorded evidence in chief. This training should emphasise communication, consent and interviewing vulnerable witnesses.
- Informed consent – requirement for obtaining consent both before and at the start of the video recording, to ensure victims are sufficiently informed about the implication of making a statement at the commencement of the recording.

Recommendations

- 17) I **recommend** specialist and culturally safe training for police and medical professionals on non-fatal strangulation, to be able to record evidence accurately and efficiently.
- 18) I **recommend** that public information be improved for victim-survivors to be able to identify the consequences of non-fatal strangulation.

Support and healing

Access to medical services

Improved access to medical services is critical to protecting victim-survivors, and improving the evidence available for prosecution.

I note the QLRC research paper identifies that some victims thought police should inform them about the importance of obtaining medical treatment following strangulation, and either call an ambulance to

⁴⁰ Queensland Law Reform Commission (n18) 28.

⁴¹ Beck O'Connor (Victims' Commissioner), Submission to Education, Arts, and Communities Committee: Inquiry into Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025 (May 2025)

attend or refer victim-survivor to hospital.⁴² This would be consistent with a victim's right to receive information about services and remedies available to them under the Charter of Victims' Rights.⁴³

Despite the prevalence of strangulation and its potentially fatal consequences, non-fatal strangulation remains poorly understood with the medical sector. Approximately half of all strangulation events leave little or no visible injuries. Visible injuries may not appear until hours or days after the non-fatal strangulation.⁴⁴ Other injuries such as brain injury, miscarriage or stroke may be further delayed.⁴⁵ Many healthcare providers lack the appropriate training to recognise, screen for and address possible brain injuries resulting from strangulation.⁴⁶ Medical professionals should screen everyone who seeks services for brain injury, and, when a brain injury is suspected, refer for specialised screening, evaluation, and services.⁴⁷

Inconsistent injury presentations often lead to misdiagnosis or minimisation of the incident, leaving victim-survivors vulnerable to delayed medical crises. The Australian Journal of General Practice found that in a sample of 48 patients referred for follow-up imaging after forensic examination due to advice of non-fatal strangulation, internal injuries were found in five patients – this included three with cervical arterial dissections which can quickly be fatal without close management beyond the initial emergency presentation.⁴⁸

It is also vitally important that non-fatal strangulation in the context of sexual offending is better understood and that evidence of non-fatal strangulation in the course of sexual offending is gathered professionally and accurately. In 2024, the Queensland Government committed \$56 million dollars over four years to establish a new statewide forensic model of care, as a component of a new sexual assault response service.⁴⁹ I urge QLRC to recommend that in implementing changes to the offence of strangulation the Queensland Government ensures Queensland Health statewide forensic medical service receives appropriate funding and training to work towards continuous improvement in the gathering of evidence of strangulation in whatever context it occurs.

I note the Red Rose Foundation has established Australia's first Strangulation Trauma Centre and provides training to law enforcement, legal professionals, medical professionals and domestic and family violence support services about non-fatal strangulation and supporting victim-survivors. A summary report of feedback responses received from participants clearly demonstrate the importance of increasing awareness, and providing information to legal professionals, medical professionals and domestic and family support services.⁵⁰ In making recommendations with respect to training, the QLRC should have regard to the existing training that is available.

The healing and support services which are available to victim-survivors should not stop at the reporting, investigation, or prosecution stages - especially for domestic and family violence, sexual violence, and non-fatal strangulation which can leave lifelong physical health impacts. I therefore urge

⁴² Queensland Law Reform Commission (n12).

⁴³ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld), schedule 1.

⁴⁴ Queensland Law Reform Commission (n18) 12.

⁴⁵ Ibid 29.

⁴⁶ Synapse, 'Non-Fatal Strangulation and Its Link to Brain Injury' (2 May 2024) Synapse Australia <https://synapse.org.au/news/non-fatal-strangulation-and-its-link-to-brain-injury/>

⁴⁷ Synapse, 'Domestic and Family Violence' (Web Page, 2025) <https://synapse.org.au/creating-real-change/why-our-work-matters/domestic-violence/>.

⁴⁸ Anousha Victoire, Julia De Boos and Johanna M Lynch, 'Management of Non-Fatal Strangulation in General Practice' (2022) 51(11) *Australian Journal of General Practice* <https://www1.racgp.org.au/ajgp/2022/november/management-of-non-fatal-strangulation>.

⁴⁹ Queensland Government, *Queensland Budget 2024-25, Budget Measures* (Budget Paper No. 4, 2024) 130.

⁵⁰ Queensland Centre for Domestic and Family Violence Research, *Non-Lethal Strangulation Prevention Training Brisbane: Summary Report 25th-26th March 2019* (undated).

the QLRC to consider how long-term integrated service responses can be embedded to accompany victim-survivors well beyond the initial crisis response.

Recommendations

- 19) I **recommend** the QLRC recommend the development of specialist training for medical professionals, including first responders, emergency practitioners and forensic medical services to recognise symptoms, ask appropriate screening questions, and use diagnostic tools effectively in relation to non-fatal strangulation presentations. This training should be developed with, and informed by, victim-survivors, and supported by appropriate funding for forensic medical services.
- 20) I **recommend** the Government review first responder and emergency department response procedures to ensure they adequately consider domestic and family violence, and non-fatal strangulation.
- 21) I **recommend** the QLRC recommend the development of a resource hub for non-fatal strangulation training and resources which is easily accessible for law enforcement, legal professionals, medical professionals and domestic and family violence support sector to contribute to knowledge sharing and uplift.
- 22) I **recommend** that the QLRC recommend that Queensland Police Service resources be updated to **reflect** current understandings of non-fatal strangulation to ensure timely and appropriate referral and information provision to victim-survivors when suspected non-fatal strangulation has occurred.

Safety and protection

To be safe is to be protected from harm, risk or threat. More broadly, safety encompasses both protection from immediate dangers and precaution to prevent possible future risks. All Queenslanders have the right to be safe and to have their lives, and families, protected by the government.⁵¹

Non-fatal strangulation is an inherently dangerous act. As outlined by the QLRC, it can result in serious short-and long-term physical, neurological, cognitive, and psychological consequences.⁵² Victim-survivors often experience this form of physical violence alongside other forms of abuse such as coercive control, particularly in the domestic and family violence context.⁵³ The extremely traumatic experience of strangulation is compounded by its symbolic and literal attack on a person's sense of safety and a person's bodily autonomy.

Prevention

The criminal justice system plays a vital role in holding perpetrators accountable and deterring future violence. However, it is not an appropriate or sufficient tool for preventative education. The complexities and severity of non-fatal strangulation demand a broader, whole of society response.

The growing use of technology and the widespread accessibility of pornography, including by children as young as 12, is influencing expectations, and is contributing to the normalisation of violent sexual

⁵¹ Queensland Human Rights Commission, A Plain Language Guide to Your Human Rights (1 May 2020) <https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/9ff883e6-afa9-4934-a153-7c9d42d4926d/hr-plain-lang-guide-english.pdf?ETag=73135147a50e8cfa491def577efece11>.

⁵² Queensland Law Reform Commission (n18).

⁵³ Ibid 18.

behaviours.⁵⁴ Pornography is significantly influencing how young people perceive sex, relationships, gender roles and identity.⁵⁵ A study in July 2024 found that more than half of young people are using strangulation during sex. More men than women said that they had strangled their partners and nearly three-quarters of trans and gender-diverse participants reported that they had strangled their partners.⁵⁶ Alarming, many respondents who had a positive view of choking or strangling **believed the act could be safe**, the study found.

Education about the dangers, dynamics and impacts of strangulation must begin early through schools, youth programs and community partnerships to foster prevention. The QLRC has noted that further evidence-based training and education about non-fatal strangulation and its effects is needed.

I note initiatives such as respectful relationships education across all Queensland schools, both public and private, and the extension to acknowledge and address children's access to pornography.⁵⁷ The rollout of the updated respectful relationships education and corresponding professional development training is yet to be fully implemented.⁵⁸

Recommendations

23) I **recommend** the Queensland Government report on its implementation of **respectful relationship** education across all Queensland schools, both public and private, and the extent to which it addresses pornography and the dangerousness of non-fatal strangulation.

Concluding remarks

My expectation, and that of the Queensland community, is that all victims be respected, seen, and heard in a criminal justice system that anticipates their needs. Victims have waited far too long for this. At its core, our criminal justice system must be underpinned by laws consistent with contemporary community attitudes and informed by best available knowledge and evidence.

It is clear our existing laws and approaches to non-fatal strangulation are not adequately capturing the lethality and prevalence of the conduct in our communities. I commend the QLRC's review and proposals, though encourage an ongoing focus on the rights, needs, and protections of victim-survivors.

⁵⁴ Women's Safety and Justice Taskforce (n7) 63.

⁵⁵ Our Watch, Pornography, Young People and Preventing Violence Against Women (Report, 2020) <https://assets.ourwatch.org.au/assets/Pornography-young-people-preventing-violence-OurWatch.pdf>.

⁵⁶ University of Melbourne (n13).

⁵⁷ Women's Safety and Justice Taskforce (n 7) 39.

⁵⁸ Office of the Independent Implementation Supervisor (n32) 13.