



# Non-fatal strangulation: Section 315A review

Education, accountability and  
support: Improving Queensland's  
response to non-fatal strangulation

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SUMMARY REPORT

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**Reference to legislation:**

All legislation referred to applies to Queensland, unless otherwise indicated. Reference to the current law in this report is taken to refer to the law as at 31 August 2025 unless otherwise stated.

## Content warning

This report 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. 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

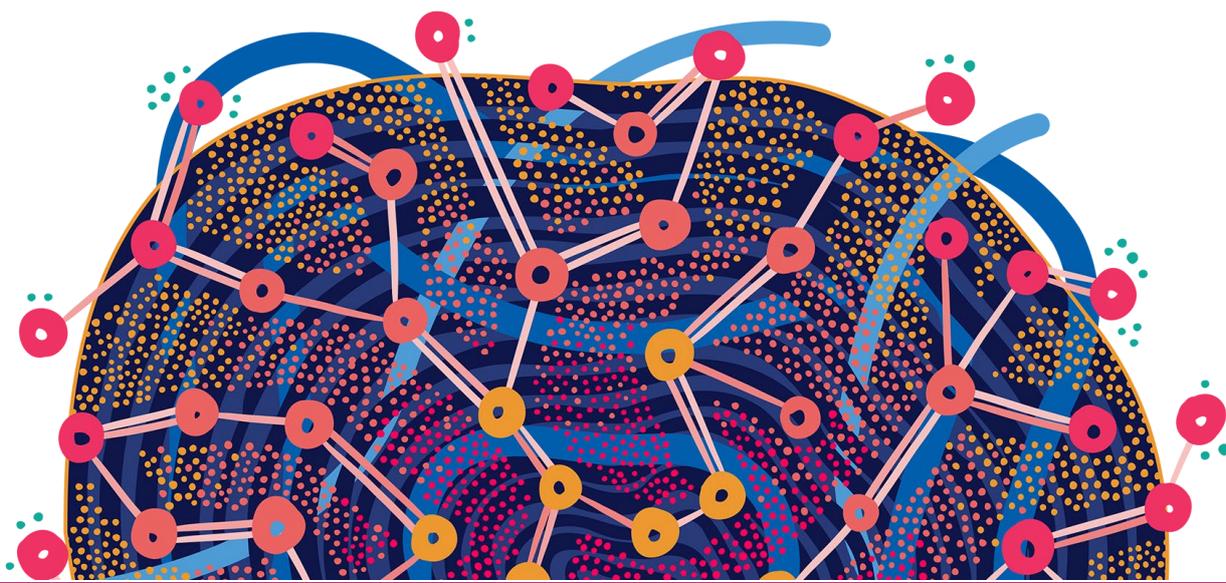
**Lifeline:** 13 11 14

**Beyond Blue:** 1300 224 636

**Rainbow SDFV Helpline:** 1800 497 212

## Acknowledgement of Country

The Queensland Law Reform Commission acknowledges and pays respect to Aboriginal peoples and Torres Strait Islander peoples, and their Elders past and present. Particularly, we acknowledge the Jagera people and Turrbal people as the Traditional Custodians of Meanjin, the land on which our Brisbane office is located. We recognise the extraordinary knowledges and perspectives of Aboriginal peoples and Torres Strait Islander peoples throughout Queensland and would like to thank all those who have welcomed us on Country and connected with us in this review.



## Acknowledgements

### Review participants

We thank all those who generously shared their views and stories with us. Your insights were critical in helping us to develop practical, innovative and just recommendations for reform.

We acknowledge the:

- individuals who shared their lived experience of non-fatal strangulation
- people and organisations who attended our meetings, roundtables and events
- people and organisations who made submissions
- people who participated in our research projects.

### Other contributors

We also acknowledge the other people and organisations who assisted us during this review, including students from Bond University, Griffith University and the University of Queensland's Pro Bono Centre.

# Language used in this report

We understand the importance of language and acknowledge that what is considered the 'right language' will sometimes be contested. We chose the following language to use in this report.

Currently, s 315A criminalises choking, suffocation and strangulation. Medically each of these terms involves different conduct, but all impact a person's respiration and/or blood circulation. 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 recommendations 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 a person who has experienced non-fatal strangulation at different points in the justice process, for example, a person alleged to have experienced violence, complainant, victim or applicant
- because we recommend that the non-fatal strangulation offence should continue to be restricted largely to domestic settings and, as such, adopt the language used in the Queensland Government's Domestic and Family Violence: Common Risk and Safety Framework.

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.

We use the phrase **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 use the phrase **culturally and linguistically diverse communities** to refer to people from diverse cultural and linguistic backgrounds. We recognise Australian South Sea Islanders as a distinct community.

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, and Australian South Sea Islanders. We recognise that different language preferences exist and use these terms with the utmost respect.

# Glossary

Term	What it means
aggravating factor	A feature of the offending that makes it more serious and may result in a higher penalty within the existing sentencing range.
aggravated form of offence	An offence that has a circumstance of aggravation.
assault	Application of force to another person without their consent. An assault can include touching, pushing, hitting or, sometimes, a threat.
assault occasioning bodily harm	An assault that results in an injury amounting to bodily harm (but not as serious as grievous bodily harm).
child	A person under the age of 18.
circumstance of aggravation	A fact in an offence that makes a person liable to a higher penalty than that which applies to the simpliciter form of the offence.  For example, being armed is often a circumstance of aggravation. Assault occasioning bodily harm whilst armed is an aggravated form of assault occasioning bodily harm
common assault	An assault that does not result in bodily harm.
indictment	The document presented by the prosecution in a superior court for prosecution of an offence, after a charge has proceeded from a magistrates-level court to a superior court.
remand (held on remand/remanded in custody)	An order to be kept in custody while waiting for criminal charges to be finalised.
simpliciter form of an offence	The basic form of an offence, without any circumstance of aggravation.
summary disposition	To finalise a matter in a magistrates-level court.

# Abbreviations

Criminal Code (Qld)      Schedule 1 of the Criminal Code Act 1899 (Qld)

DFV      domestic and family violence

LGBTIQA+      lesbian, gay, bisexual, transgender, intersex, queer or questioning, or asexual

ODPP      Office of the Director of Public Prosecutions

QIFVLS      Queensland Indigenous Family Violence Legal Service

QPS      Queensland Police Service

“ We live our whole life in fear. We are made [to] feel like we are alone and lie so we are safe. We lose friends and can [be] alone with these monsters. I want the police and prosecution to get the whole story — strangulation is not common assault. I was strangled until I urinated, I thought I was going to die not once but twice. **I want us to matter, not wait until we are dead before something changes.** Men are physically stronger than women and even trying to fight back, most of the time it makes it worse, and they go harder. ”

**A victim-survivor**

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# Overview

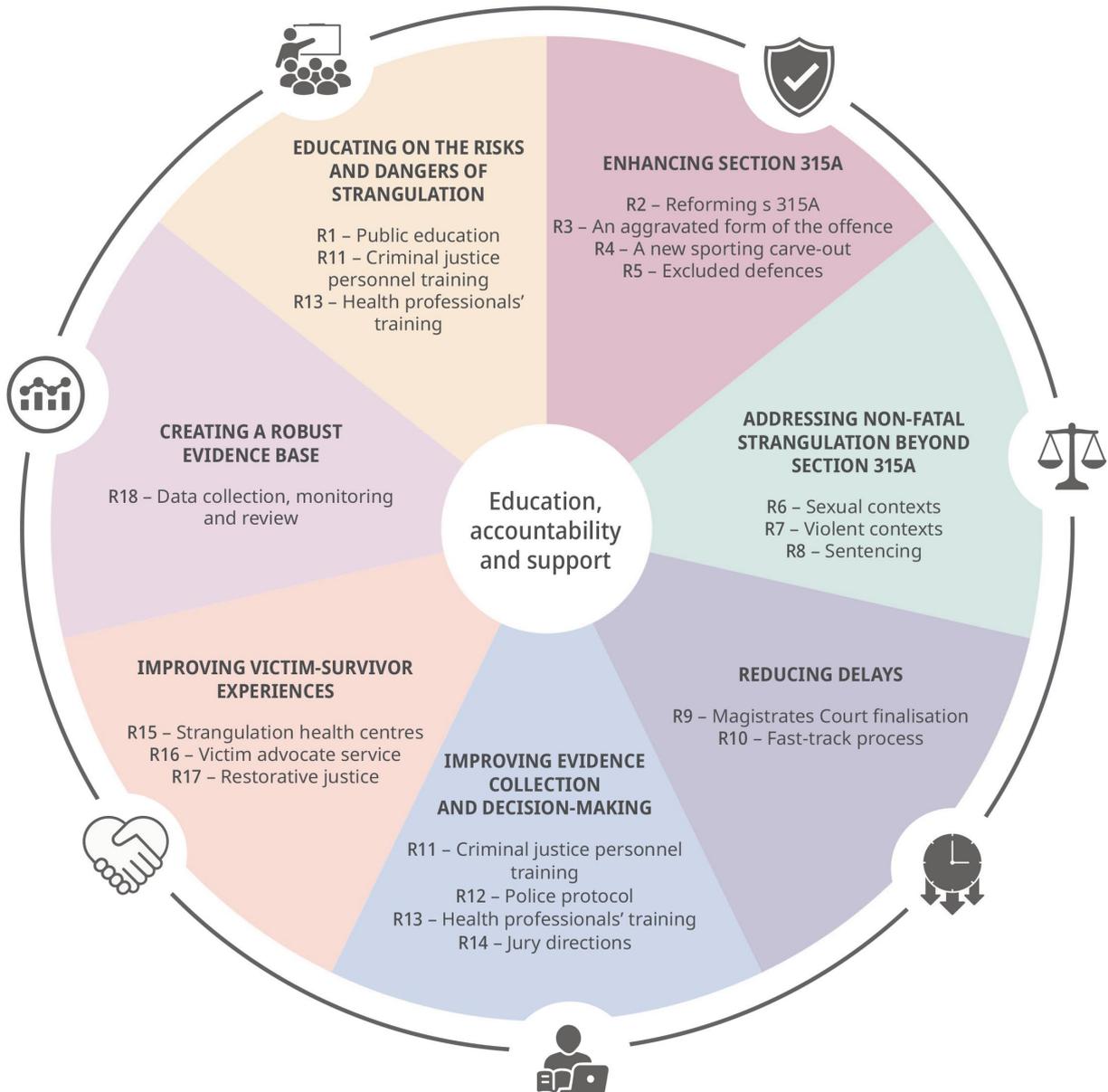
## Context

1. On 5 September 2024, the Queensland Government asked us to examine and make recommendations about the offence of 'Choking, suffocation or strangulation in a domestic setting' in s 315A of the Criminal Code (Qld) (the 'non-fatal strangulation offence'), and applicable procedural rules and practices.
2. The offence of non-fatal strangulation was introduced on 5 May 2016 following a recommendation made by the Special Taskforce on Domestic and Family Violence in Queensland.<sup>1</sup> Section 315A currently makes it a crime for a person to unlawfully choke, suffocate or strangle another person without their consent, where:
  - that person is in a domestic relationship with the other person, or
  - the conduct is associated domestic violence under the Domestic and Family Violence Protection Act 2012.
3. The Special Taskforce found strangulation was an indicator for increased risk of harm and a key predictor of domestic homicide. It recommended that a standalone offence be established with an appropriate penalty applied to account for this increased risk and allow for better recording of such incidents, assisting to assess risk to victim-survivors.<sup>2</sup> The maximum penalty for the non-fatal strangulation offence is 7 years imprisonment.

## Response to terms of reference

4. Our terms of reference asked us to make recommendations on whether:
  - the terms 'chokes', 'suffocates' and 'strangles' should be defined generally or for the specific purposes of the non-fatal strangulation offence and, if so, in what way
  - the requirement that the choking, suffocation or strangulation be 'without the other person's consent' should be removed or amended
  - the offence should apply to conduct that is not committed in circumstances where the persons are in a 'domestic relationship' or the conduct is not 'associated domestic violence' under the Domestic and Family Violence Protection Act 2012
  - the current maximum penalty of 7 years imprisonment reflects the gravity of the conduct
  - the offence should be able to be finalised in the Magistrates Court and, if so, in what circumstances.
5. We have also been asked to make recommendations about any other matters we consider relevant to the issues in the review. Our full terms of reference are in [Appendix A](#).
6. We consider that reforms are necessary to improve the response to non-fatal strangulation in Queensland. We make **18 recommendations** for reform. **Figure 1** shows how these recommendations fit together.

Figure 1: Snapshot of our recommendations

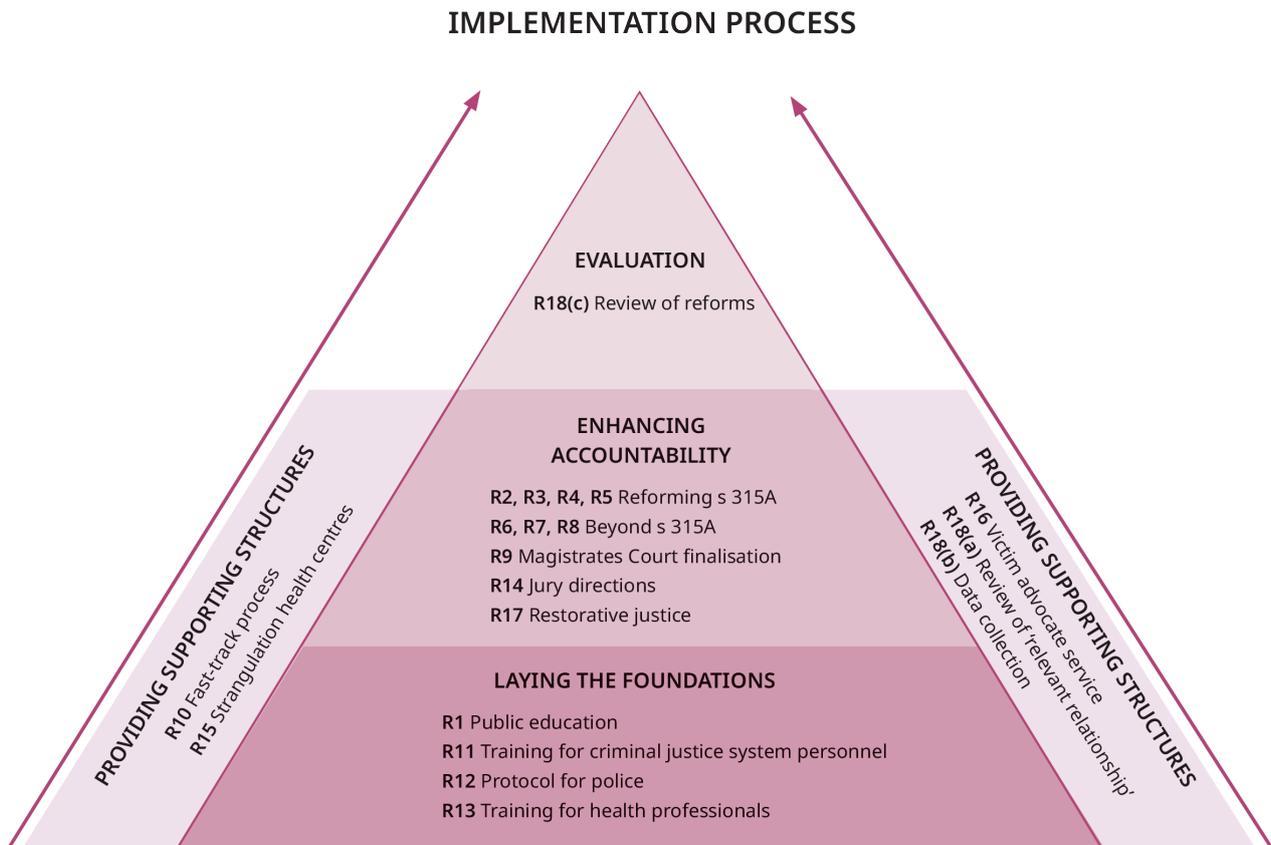


7. Our recommendations aim to:

- educate the public and relevant professionals about the risks and dangers of strangulation (recommendations 1, 11, 13).
- enhance the operation of s 315A by:
  - expanding the types of relationships to which the offence applies and recommending a review of the scope of ‘relevant relationship’ as defined in the Domestic and Family Violence Protection Act 2012 (recommendations 2(a), 18(a))
  - addressing the challenges with proving restriction of a person’s respiration and/or blood circulation (recommendation 2(b))
  - modifying the way consent is relevant (recommendation 2(d))
  - better reflecting the seriousness of the conduct involved (recommendations 2-3)

- clarifying the defences that should and should not apply (recommendations 2(d), 4–5).
  - better respond to non-fatal strangulation in circumstances beyond the scope of s 315A (recommendations 2, 6–8).
  - address system issues to:
    - reduce delays (recommendations 9–10)
    - improve evidence collection and informed decision-making (recommendations 11–14)
    - improve victim-survivor experiences (recommendations 15–17).
  - create a robust evidence base for non-fatal strangulation in Queensland (recommendation 18).
8. We have not limited our recommendations to amendments to the non-fatal strangulation offence because we identified several other key issues that impact how the offence is operating in practice. Instead, we take a holistic, coordinated approach to reform involving the public, criminal justice personnel (including police, lawyers, judicial officers, court staff and restorative justice/dispute resolution providers), health professionals and support services.
9. We propose a phased approach to implementation of the recommendations made in this report — see **Figure 2**.

**Figure 2: Implementation process for our recommendations**



## Section 315A of the Criminal Code

### **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).



# Recommendations

## Educating on the risks and dangers of strangulation



- R1** The Queensland Government should develop, implement and fund a comprehensive public education and training program about the risks and dangers associated with strangulation, including during sex, and the reforms arising from this review.

## Enhancing section 315A



- R2** Section 315A of the Criminal Code should be changed to:
- (a) also apply to people in a relationship involving coercion, control or domination.
  - (b) make it an offence with a maximum penalty of 7 years imprisonment to unlawfully engage in conduct capable of restricting another person's respiration and/or blood circulation.
  - (c) include a legislative note that explains that conduct capable of restricting a person's respiration and/or blood circulation could include:
    - applying pressure to the person's neck
    - covering the person's nose or mouth
    - obstructing or interfering with the person's respiratory system or accessory systems of respiration.
  - (d) modify the way consent is relevant by including a defence of affirmative consent if the conduct constituting the offence occurs in a sexual context.
- A rebuttable presumption should also be included in section 348AA of the Criminal Code that applies to all sexual offences and states that complete or partial restriction of the person's respiration and/or blood circulation is evidence of lack of consent.



- R3** Section 315A should include an aggravated form with a maximum penalty of 14 years imprisonment if a person completely or partially restricts the other person's respiration and/or blood circulation.



- R4** The Criminal Code should be amended to make it a defence to a section 315A offence where the conduct:
- is done as part of a socially acceptable function or activity (with function or activity defined to include a sporting event), and
  - is reasonable in the circumstances.

	<p><b>R5</b> The Criminal Code should state that the following defences do not apply to a section 315A offence:</p> <ul style="list-style-type: none"> <li>• provocation to assault (section 269 of the Criminal Code)</li> <li>• prevention of repetition of insult (section 270 of the Criminal Code)</li> <li>• domestic discipline (section 280 of the Criminal Code).</li> </ul>
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**Addressing non-fatal strangulation beyond the scope of section 315A**

	<p><b>In sexual contexts</b></p> <p><b>R6</b> Section 352(1) of the Criminal Code should be amended to clarify that unlawful conduct that completely or partially restricts a person’s respiration and/or blood circulation and occurs in a sexual context without the person’s consent is an offence.</p>
	<p><b>In violent contexts</b></p> <p><b>R7</b> The definition of ‘bodily harm’ in section 1 of the Criminal Code should be amended to include complete or partial restriction of a person’s respiration and/or blood circulation.</p>
	<p><b>Sentencing</b></p> <p><b>R8</b> The Penalties and Sentences Act 1992 should be amended:</p> <p>(a) to provide that conduct capable of restricting or that does restrict a person’s respiration and/or blood circulation is an aggravating factor on sentence for all offences except an offence:</p> <ul style="list-style-type: none"> <li>• against sections 315A or 315 of the Criminal Code</li> <li>• resulting in death or grievous bodily harm.</li> </ul> <p>(b) so that a person who is convicted for an offence involving conduct capable of restricting or that does restrict a person’s respiration and/or blood circulation has that circumstance recorded as ‘non-fatal strangulation’ as part of their conviction.</p>

Reducing delays	
	<p><b>R9</b> The Criminal Code should be changed to state that an adult who pleads guilty to a section 315A offence in the Magistrates Court must be sentenced in that court unless the Magistrate deems otherwise.</p>
	<p><b>R10</b> The Queensland Government should investigate introducing a fast-track initiative in superior courts for section 315A charges, having regard to evaluations of other fast-track initiatives in Queensland.</p>

Improving evidence collection and informed decision-making	
 	<p><b>Criminal justice personnel</b></p> <p><b>R11</b> The QPS, ODPP, National Judicial College of Australia, Australian Institute of Judicial Administration, Queensland Courts and restorative justice/dispute resolution providers should regularly review and update their training, policies, guidelines and resources on non-fatal strangulation and relevant laws, practices and procedures.</p> <p>All police, prosecutors, judicial officers and restorative justice/dispute resolution facilitators who deal with non-fatal strangulation matters should be required to complete training and education on non-fatal strangulation.</p>
	<p><b>R12</b> The QPS should develop a consistent screening, documentation and response protocol for non-fatal strangulation.</p>
 	<p><b>Health professionals</b></p> <p><b>R13</b> Queensland Health, Queensland Hospital and Health Services, Queensland Primary Health Networks and the Queensland Ambulance Service, as well as relevant professional colleges, should:</p> <ul style="list-style-type: none"> <li>(a) develop, regularly review and update their training, policies, guidelines and resources on non-fatal strangulation and relevant laws, practices and procedures.</li> <li>(b) develop a best practice non-fatal strangulation assessment and documentation protocol, tailored to their operational needs.</li> </ul> <p>All Queensland emergency medicine physicians, forensic physicians and nurses, general practitioners, paramedics and emergency department nurses and social workers should be required to complete training and education on non-fatal strangulation.</p>

	<p><b>Jury directions</b></p> <p><b>R14</b> The Evidence Act 1977 should be amended to provide for jury directions on:</p> <ul style="list-style-type: none"> <li>(a) lack of physical injury to the victim-survivor — in criminal proceedings for a section 315A offence or an offence involving conduct that completely or partially restricts the victim-survivor’s respiration and/or blood circulation.</li> <li>(b) differences in the victim-survivor’s account — in criminal proceedings for a section 315A offence.</li> <li>(c) victim-survivor responses to giving evidence at trial — in criminal proceedings for a section 315A offence.</li> </ul>
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Improving victim-survivor experiences	
	<p><b>R15</b> The Queensland Government should consider funding the development, implementation and resourcing of strangulation health centres in Queensland.</p>
	<p><b>R16</b> In implementing a victim advocate service, the Queensland Government should:</p> <ul style="list-style-type: none"> <li>• ensure services are individualised, trauma-informed and culturally safe</li> <li>• ensure there are clear pathways and guidance for referral to a victim advocate</li> <li>• prioritise victim-survivors based on risk of re-traumatisation and disengagement from the criminal justice process</li> <li>• take into account the gaps or limitations in information made available to victim-survivors, complementing the work of existing services.</li> </ul>
	<p><b>R17</b> The Queensland Government should:</p> <ul style="list-style-type: none"> <li>• in relation to matters involving non-fatal strangulation, provide clarity and guidance about referrals to restorative justice, the suitability of such matters for restorative justice and the qualifications and training required for potential facilitators of restorative justice processes</li> <li>• ensure restorative justice processes are trauma-informed, culturally safe and prioritise the needs and interests of victim-survivors while also responding to the educative needs of perpetrators.</li> </ul>

## Creating a robust evidence base



**R18** The Queensland Government should:

- (a) review the scope of 'relevant relationship' as defined in the Domestic and Family Violence Protection Act 2012.
- (b) improve health and criminal justice data collection on non-fatal strangulation.
- (c) monitor the implementation of reforms recommended in this review and evaluate outcomes and impacts between three to five years after implementation.



# Key points

## Strangulation is dangerous and the risks are not well understood

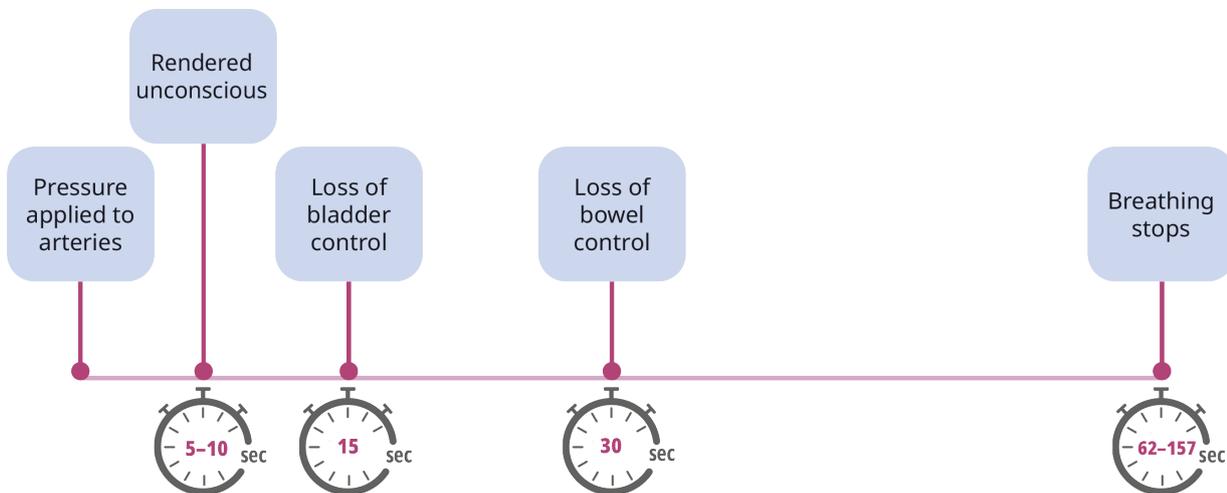
Strangulation is inherently dangerous. It can cause serious harm, including death within minutes.<sup>3</sup> It can result in a variety of short and long-term physical, neurological, cognitive and psychological consequences, even with brief or partial restriction of respiration or blood circulation, little force, or no, minor or delayed external injuries.<sup>4</sup> Research shows that about 50% of people may not have visible injuries following strangulation.<sup>5</sup>

Injuries can be delayed from days to years, can be unpredictable, and can increase in severity with repeated strangulations.<sup>6</sup> The effects of strangulation on the brain can impair a person's ability to withdraw consent.<sup>7</sup>

Despite the dangers of strangulation, we found that not many people understand its risks. There is misplaced reliance on being able to safely engage in such conduct.

“ Every individual's physiology is unique and not static; a previous strangulation incident that appeared harmless is no guarantee of future safety. This unpredictability means that individuals cannot anticipate how their body will respond to strangulation, even with prior experience.

**Red Rose Foundation, Submission 13**



## There is an added risk of future violence and death for people in certain types of relationships

In addition to its inherent dangers, there is an added risk of future violence and homicide for strangulation victim-survivors who experience DFV and/or coercion, control or domination.

Strangulation is a gendered crime and one of the most common methods men use to kill women.<sup>8</sup>

People in certain types of relationships who experience strangulation, including intimate partners and children of intimate partners, are at risk of being killed in future, whether by strangulation or another means.<sup>9</sup> Further, strangulation is a dangerous and terrorising form of coercive control — the victim-survivor's life is literally in the perpetrator's hands.<sup>10</sup>

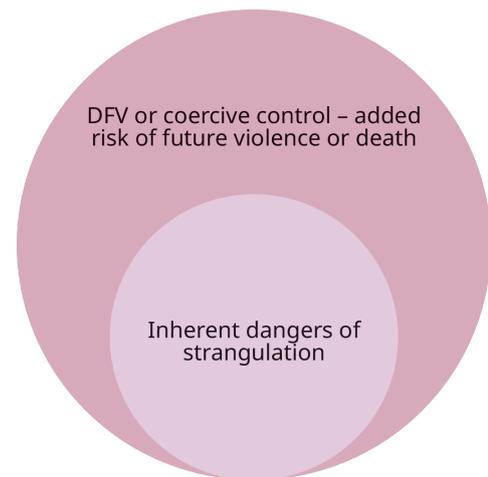
The added risk of future violence and death for people in certain types of relationships should be reflected in the law.

“ The experience of strangulation is compounded by its symbolic and literal attack on a person's sense of safety and a person's bodily autonomy.

**Victims' Commissioner, Submission 22**

“ [T]he basis of any offence of non-fatal strangulation, as a distinct offence ... should reflect the noted predictive nature of strangulation.

**Bar Association of Queensland, Submission 20**



## Criminal law reform and public education must go hand-in-hand

Criminalisation of non-fatal strangulation conduct has a role in protecting more people from the health impacts of strangulation and sending a clear message to the community about its risks. While the criminal law has an important role to play, it is not the only way to deal with the risks of strangulation.

Public education must accompany changes to the criminal law to support messaging about the dangerousness of strangulation, disrupt its increased normalisation, and prevent over-criminalisation, particularly of marginalised groups.

“

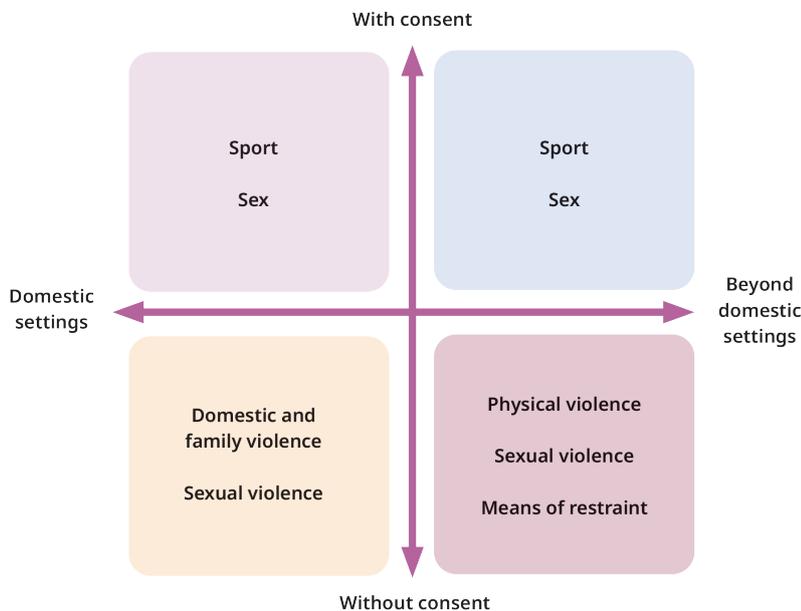
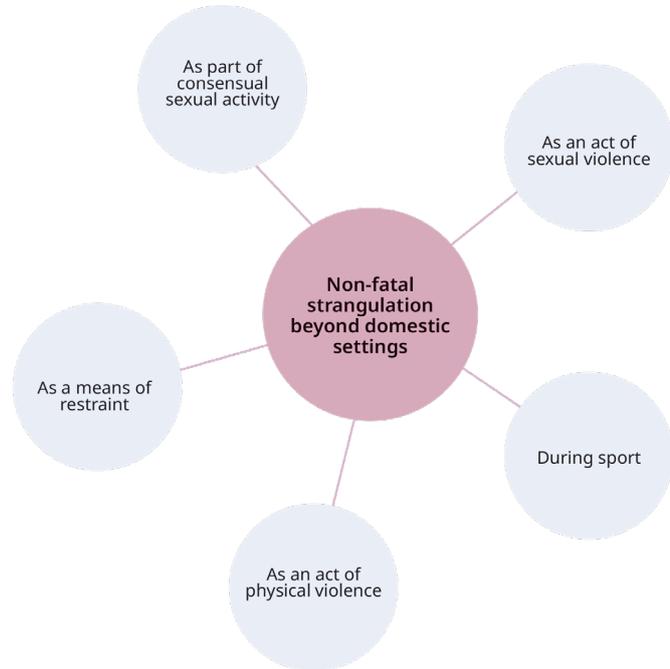
The normalisation of strangulation in young relationships and more broadly in the community ... is incredibly common and increasingly normalised through its prevalence in pornography.

**Queensland Sexual Assault Network,  
Submission 11**

# The law must respond to non-fatal strangulation that occurs in varied contexts

Non-fatal strangulation occurs in violent contexts, sexual contexts, sporting contexts and as a means of restraint. It is also used both by and against children, and in the presence of children. Strangulation is increasingly normalised in sexual contexts, particularly between young people. The situations where non-fatal strangulation could be considered reasonable or socially acceptable should be limited.

Because non-fatal strangulation occurs in varied contexts, applicable penalties and defences must respond to different considerations. The issue of consent also requires a nuanced response. Removing a person’s ability to consent to non-fatal strangulation limits their personal autonomy, but consent can be undermined where there is inequality, overt or implied pressure or expectations, and by limited understanding of the impacts of strangulation.



“ I’ve dealt with assaults with two random people and one person decided that he was going to strangle the other, it seems to be a common thing now.

**Police Officer 12**

## Systemic reforms are needed to support just and effective responses to non-fatal strangulation

About half of non-fatal strangulation charges do not result in a conviction, mostly because such charges are dismissed or withdrawn.

Many victim-survivors are reluctant to proceed with non-fatal strangulation charges and this is a key factor in discontinued or unsuccessful prosecutions. There are many reasons why victim-survivors are reluctant to proceed. Some of these reasons relate to poor experiences they had with the criminal justice and health systems, including because of:

- how they were treated by criminal justice and health professionals
- delays
- not receiving sufficient information or support
- perceived lack of accountability for perpetrators.

“ You're supposedly a 'victim' or a 'survivor' and yet the system does it to you all over again.

**Victim-survivor 9**

Further, there are barriers to prosecuting non-fatal strangulation, including because of:

- limitations in the current offence framework
- a lack of understanding about non-fatal strangulation and its impacts by criminal justice and health professionals. This has impacted evidence collection.

Systemic reforms can improve the experiences of victim-survivors and the investigation, prosecution and resolution of non-fatal strangulation matters.



# Guiding principles



### 1. CLARITY

The non-fatal strangulation offence should be clear, certain and easy to understand



### 2. EVIDENCE-BASED

The non-fatal strangulation offence should be informed by evidence, including expert knowledge and lived experience



### 3. JUSTICE

The non-fatal strangulation offence should promote just outcomes, be fit for purpose and protect human rights, including rights in criminal proceedings



### 4. DFV AND COERCIVE CONTROL

The non-fatal strangulation offence should recognise the unique position of non-fatal strangulation in DFV contexts, including its status as an indicator of future lethality and the impact of coercive control



### 5. TRAUMA-INFORMED

The non-fatal strangulation offence should promote a trauma-informed, culturally-sensitive and age-appropriate approach to investigation and prosecution



# Our approach

## What we did

10. In making our recommendations, our terms of reference asked us to have regard to:
  - the findings and recommendations of previous reports<sup>11</sup>
  - the experiences of victims and survivors, and their families
  - the views and research of relevant experts, including those with expertise in criminal law, DFV and the experiences of victims and survivors
  - recent developments, similar legislation and research in other jurisdictions
  - the compatibility of our recommendations with the Human Rights Act 2019, including balancing the rights of victim-survivors and accused persons.
11. We took a mixed methods approach to our review by:
  - exploring and considering the literature, including relevant reports
  - examining legislation and cases in Queensland, other Australian jurisdictions and overseas jurisdictions
  - conducting five original research projects
  - consulting with a diverse range of stakeholders across Queensland
  - analysing submissions.
12. We used the information we obtained to identify the review's key issues and to formulate proposals (in the [consultation paper](#)) and recommendations (in the final report) for reform.
13. [Background paper 1](#) outlined our terms of reference and guiding principles, described the current law and background to the review, and explained the review's key issues. 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.
14. Our consultation paper introduced three proposals for reform and posed eight questions about potential reforms. It invited feedback on the proposals and questions, other relevant reform options and other issues important for our review.

## Empirical research

15. During our review, we conducted five original research projects:
  - 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 assault occasioning bodily harm (domestic violence offence) charges.

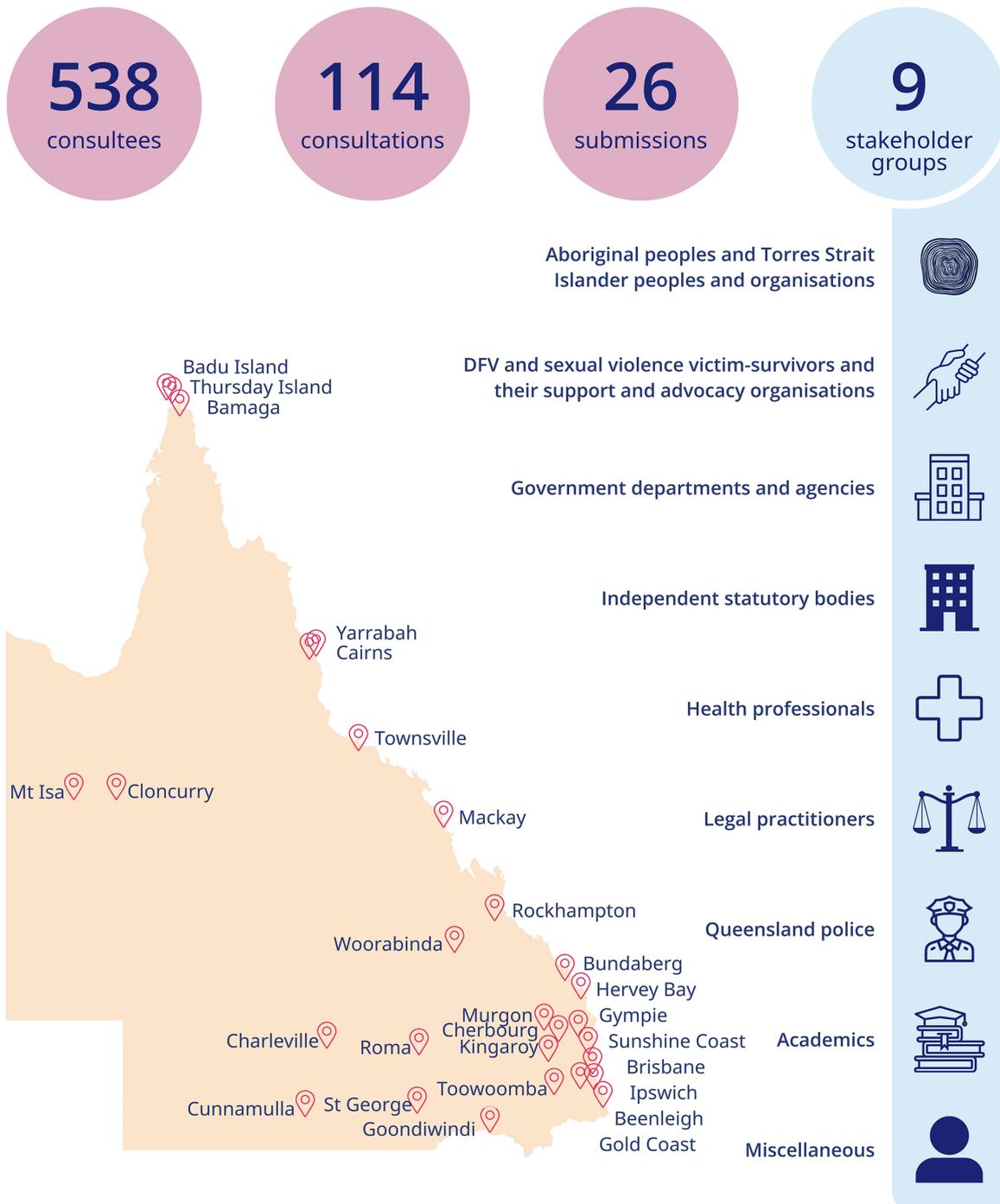
- Research project 4 — Child victim-survivors of and witnesses to non-fatal strangulation: semi-structured interviews and focus groups with police, prosecutors and services to understand the unique issues that arise in matters where children were strangulation victim-survivors or witnessed the non-fatal strangulation of another.
  - Research project 5 — Analysis of sentencing remarks: analysis of sentencing remarks for common assault and for the simpliciter form of assault occasioning bodily harm to understand the circumstances in which conduct capable of restricting or that did restrict respiration and/or blood circulation was included in those charges, and how that impacted sentencing.
16. Findings from research projects 1 and 2 were published as [research report 1](#) and [research report 2](#). Findings from research projects 3, 4 and 5 are incorporated into the final report.

## Consultations

17. Consultation with stakeholders, including diverse and disadvantaged communities, is an integral part of our law reform process. Prior to release of our consultation paper, we engaged in more than 40 preliminary consultation meetings. We also held an event to launch the review where participants were given an opportunity to contribute. Information about our preliminary consultations and launch event participants is found in Appendix D to the final report.
18. We also had 114 meetings following release of our consultation paper and spoke with 538 people. From April to June 2025, we travelled throughout the State and met with:
- strangulation victim-survivors
  - representatives from DFV, sexual violence and other community support services
  - members of representative/peak bodies, including for security, law enforcement, DFV and sexual assault services, and sex workers
  - health professionals, including representatives from Hospital and Health Services and general practitioners
  - Elders and representatives from Aboriginal organisations and Torres Strait Islander organisations
  - representatives from sporting codes and bodies
  - academics
  - law enforcement agencies
  - representatives from government bodies
  - representatives from independent statutory bodies
  - legal practitioners.
19. Of our 114 meetings, 7 were roundtables with:
- the DFV, sexual violence and community support sector
  - legal professionals
  - health professionals
  - academics
  - representatives from law enforcement and security organisations

- two groups of victim-survivors (where we were assisted by the Red Rose Foundation and the Resound group from Brisbane Domestic Violence Service).
20. We travelled as far north as Badu and Thursday Islands in the Torres Strait, as far west as Mt Isa in the North and Charleville in the South, and as far south as Goondiwindi. We travelled throughout South-East Queensland (including Brisbane, the Gold Coast, the Sunshine Coast, Ipswich and Beenleigh), the Darling Downs and South-West, Wide Bay-Burnett, Central Queensland, Mackay, North Queensland and Far North Queensland. **Figure 3** shows the locations of our consultations.

**Figure 3: Locations of our consultations throughout Queensland**



21. Appendix E to the final report lists the people and organisations we consulted with following release of our consultation paper.
22. In addition to consultations, we received 26 written submissions in response to our consultation paper, including from:
  - victim-survivors and their support and advocacy organisations
  - health professionals
  - Aboriginal peoples and Torres Strait Islander peoples and their organisations
  - academics
  - government department and agencies
  - independent statutory bodies
  - legal practitioners
  - security organisations.
23. A number of these submissions were from bodies representing the views of a significant membership base. Appendix F to the final report contains a list of submissions we received. Most submissions are published on our website.
24. We analysed stakeholders' feedback in response to the proposals and questions in our consultation paper and published our findings in [background paper 2](#). **Figure 4** provides an overview of the six overarching themes we distilled from our analysis of stakeholder feedback.

**Figure 4: Overview of feedback from stakeholders**

**Non-fatal strangulation is inherently dangerous and indicates a high risk of future violence and death in some contexts.**

- Non-fatal strangulation is always dangerous.
- Non-fatal strangulation is often used as a means of control over another person's life.
- In some contexts, particularly those involving DFV, non-fatal strangulation is a risk factor for future injury or death.
- There is less evidence about the risk of future injury and death for non-fatal strangulation beyond domestic settings. This may be due to lack of available data.

**The criminal law should treat non-fatal strangulation more seriously.**

- When used as a means of control or terror, the seriousness of non-fatal strangulation conduct should be recognised without necessarily requiring proof of any restriction of respiration and/or blood circulation.
- The ability to argue consent to non-fatal strangulation should be limited or removed to protect vulnerable persons, including those experiencing DFV or coercion, control or domination.
- Defences to non-fatal strangulation should be limited.
- Penalties for non-fatal strangulation should be increased.
- The criminal law does not appropriately deal with non-fatal strangulation that occurs in circumstances beyond the scope of the current non-fatal strangulation offence.

**Non-fatal strangulation occurs in various contexts.**

- Non-fatal strangulation occurs in violent contexts, sexual contexts, sporting contexts and as a means of restraint.
- Non-fatal strangulation is increasingly normalised in sexual contexts, particularly between young people.
- The situations where non-fatal strangulation could be considered reasonable or socially acceptable should be limited.

**The issue of consent is complex and requires a nuanced response.**

- Views about whether a person should be able to consent to non-fatal strangulation depend on the context in which the strangulation occurred.
- Removing a person's ability to consent to non-fatal strangulation limits their personal autonomy.
- Consent can be undermined where there is inequality, overt or implied pressure or expectations, and by limited understanding of the impacts of non-fatal strangulation.
- There are difficulties withdrawing consent to non-fatal strangulation.

**There is an important role for both criminal law and public education.**

- The risks of non-fatal strangulation are not adequately understood and there is misplaced reliance on being able to safely engage in such conduct.
- Criminalisation of non-fatal strangulation conduct has a role in protecting more people from the health impacts of non-fatal strangulation and sending a clear message to the community about its risks.
- Public education must accompany changes to the criminal law to support messaging about the dangerousness of non-fatal strangulation, to disrupt its increased normalisation and to prevent over-criminalisation, particularly of marginalised groups.

**Systemic changes are necessary to support just and effective criminal justice responses to non-fatal strangulation.**

- There are barriers to prosecuting non-fatal strangulation because of inadequacies in evidence collection and a lack of understanding about non-fatal strangulation by criminal justice personnel and health professionals.
- Victim-survivors have poor experiences of the criminal justice process, including because of delays and not receiving enough information and support.
- Systemic changes must accompany reforms to the criminal law.



# Analysis

25. This section provides a brief overview of the context and analysis underpinning our recommendations. Recommendations are discussed thematically.
26. In our final report, we:
  - provide a detailed explanation of each recommendation
  - explore the case for reform and explain why alternatives were not recommended
  - discuss human rights considerations, impacts of reform and implementation considerations.

## Education

27. The final report includes two chapters that discuss the need for further education and training on strangulation. Chapter 1 considers education for the public, while Chapter 6 considers education for criminal justice personnel and health professionals, as well as jury directions to improve jurors' understanding of non-fatal strangulation. There was broad support from stakeholders for further education for the community about strangulation and its associated risks and dangers.
28. We found that people in the community may not understand the impacts of strangulation or be aware of its dangers, including believing it can be done safely in, for example, sexual and sporting contexts. We were told that strangulation during sex has become normalised, particularly among young people.
29. We also found that particular groups who deal with non-fatal strangulation matters, including criminal justice and health professionals, need further training on strangulation. Lack of awareness about strangulation and its effects can impact evidence collection, decision-making and how victim-survivors are treated by criminal justice and health professionals.

“ [S]takeholders in key agencies including law enforcement, GPs, health practitioners, legal practitioners, community services practitioners require improved universal knowledge and capability to identify and respond to non-lethal strangulation.

**Domestic Violence Action Centre, Submission 16**

30. To address these gaps, we make four recommendations for reform (recommendations 1, 11, 13–14).

### Public education

31. Recommendation 1 is that the Queensland Government develop, implement and fund a comprehensive public education and training program about the risks and dangers associated with strangulation, including during sex, and the reforms arising from this review. This program should incorporate targeted community-specific campaigns for children and young people, Aboriginal peoples and

“ I generally agree that education about the potential effects of [non-fatal strangulation] should be provided across the community... Information about the dangers of sexual strangulation should also be targeted towards young people.

**Professor Heather Douglas, Submission 6**

Torres Strait Islander peoples, people from culturally and linguistically diverse communities, people from LGBTIQ+ communities and people with disability.

32. Recommendation 14 aims to address misconceptions the public holds about non-fatal strangulation and its impacts, both physical and psychological, to ensure their decision-making is properly informed when they act as jurors. It recommends three jury directions be introduced into the Evidence Act 1977 on:

(a) lack of physical injury to the victim-survivor — that people who experience restriction of respiration and/or blood circulation may not be physically injured and the absence of injury does not, of itself, mean that a person is not telling the truth.

“ My clients often say, ‘well ... how can they prove that ... If I'd done that, she would have marks around her neck and you know, there's nothing wrong with her’.

**Defence Lawyer 3**

(b) differences in the victim-survivor's account — that people may not remember details of a non-fatal strangulation offence, trauma may affect people differently (including how they recall events), and it is common for there to be differences in accounts of a non-fatal strangulation offence.

(c) victim-survivor responses to giving evidence at trial — that 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 non-fatal strangulation offence, but others may not.

“ You win and lose ... in these choking/strangulation trials on credit, rather than on the prosecution not being able to satisfy an element of the charge.

**Counsel 1**

33. We recommend all three jury directions apply in criminal proceedings for the amended non-fatal strangulation offence. We also recommend jury direction (a) apply in criminal proceedings for an offence involving conduct that completely or partially restricts the victim-survivor's respiration and/or blood circulation.

## Training for criminal justice personnel

34. Recommendation 11 is that all police, prosecutors, judicial officers and restorative justice/dispute resolution facilitators who deal with non-fatal strangulation matters be required to complete training and education on non-fatal strangulation. To facilitate this, the QPS, ODPP, National Judicial College of Australia, Australian Institute of Judicial Administration, Queensland Courts and restorative justice/dispute resolution providers should regularly review and update their training, policies, guidelines and resources on non-fatal strangulation and relevant laws, practices and procedures.

“ I thought they were supposed to help me. They let me down.

**Victim-survivor 7**

## Training for health professionals

35. Recommendation 13 is that all Queensland emergency medicine physicians, forensic physicians and nurses, general practitioners, paramedics and emergency department nurses and social workers be required to complete training and education on non-fatal strangulation. To facilitate this, Queensland Health, Queensland Hospital and Health Services, Queensland Primary Health Networks and the Queensland Ambulance Service, as well as relevant professional colleges, should develop, regularly review and update their training, policies, guidelines and resources on non-fatal strangulation and relevant laws, practices and procedures.
36. Relevant professional colleges include, but are not limited to, the Australasian College for Emergency Medicine, Royal College of Pathologists of Australia (Faculty of Clinical Forensic Medicine), Royal Australasian College of Physicians, Royal Australian College of General Practitioners, Australian College of Rural and Remote Medicine, Australasian College of Paramedicine, and the Australian College of Nursing.

“ I mentioned that I am aware of possible strangulation consequences that can occur later on. The doctor said he has never heard of such a thing.

**Victim-survivor 15**

## Enhancing the operation of section 315A

37. The added risk of future violence and death for people in certain types of relationships is an important rationale justifying the retention of a standalone non-fatal strangulation offence that applies to domestic settings and people in relationships involving coercion, control or domination.
38. However, we found that the current non-fatal strangulation offence framework creates several barriers to investigating, charging and prosecuting non-fatal strangulation in such settings, and holding perpetrators accountable. Chapters 2 and 3 of the final report consider how to address these barriers. Chapter 2 discusses reforms to the scope of the offence (recommendations 2–3) while Chapter 3 discusses lawfulness, defences and excuses (recommendations 2(b), 2(d), 4–5).

## Scope of section 315A

39. Recommendations 2 and 3 aim to address the:
- limited range of relationships to which the non-fatal strangulation offence applies
  - difficulties proving restriction of respiration and/or blood circulation
  - lack of clarity about what ‘chokes’, ‘suffocates’ and ‘strangles’ mean
  - uncertainties about how consent is defined and when a person should be able to consent to non-fatal strangulation
  - imposition of sentences that do not reflect the gravity of strangulation.

“ [E]ven though it was caught on CCTV, without her being able to particularise that impediment to her breath, we just had to go with common assault.

**Police Officer 5**

40. Specifically, recommendation 2 is that the non-fatal strangulation offence should be changed to:
- also apply to people in a relationship involving coercion, control or domination (recommendation 2(a)).
  - make it an offence with a maximum penalty of 7 years imprisonment to unlawfully engage in conduct capable of restricting another person's respiration and/or blood circulation (recommendation 2(b)).
  - include a legislative note which explains that conduct capable of restricting a person's respiration and/or blood circulation could include:
    - applying pressure to the person's neck
    - covering the person's nose or mouth
    - obstructing or interfering with the person's respiratory system or accessory systems of respiration (recommendation 2(c)).
  - modify the way consent is relevant (recommendation 2(d)), discussed further below at [42].
41. Recommendation 3 is that the non-fatal strangulation offence should include an aggravated form with a maximum penalty of 14 years imprisonment if a person completely or partially restricts the other person's respiration and/or blood circulation. **Figure 5** outlines how recommendations 2 and 3, as well as recommendation 6–8 (discussed below from [44]), fit together.

“ We definitely get files in where people have been choked, but it's not a domestic setting so they're charged with common assault or [assault occasioning bodily harm] ... for what is really serious conduct in itself but it's just not [DFV], there's no charge for it.

**Prosecutor 1**

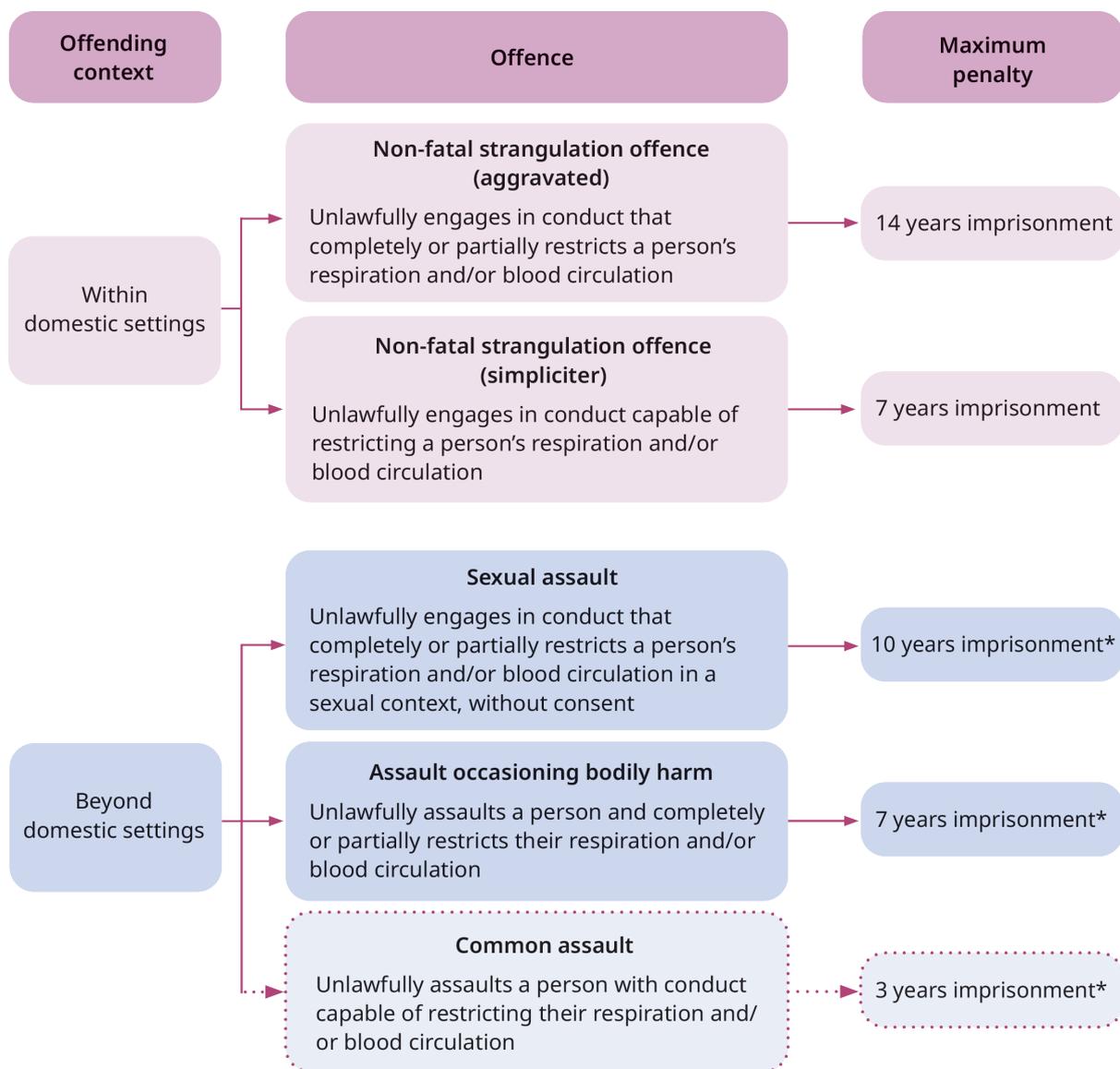
## Lawfulness, defences and excuses

42. To ensure the amended non-fatal strangulation offence does not result in over-criminalisation, we recommend:
- retaining the 'unlawfulness' element (recommendation 2(b)).
  - including a defence of affirmative consent if the conduct constituting the offence occurs in a sexual context. A rebuttable presumption should also be included in s 348AA of the Criminal Code (Qld) that applies to all sexual offences and states that complete or partial restriction of the person's respiration and/or blood circulation is evidence of lack of consent (recommendation 2(d)).
  - introducing a defence to apply in sporting contexts (recommendation 4).
43. Further, we recommend that the amended non-fatal strangulation offence expressly state that the defences of provocation to assault, prevention of repetition of insult and domestic discipline do not apply to the offence (recommendation 5). Like recommendations 2 and 3, this recommendation also aims to address some of the barriers to investigating, charging and prosecuting non-fatal strangulation in domestic settings.

## Responding better to non-fatal strangulation beyond the scope of section 315A

44. We think it is important the non-fatal strangulation offence be limited to domestic settings and relationships characterised by coercion, control or domination. However, we also consider that the criminal law needs to better reflect and respond to the inherent dangers of strangulation that occurs beyond the scope of the amended non-fatal strangulation offence, in both sexual and non-sexual contexts. Chapter 4 of the final report includes three recommendations (recommendations 6–8) to improve the response of the criminal law in such situations. **Figure 5** shows how recommendations 2–3 and 6–8 fit together.

**Figure 5: How recommendations 2–3 and 6–8 fit together**



\* Aggravating factor applies on sentence if the conduct is capable of restricting or does restrict respiration and/or blood circulation

## Sexual contexts

45. Non-fatal strangulation is increasingly used in sexual contexts both consensually and non-consensually, that is, as part of sexual violence.<sup>12</sup> Despite this, we found that non-fatal strangulation used in a sexual context:

- does not usually constitute the sole basis for a charge of sexual assault in Queensland
- is usually alleged as part of the facts of sexual offending, which may include, for example, sexual assault or rape.

46. This approach has limitations, including that:

- where non-fatal strangulation is used as a sexual act itself, rather than during other sexual activities, it will likely not be charged as sexual assault
- the inherent dangerousness of strangulation, regardless of the context in which it occurs, is not recognised if such conduct is not charged as a separate offence.

47. Recommendation 6 is that s 352(1) of the Criminal Code (Qld) be amended to clarify that unlawful conduct which completely or partially restricts a person's respiration and/or blood circulation and occurs in a sexual context without the person's consent is an offence of sexual assault.

“ [M]ore often than not, our clients disclose [non-fatal strangulation] in the lead up to non-consensual sexual assaults.

**QIFVLS, Submission 21**

## Violent contexts

48. In violent contexts beyond the scope of the amended non-fatal strangulation offence, strangulation conduct can be charged as another offence in the Criminal Code (Qld), including offences that require:

- some level of harm, such as assault occasioning bodily harm<sup>13</sup> or grievous bodily harm<sup>14</sup>
- specific intent for a particular result, such as to commit an indictable offence,<sup>15</sup> to cause grievous bodily harm and other malicious acts,<sup>16</sup> or to unlawfully kill.<sup>17</sup>

49. However, there can be challenges proving some of these offences because of difficulties proving either intent, or harm when there are lack of injuries following strangulation. Common assault is sometimes charged when there are no visible injuries. However, we consider common assault, which has a maximum penalty of 3 years imprisonment, does not reflect the seriousness of offending involving non-fatal strangulation conduct.

“ An aspect of strangulation unlike other forms of physical violence such as punching or kicking, is that it frequently leaves little in the way of observable injury so that the seriousness of the assault can be underestimated.

**R v Allen [2020] NICA 25**

50. To address these limitations, we recommend that the definition of 'bodily harm' in s 1 of the Criminal Code (Qld) be amended to include complete or partial restriction of a person's respiration and/or blood circulation (recommendation 7). This would allow such conduct to be charged as assault occasioning bodily harm, which has a maximum penalty of 7 years imprisonment, even if the victim-survivor has no visible injuries.

## Sentencing

51. Recommendation 8(a) is that the Penalties and Sentences Act 1992 be amended to provide that conduct capable of restricting or that does restrict a person's respiration and/or blood circulation is an aggravating factor on sentence for all offences except an offence:
  - against ss 315A and 315 of the Criminal Code (Qld)
  - resulting in death or grievous bodily harm.
52. This recommendation aims to ensure the inherent dangerousness of non-fatal strangulation is reflected in the sentence given where strangulation conduct is alleged as part of the facts of offences.
53. Recommendation 8(b) is that the Penalties and Sentences Act 1992 be amended so that a person who is convicted of an offence involving conduct capable of restricting or that does restrict a person's respiration and/or blood circulation has that circumstance recorded as non-fatal strangulation as part of their conviction.
54. This recommendation aims to assist police, other supporting agencies and judicial officers to more easily identify perpetrators who use non-fatal strangulation conduct in contexts beyond the scope of the amended non-fatal strangulation offence. It will also act as a flag for those agencies where a decision has been made to proceed with a charge other than the amended offence.

## Addressing system issues

55. The final report includes three chapters that discuss reforms to address system issues by:
  - reducing delays (Chapter 5)
  - improving evidence collection and informed decision-making (Chapter 6)
  - improving victim-survivor experiences (Chapter 7).

## Reducing delays

56. We found that from July 2023 to June 2024, it took 14.5 months on average to finalise a non-fatal strangulation charge. Charges that proceeded to trial in superior courts took longer to finalise — more than 17.5 months on average. Average finalisation times for non-fatal strangulation charges were significantly longer than average finalisation times for assault occasioning bodily harm (domestic violence offence) charges, in both magistrates-level courts (the Magistrates Court and Childrens Court (Magistrate)) and superior courts (the District Court, Supreme Court and Childrens Court of Queensland).
57. Delays to finalisation can impact:
  - victim-survivors, by increasing the risk of re-traumatisation and the likelihood that victim-survivors will withdraw their support for the case
  - perpetrators, by increasing the time spent on remand, rather than serving their sentence, which impacts their ability to access and engage with prison-based rehabilitation programs.
58. Chapter 5 of the final report includes two recommendations (recommendations 9–10) aimed at reducing delays in non-fatal strangulation matters.

“ [The 3 year wait for trial] was just tortuous. It was like being assaulted all over again.

**Victim-survivor 9**

59. Recommendation 9 is that the Criminal Code (Qld) be amended to state that an adult who pleads guilty to a s 315A offence in the Magistrates Court must be sentenced in that court. This amendment would still be subject to the Magistrate’s ability to not deal with the charge if they consider the perpetrator may not be adequately punished on summary conviction.
60. If recommendation 9 is implemented, some non-fatal strangulation charges would still need to proceed to superior courts for finalisation. To address delays experienced in superior courts, recommendation 10 is that the Queensland Government investigate introducing a fast-track initiative in superior courts for s 315A charges, having regard to evaluations of other fast-track initiatives in Queensland. A fast-track process could be implemented via a specialist court, or a specialist list in a generalist court.

“ Why can’t there be a better system?

Victim-survivor 6

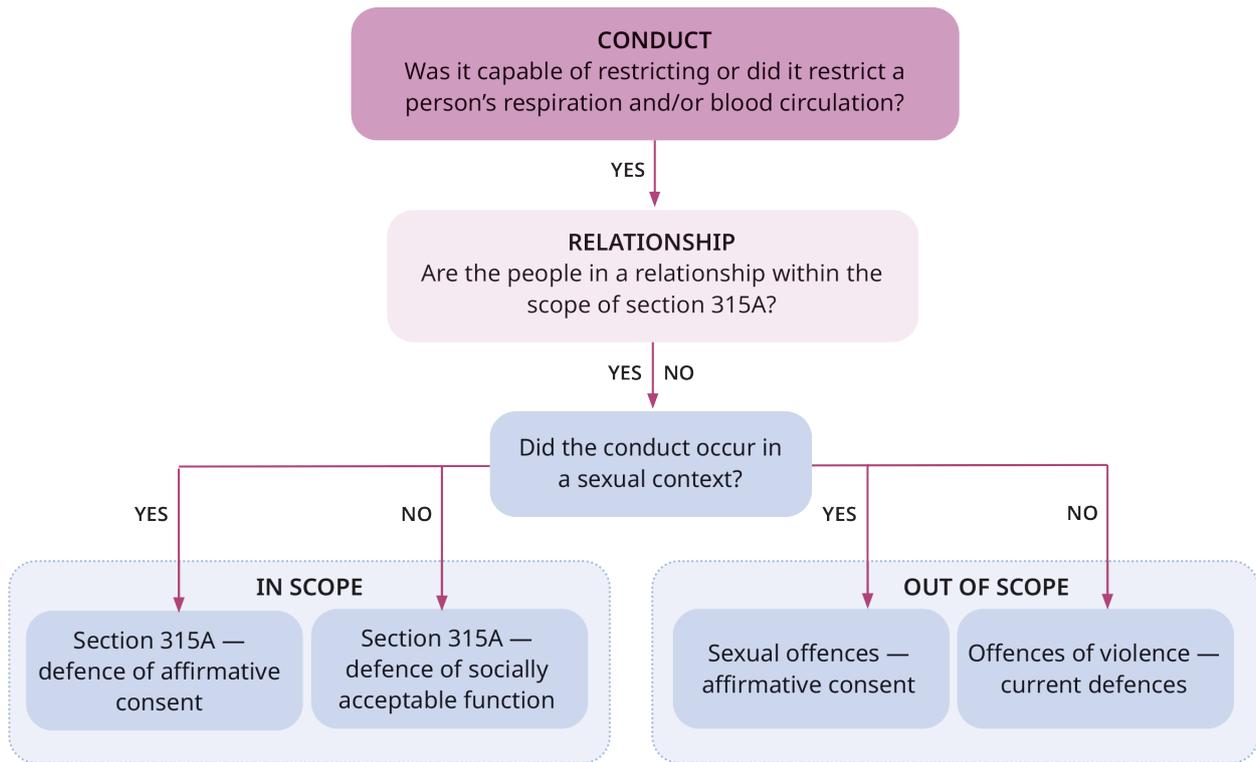
## Improving evidence collection and informed decision-making

61. As discussed above, lack of understanding of strangulation and its effects can impact decisions that criminal justice personnel, health professionals and jurors make. It can also impact evidence that criminal justice and health professionals collect. We found that evidence collected by police and health professionals in non-fatal strangulation matters is not always adequate.
62. Chapter 6 includes four recommendations (recommendations 11–14) that aim to improve evidence collection and informed decision-making in non-fatal strangulation matters. These include recommendations about:
- training for criminal justice personnel and health professionals (recommendations 11 and 13) — discussed above at [34]–[36]
  - introduction of jury directions (recommendation 14) — discussed above from [32]
  - development of non-fatal strangulation protocols for police and health professionals (recommendations 12–13).
63. Recommendation 12 is that the QPS develop a consistent screening, documentation and response protocol for non-fatal strangulation. **Figure 6** shows a decision tree for police investigating matters involving non-fatal strangulation. This could be incorporated into QPS training, guidelines or resources, including the protocol.
64. Recommendation 13 is that Queensland Health, Queensland Hospital and Health Services, Queensland Primary Health Networks and the Queensland Ambulance Service, as well as relevant professional colleges (listed above at [36]), develop a best practice non-fatal strangulation assessment and documentation protocol, tailored to their operational needs.

“ Systematic training and protocols are needed for police and health professionals to ensure thorough documentation and the use of medical and forensic evidence in all suspected strangulation cases.

Red Rose Foundation, Submission 13

**Figure 6: Decision tree for police investigating matters involving non-fatal strangulation**



## Improving victim-survivor experiences

65. A key issue we found in our review was that strangulation victim-survivors had poor experiences with the criminal justice system, including with police, lawyers and the court, as well as within the health system.
66. We were told that the criminal justice process can be re-traumatising, disempowering and not hold perpetrators accountable. We were also told that victim-survivors can have difficulties accessing health care and that health responses can be inadequate. Further, we were told that victim-survivors are not provided with enough information about non-fatal strangulation or the criminal justice process and that this can create confusion.
67. Chapter 7 of the final report includes three recommendations (recommendations 15–17) that aim to improve victim-survivor experiences of the health and justice systems following strangulation.
68. Recommendation 15 is that the Queensland Government consider funding the development, implementation and resourcing of strangulation health centres in Queensland. Strangulation health centres would be accessible, trauma-informed, culturally safe, multidisciplinary and integrated health services that ensure:

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

**Victims’ Commissioner, Submission 22**

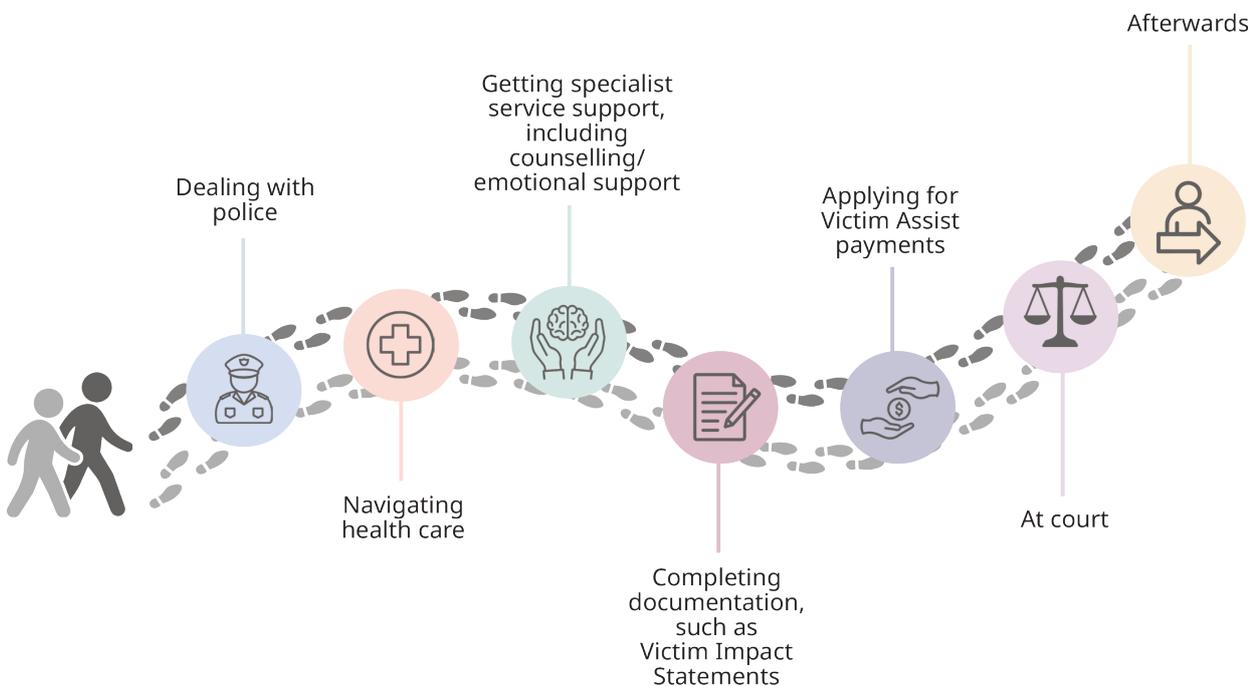
- victim-survivors receive timely and adequate acute and ongoing healthcare, and information on non-fatal strangulation and its impacts
- robust evidence is collected and documented and staff are specially trained in providing expert evidence for criminal justice system purposes

- victim-survivors have access to social workers and can easily access information on and be referred to other services.
69. Strangulation health centres may also:
- ensure a holistic approach to training and education is taken across systems in Queensland by working with relevant bodies to develop, implement and regularly review training, policies, guidelines and resources on non-fatal strangulation
  - conduct research on non-fatal strangulation, including being involved in monitoring and evaluation of relevant reforms that arise from this review.
70. Recommendation 16 provides guidance to the Queensland Government regarding the establishment of a victim advocate service to ensure strangulation victim-survivors are allocated appropriate resources and consideration when funding, developing and implementing the victim advocate service. It recommends that, in implementing a victim advocate service, the Queensland Government should:
- ensure services are individualised, trauma-informed and culturally safe
  - ensure there are clear pathways and guidance for referral to a victim advocate
  - prioritise victim-survivors based on risk of re-traumatisation and disengagement from the criminal justice process
  - take into account the gaps or limitations in information made available to victim-survivors, complementing the work of existing services.

“ I have never felt so alone in the fight for the right thing.

**Victim-survivor 19**

**Figure 7: The role of victim advocates**



“ What is happening in the police station system? How did they do with my case? It’s the total confusion for me. I just feel from the beginning to the end, they didn’t make me feel that I was even a part of it, that they probably need[ed] to notify me, or maybe give me more information.

**Victim-survivor 7**

71. Victim advocates would not replace existing supports. Rather, they would empower victim-survivors to access the right services to meet their needs at the right time throughout the criminal justice process (see **Figure 7**).
72. Recommendation 17 aims to ensure an appropriate framework exists to protect strangulation victim-survivors who wish to engage in restorative justice. Restorative justice processes in Queensland usually involve trained facilitators supporting victims of crime to meet with those who have perpetrated harm against them. During the process, perpetrators are encouraged to take responsibility for their actions and take steps towards repairing any harm. Restorative justice may be a potential alternative or complementary mechanism to the criminal justice process that may assist perpetrators to understand wrongdoing.
73. Recommendation 17 is that the Queensland Government should:
- in relation to matters involving non-fatal strangulation, provide clarity and guidance about referrals to restorative justice, the suitability of such matters for restorative justice, and the qualifications and training required for potential facilitators of restorative justice processes
  - ensure restorative justice processes are trauma-informed, culturally safe and prioritise the needs and interests of victim-survivors while also responding to the educative needs of perpetrators.

“ I requested that police withdraw a criminal complaint for non-fatal strangulation relating to my ex-partner. ... My aim was for my ex-partner to understand what he did was wrong — not necessarily impose a jail sentence.

**Name withheld, Submission 1**

## Creating a robust evidence base

74. Chapter 7 discusses one recommendation (recommendation 18) directed at data collection, monitoring and review with the aim of improving the evidence base on non-fatal strangulation in Queensland.
75. During this review, stakeholders raised concerns about the current scope of ‘domestic relationship’, as used in the non-fatal strangulation offence. Domestic relationship is defined to mean ‘relevant relationship’ under the Domestic and Family Violence Protection Act 2012. These terms are used in contexts (criminal and civil) beyond the non-fatal strangulation offence.
76. Some stakeholders considered these terms are too broad, particularly as they apply to Aboriginal peoples and Torres Strait Islander peoples, and peoples from culturally and linguistically diverse communities, which could lead to over-criminalisation of certain cohorts. However, others were concerned that the terms are too narrow and do not adequately apply to certain modern relationships, such as dating relationships, casual relationships and ‘situationships’.

“ The status quo does not reflect the modern world where, for example, dating apps are extensively used for casual encounters that do not meet the definition of a domestic relationship.

**North Queensland Women’s Legal Service, Submission 7**

77. To explore these concerns further, recommendation 18(a) is that the Queensland Government review the scope of relevant relationship as defined in the Domestic and Family Violence Protection Act 2012.
78. We also found there is a lack of health and criminal justice data on non-fatal strangulation in Queensland and were told by stakeholders about the limitations of existing record management systems. Therefore, recommendation 18(b) is that the Queensland Government improve health and criminal justice data collection on non-fatal strangulation.
79. Finally, we emphasise the critical importance of monitoring and evaluation to enable the Queensland Government and stakeholders to understand what changes have occurred as a result of reforms following this review, what is and is not working, and whether intended outcomes are achieved. To that end, recommendation 18(c) is that the Queensland Government monitor the implementation of reforms recommended in this review and evaluate outcomes and impacts between three to five years after implementation. The evidence base generated through implementation of recommendation 18(b) will be crucial for such an evaluation.



# Appendix A

## Terms of Reference

### A review of the offence of Choking, suffocation or strangulation in a domestic setting (Criminal Code, section 315A)

#### Background

The offence of 'Choking, suffocation or strangulation in a domestic setting' in section 315A of the Criminal Code was enacted by the Criminal Law (Domestic Violence) Amendment Act 2016. It criminalised domestic non-fatal strangulation, giving effect to Recommendation 120 of the Special Taskforce on Domestic and Family Violence Report, Not Now, Not Ever: Putting an End to Domestic Violence in Queensland (Not Now, Not Ever Report),

The offence prohibits the unlawful choking, suffocation or strangulation of a person, without their consent, where the perpetrator is in a domestic relationship with that other person, being a relevant relationship under section 13 of the Domestic and Family Violence Protection Act 2012 (DFVPA), or where that conduct is associated domestic violence under the DFVPA. An assault is not an element of the offence. It carries a maximum penalty of seven years imprisonment and charges against adults must proceed on indictment, though children may elect for summary disposition under the Youth Justice Act 1992.

These terms have received judicial consideration, most notably in the case of *R v HBZ* (2020) 4 QR 171 which concerned the correctness of a jury direction that 'choked' meant 'to hinder or stop the breathing of a person'. The Court of Appeal there determined that 'chokes' in section 315A refers to 'the act of the perpetrator that hinders or restricts the breathing of the victim and does not require proof that breathing was completely stopped', and observing that the Not Now, Not Ever Report used the words 'choke', 'suffocate' and 'strangle' interchangeably.

Following *HBZ*, some concern has been raised about whether the offence extends to compression of a person's neck that does not hinder breathing but does restrict or cut off blood flow. This issue is illustrated by the recent case of *R v WCA* [2023] QCA 265 where a convicted man argued on appeal that he had applied a chokehold designed to cut off circulation in a person's neck but not their breathing. The appeal was dismissed on the basis that there was evidence of restricted breathing and so did not further consider the scope of the offence.

Other potential issues have also been raised in recent years concerning the offence. The appropriateness of the applicable penalties has been raised by some stakeholders, as have concerns that the element requiring the relevant act be without the victim's consent may present barriers to prosecution, as proof of this element may be complicated by the relationships characterised by violence and coercive control in which these offences tend to occur. Relevant research has also raised concern about delays and the overall length of prosecutions proceedings presenting a barrier to complainants remaining engaged in the process and has raised the question of whether conduct of this nature should be specifically criminalised in contexts beyond domestic violence.

#### Terms of Reference

1. I, YVETTE MAREE D'ATH, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence (Attorney-General), refer to the Queensland Law Reform Commission (the Commission) pursuant to section 10 of the Law Reform Commission Act 1968 for review and investigation, the structure and operation of the offence of 'Choking, suffocation or strangulation in a domestic setting' under Criminal Code, section 315A (strangulation offence).

## Scope

2. The Commission is asked to examine the scope, structure and interpretation of the strangulation offence, as well as any procedural rules and practices applicable to proceedings for the strangulation offence.
3. The Commission is asked to make recommendations on:
  - (a) whether the terms 'chokes', 'strangles' and 'suffocates', as applicable to the strangulation offence, should be defined either generally or for the specific purposes of the strangulation offence, and if so in what way;
  - (b) whether the requirement that the choking, strangulation or suffocation be 'without the other person's consent' in the strangulation offence should be removed or amended,
  - (c) whether the strangulation offence should be applicable to conduct that is not:
    - (i) committed in circumstances where the perpetrator is in a domestic relationship with the victim; or ii, associated domestic violence under the Domestic and Family Violence Protection Act 2012;
    - (ii) whether the maximum penalty of seven years imprisonment for the offence appropriately reflects the gravity of the prohibited conduct;
  - (d) whether, and, if so, in what circumstances, the strangulation offence should be able to be subject to summary disposition before the Magistrates Court; and
  - (e) any other matters the Commission considers relevant having regard to the issues relating to the referral,
4. As the Queensland Sentencing and Advisory Council has previously reviewed the strangulation offence in the context of the Serious Violence Offence Scheme, the Commission is not asked to consider whether the strangulation offence should be added to Schedule I of the Penalties and Sentences Act 1992 as a 'serious violent offence'.
5. In making its recommendations, the Commission should have regard to:
  - (a) the original findings and recommendations of the Special Taskforce on Domestic and Family Violence;
  - (b) all relevant findings and recommendations of the independent Women's Safety and Justice Taskforce;
  - (c) the relevant findings and recommendations of the Queensland Audit Office: Keeping people safe from domestic and family violence, Report 5: 2022-23;
  - (d) the experiences of victims and survivors, and their families, in the criminal justice system;
  - (e) 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;
  - (f) recent developments, similar legislation including recent reforms, and research in other Australian and international jurisdictions;
  - (g) the compatibility of the recommendations with the Human Rights Act 2019
  - (h) (including balancing the rights of victims and accused persons); and
  - (i) any other matters that the Commission considers relevant having regard to the issues relating to the referral.
6. In conducting its review, the Commission should engage experts with specialist expertise in DFV and the impacts of criminal conduct on victims and survivors.

## **Consultation**

The Commission shall consult with:

- (a) legal stakeholders;
- (b) people who have experienced DFV or who have been the victim of other criminal conduct, and relevant bodies that work with or represent victims and survivors, or the family of victims, of DFV and other offences;
- (c) Aboriginal and Torres Strait Islander stakeholders;
- (d) the public generally;
- (e) any group or individual, in or outside Queensland, the Commission considers relevant having regard to the issues relating to the referral.

## **Timeframe**

The Commission is to provide its final report, including any information required to give effect to its recommendations, to the Attorney-General by 30 September 2025.

Dated the 5 September 2024

## **YVETTE D'ATH MP**

Attorney-General and Minister for Justice

Minister for the Prevention of Domestic and Family Violence

## References

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  - 11 Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Report, February 2015); Women's Safety and Justice Taskforce, *Hear Her Voice - Report One: Addressing Coercive Control and Domestic and Family Violence in Queensland* (Report, 2021); Women's Safety and Justice Taskforce, *Hear Her Voice - Report Two: Women and Girls' Experiences across the Criminal Justice System* (Report, 2022); Queensland Audit Office, *Keeping People Safe from Domestic and Family Violence* (Performance Audit Report No 5, 10 November 2022).
  - 12 Queensland Law Reform Commission, *Non-Fatal Strangulation: Section 315A Review - Our Terms of Reference* (Background Paper No 1, November 2024) 17–18.
  - 13 Criminal Code Act 1899 (Qld) sch1, s 339(1) ('Criminal Code (Qld)').
  - 14 Criminal Code (Qld) s 320.
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  - 16 Criminal Code (Qld) s 317.
  - 17 Criminal Code (Qld) s 306.





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