

23 June 2025

Our ref: [BC:CrLc]

Ms Fleur Kingham
Queensland Law Reform Commission
Level 30, 400 George Street
Brisbane QLD 4000

By email: [REDACTED]

Dear Ms Kingham,

Non-fatal strangulation: Section 315A review

The Queensland Law Society (the **Society**) thanks the Queensland Law Reform Commission (the **Commission**) for the opportunity to provide a submission to its review of the non-strangulation offence. Our response to the proposals and questions proposed in the Consultation Paper are set out below with the assistance of the Society's Criminal Law Committee.

I also take this opportunity to commend the Commission for the significant work undertaken as part of this review and the way in which the Commission has consulted with key stakeholders and communities. This thoughtful process has led to a comprehensive Consultation Paper.

The Society supports the strong stand taken in relation to domestic violence and is eager to contribute to this review. Many of the Society's members are involved in addressing the consequences of domestic violence on a daily basis; addressing these issues is also a priority for the Society. The Society recognises the necessity and importance of reviewing the operation and effectiveness of the offence and subsequent contemplation of legislative reform.

The Society has a long-standing commitment to evidence-based policy, and it is the Society's view the response to domestic violence should also be based on all the available evidence. Whilst the Society acknowledges domestic violence is a particularly heinous crime and the perpetrators of domestic violence should be subject to appropriate punishment, it is imperative any response to domestic violence also include preventative and rehabilitative measures. As a matter of logic, it is preferable to prevent domestic violence before it occurs, rather than levy punishment after the fact.

The Society has considered the Commissions' Consultation Paper, *A holistic review of the non-fatal strangulation offence*. The Society has reservations at this time as to the enactment of three new offences to replace current section 315A where there are significant difficulties surrounding how such offences should be constructed or defined.

Reservations held by the Society about legislating three new offences relate to adequacy of training and resources, police responses and community awareness as contributing factors to the effectiveness of the operation of existing 315A offence. The Society's Criminal Law Committee has the following comments to put forward for consideration.

PROPOSAL 1

Section 315A should be repealed and replaced with three new offences.

- **Offence 1: unlawfully doing particular conduct that restricts respiration and/or blood circulation *in the context of a domestic setting*. This offence would prescribe a maximum penalty of 14 years' imprisonment.**
- **(subsidiary) Offence 2: unlawfully doing particular conduct *in the context of a domestic setting*. This offence would prescribe a maximum penalty of 7 years' imprisonment.**
- **Offence 3: unlawfully doing particular conduct that restricts respiration and/or blood circulation. This offence would prescribe a maximum penalty of 10 years' imprisonment.**

We note section 315A is enlivened when a person chokes, suffocates or strangles another person in a domestic setting. The maximum penalty is seven years imprisonment.

The Society does not support the creation of three new offences. The Society is concerned that proposal 1 might further complicate the offence and lead to further prosecutorial challenges. In addition, in our view, any perceived inadequate criminal justice response to offending of this nature is not necessarily caused by an absence of an appropriate or available offence.

As highlighted in the Commission's Paper, sufficient evidence of strangulation is an important part of prosecutions, and it is well-established that strangulation can leave limited evidence. As such, the Society is of the view that further education and training in relation to the investigation and prosecution of these offences will enhance the understanding of the those tasked with identifying, charging and prosecuting this type of offending, and thereby address any perceived inadequacy with the current criminal justice response.

Issue: Scope

One of the central terms of reference for this review is whether section 315A should be expanded beyond domestic settings to capture non-domestic offending.

As clearly set out in the Paper, this section was introduced based on strong evidence linking strangulation within intimate relationships to increased homicide risk. It is important to assess how frequently non-domestic strangulation offences occur and in what contexts (e.g. assaults, following online dating interactions, organised crime violence). We acknowledge there are proponents in support of expanding the scope of the offence beyond domestic settings, indicating strong recognition that strangulation can be highly dangerous regardless of relational context.

However, the Society's position is that there is currently insufficient evidence to support expanding the scope of the existing 315A offence. If expanded, careful consideration should be given to legislative definitions to ensure clarity around relational dynamics and intent. As stated at the outset, the Society is also not supported of a three-tiered alternative offence approach.

Issue: Conduct

The Society supports the retention of the current scope of conduct captured in the extant offence that applies in domestic settings and requires proof of some restriction of breath.

Issue: Consent

Currently, section 315A requires an absence of consent. At present, the Society broadly considers questions of express or implied consent in cases of non-fatal strangulation can be left to the established common law principles and do not need to be dealt with specifically in the statutory offence provision.

The Paper recognises the need to protect against the unintended capture of innocuous behaviour or behaviour that should not reach the threshold of criminality. The Society shares this view and observes the proposed new offences might have the effect of criminalizing behaviour that is not within the intended scope. Examples of this include medical treatment, acts of self-defence, certain sexual activity and acts in a sporting context.

The Society notes the Commission's regard to the sexual activity and consent defence to non-fatal strangulation at [166] available in Victoria. We would encourage the Commission to give further consideration to a narrowly framed exception, modelled on the Victorian approach, where the conduct occurs during consensual sexual activity and does not result in injury. In our view, this model preserves the seriousness of non-fatal strangulation in a domestic abuse setting, while recognising some individuals engage in consensual sexual practices involving the restriction of breath or similar conduct. A narrow defence premised on the Victorian approach might be appropriate, if appropriately constrained by affirmative consent standards (including the absence of coercion), and if it is not available where injury is caused.

To this end, we also observe that the new coercive control offence is part of wider reform – consistent with developing societal attitudes - that seeks to move away from viewing domestic abuse as a series of isolated incidents and instead acknowledge patterns of harmful behaviour that span multiple, varied instances of abuse, including acts that fall within the scope of section 315A, and coercive control. The evidence also suggests that in domestic abuse cases, non-fatal strangulation will rarely occur in isolation of other forms of abusive behaviour. We consider a risk exists that to further reduce the s315A offence into three tiered offences may shift the investigation and prosecution of incidents of non-fatal strangulation out of the broader criminal justice reforms seeking to address it and return to isolated incident-based approaches.

Issue: Maximum Penalty

The Society does not support an increase in the maximum penalty.

There are drawbacks to increasing the maximum penalty. The motivation to defend a charge with a higher penalty will be greater and more likely to be resisted. On the other hand, if the current maximum penalty is retained, or even lowered, the offence may be less contested by defendants and consequently easier for prosecutors to make out. Arguably, this may facilitate the overall public interest in securing early pleas of guilty.

We would welcome consideration of legal measures to reflect the detrimental impact of such behaviour at sentencing, such as implementing a circumstance of aggravation to common assault or assault occasioning grievous bodily harm that increase the maximum penalty.

PROPOSAL 2

The existing defences in the Criminal code of provocation to assault (s 269) prevention of repetition of insult (s 270) and domestic discipline (s 280) should not apply to the three new offences.

The Society does not support the proposal that the existing defence provisions of provocation to assault, prevention of repetition of insult and domestic discipline should not apply to the three proposed offences.

There are a seemingly endless number of factual scenarios arising in criminal matters – the more defences available to ensure just outcomes, the better. Just because a defence is raised infrequently, does not mean it is not important or significant to avoid injustice in those few circumstances in which it applies.

PROPOSAL 3

Adult perpetrators who plead guilty should be sentenced in the Magistrates Court: unless the perpetrator elects otherwise subject to the Magistrate's overriding discretion. Legal represented child perpetrators should continue to be able to consent to have their case tried or sentenced in the Children's Court (Magistrate).

The Society supports amending the *Criminal Code (Qld)* to allow for summary disposition by way of sentence for an offence under s 315A.

The public interest is in the conviction of the guilty. The most efficient conviction is a plea of guilty. Early pleas of guilty should be encouraged. A capacity to, where appropriate, dispose of a charge under s 315A as a sentence in the summary jurisdiction will result in more defendant's pleading guilty to the charge and, in particular, giving early notice of their intention to plead guilty. This will, in turn, facilitate the expeditious disposition of the proceedings and maximise benefits for victims, witnesses and the community.

In light of the above, the Society suggests consideration be given to including the s 315A offence with those susceptible to defence summary election under s 552B, for the following reasons.

1. The offence is choking/strangulation under s 315A is punishable by a maximum penalty of seven years imprisonment. To make the offence the subject of a defence election under s 552B is consonant with other offences the subject of s 552B (i.e. assault occasioning bodily harm).
2. The effect will be to ensure that a defendant who pleads guilty to an offence under s 315A is dealt with at sentence in the Magistrates Court, unless the defendant elects to defend at a jury trial.
3. The Magistrates Court has jurisdiction to impose sentences of up to 3 years imprisonment. This penalty limit is sufficient to deal with many examples of the offence under s 315A.
4. Section 552D prescribes that a Magistrate **must** abstain from jurisdiction if satisfied, at any stage, and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, **may not** be adequately punished on summary conviction.

As the Commission is no doubt aware, in all but the Magistrates Courts Districts where an office of the ODPP is located (i.e. the majority of Magistrate Courts in Queensland), the QPS Prosecution Corps is the prosecutorial authority responsible for the conduct of proceedings for indictable offences up until committal hearing. There is, in the Society's experience, inconsistency in the approach of individual police prosecutors and police prosecution offices regarding the exercise of their jurisdictional election. In circumstances where the *Criminal Code (Qld)* obliges a Magistrate to abstain from jurisdiction and commit a defendant for sentence if they consider they may not be adequately punished, it is the Society's view that a prosecution election for an offence under s 315A is neither necessary nor desirable.

Thank you for considering this feedback and the additional time to provide it. [REDACTED]

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Yours faithfully

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Genevieve Dee
President