



# Non-fatal strangulation: Section 315A review

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

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FINAL REPORT

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**Publications in this reference, found at [www.qlrc.qld.gov.au](http://www.qlrc.qld.gov.au):**

QLRC, Non-fatal strangulation: Section 315A review – Our terms of reference (Background Paper 1, November 2024)

QLRC, Non-fatal strangulation: Section 315A review – 'I just want to be heard': The voices of strangulation victim-survivors (Research Report 1, April 2025)

QLRC, Non-fatal strangulation: Section 315A review – A holistic review of the non-fatal strangulation offence (Consultation Paper, April 2025)

QLRC, Non-fatal strangulation: Section 315A review – Investigating, prosecuting and defending non-fatal strangulation in Queensland: The experiences of police and lawyers (Research Report 2, July 2025)

QLRC, Non-fatal strangulation: Section 315A review – What we heard (Background Paper 2, October 2025)

**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.

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## 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

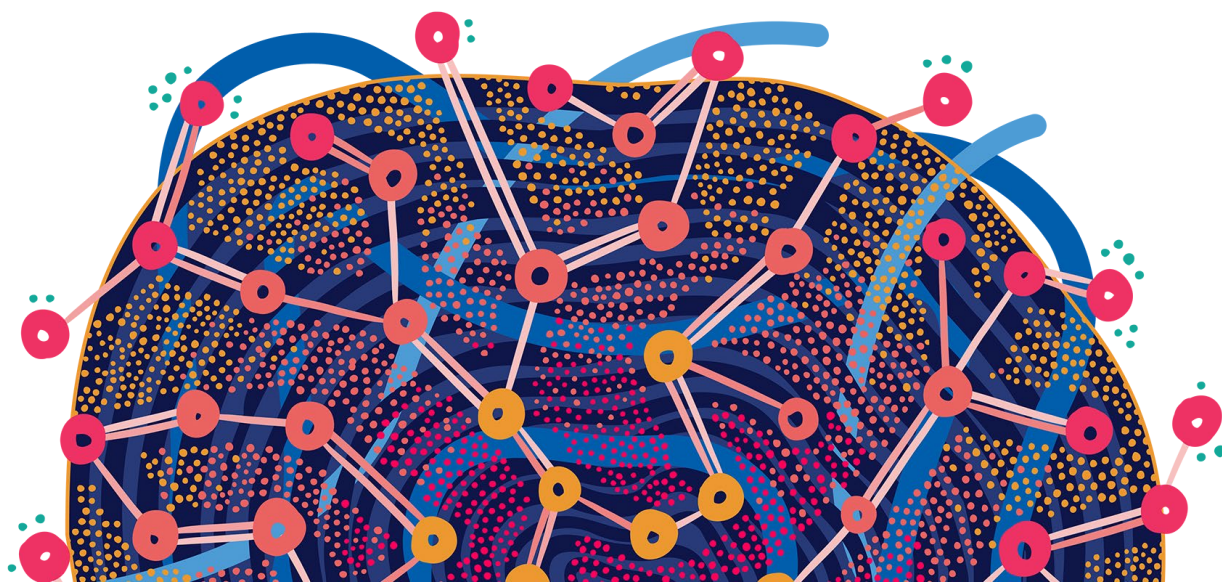
**Lifeline:** 13 11 14

**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.
anoxia	Lack of oxygen in body tissues.
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).
bail	A written promise to return to court after being released from custody while waiting for criminal charges to be finalised. People on bail must follow bail conditions or rules, and not break the law, otherwise they can be arrested and may be remanded in custody.
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
committed (to a superior court for trial or sentence)	To be sent up to a superior court by a magistrates-level court through a committal proceeding. To commit a matter, a Magistrate can be required to consider if there is sufficient evidence or the parties may make this concession. Matters can also be committed through a registry committal. For further information see <a href="#">research report 2</a> .
common assault	An assault that does not result in bodily harm.
cumulative sentences	Where sentences given for more than one offence are ordered to be served one after the other, rather than at the same time.

ex-officio indictment	An indictment presented by the prosecution in a superior court without a charge having been committed by a Magistrate.
Hypoxia	Low levels of oxygen in body tissues.
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.
Ischaemia	Deprivation of oxygen in the body due to restricted or blocked blood supply.
remand (held on remand/remanded in custody)	An order to be kept in custody while waiting for criminal charges to be finalised.
show cause	Generally, there is a presumption in favour of a perpetrator getting bail for an offence. However, in some situations that presumption does not apply and a perpetrator is required to show cause as to why their detention in custody is not justified.
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.
Victim Impact Statement	A written or spoken statement that allows victim-survivors to tell the court about how the crime affected them.

## Abbreviations

ASIAL Australian Security Industry Association Limited

BDSM bondage and discipline, dominance and submission, sadism and masochism

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

DFV domestic and family violence

DVAC Domestic Violence Action Centre Inc

DVO	domestic violence offence
GCCASV	Gold Coast Centre Against Sexual Violence Inc
Legal Aid Queensland (CLS)	Legal Aid Queensland (Criminal Law Services)
Legal Aid Queensland (FLS)	Legal Aid Queensland (Family Law Services)
LGBTIQA+	lesbian, gay, bisexual, transgender, intersex, queer or questioning, or asexual
North Queensland WLS	North Queensland Women's Legal Service
ODPP	Office of the Director of Public Prosecutions
PTSD	post-traumatic stress disorder
QIFVLS	Queensland Indigenous Family Violence Legal Service
QPS	Queensland Police Service
QSAC	Queensland Sentencing Advisory Council
QSAN	Queensland Sexual Assault Network
RACGP Queensland	Royal Australian College of General Practitioners Queensland



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# Chair's preface

This report makes a compelling case to reform Queensland's response to non-fatal strangulation and charts a clear program of education, accountability and support.

Currently, the non-fatal strangulation offence covers conduct which does not result in death but does restrict a person's respiration or blood flow and includes choking, suffocation and strangulation. Before engaging in this review, I was unaware of the full extent of the risks of conduct capable of restricting respiration or blood flow and how little pressure is required. I was also unaware how prevalent it is and the range of contexts in which it occurs. This is true too for most community members, and many officers and professionals in the justice and health sectors. There are widespread misconceptions about the potential impacts and expected physical indications of non-fatal strangulation. It is an increasingly common sexual practice, associated with a concerning belief there is a safe way to engage in the practice.

Non-fatal strangulation carries two distinct risks:

- the risk of physical and psychological harm inherent in the conduct itself, which can be delayed and serious
- the risk of future harm, because the conduct is a predictive indicator of escalation in domestic violence offending, including homicide.

The second risk is the reason why the current offence only applies in a domestic setting. The correlation between non-fatal strangulation and death from domestic violence is strong. Research shows that victim-survivors of intimate partner violence who have been strangled by their partner are more than seven times more likely to be killed by their partner in future.

It is important to recognise, however, that non-fatal strangulation occurs in a diversity of relationships and contexts, some of which are consensual.

The response to non-fatal strangulation, including the scope of criminal offences, must be mature and nuanced. The response must respect individual autonomy and address the type of risk and circumstances.

The criminal law has an important role to play but it is not a panacea.

We start with education, because this is critical to address misconceptions about the risks of non-fatal strangulation and to prepare relevant personnel to implement our recommendations.

A stricter approach is required for non-fatal strangulation in circumstances of domestic and family violence or where there is coercion and control. This is justified by the terrorising nature of the conduct and the heightened risk of future violence, including lethal violence. Our recommendations:

- better capture relationships where the risk of future death arises
- clarify the conduct criminalised and available defences
- apply penalties that reflect the seriousness of the offence
- improve the procedures to investigate and prosecute the offence.

Outside the scope of the non-fatal strangulation offence, our recommendations:

- clarify when non-fatal strangulation can be charged as a sexual offence or an offence of violence
- improve the sentencing framework for those offences.

We also make recommendations to improve the investigation, charging, prosecution and sentencing of non-fatal strangulation and to build a more robust evidence base about its incidence.

This has been a short sharp review supported by deep and constructive engagement across the community, justice and health sectors. In particular, I thank the victim-survivors who shared their personal experiences and made informed suggestions about what could be done to reform both law and practice. I acknowledge the support of the Red Rose Foundation and others who facilitated our consultations with victim-survivors.

I am grateful to the Commissioners for their commitment to a refined and principled response to this reference. That would not have been possible without the work done by our highly skilled, diligent and very lean research team who undertook the research and consultations that supported the Commission's deliberations.

I commend this report to the Attorney-General.



Fleur Kingham

Chair

Queensland Law Reform Commission

# Summary

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.

We have been asked 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.

We have also been asked to make recommendations about any other matters we consider relevant to the issues in the review.

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, including:
  - research with strangulation victim-survivors about their experiences of the criminal justice process
  - research with Queensland police and lawyers about their experiences investigating, prosecuting and defending non-fatal strangulation
  - analysing court data
  - research with Queensland police, prosecutors and support services about child victim-survivors of and witnesses to non-fatal strangulation
  - analysing sentencing remarks
- consulting with a diverse range of stakeholders across Queensland, including more than 40 preliminary consultation meetings and 114 consultation meetings with victim-survivors, DFV and sexual violence support services, health professionals, legal professionals, law enforcement, security organisations, representatives from sporting codes and bodies, academics, and Elders and representatives from Aboriginal and Torres Strait Islander organisations
- analysing submissions.

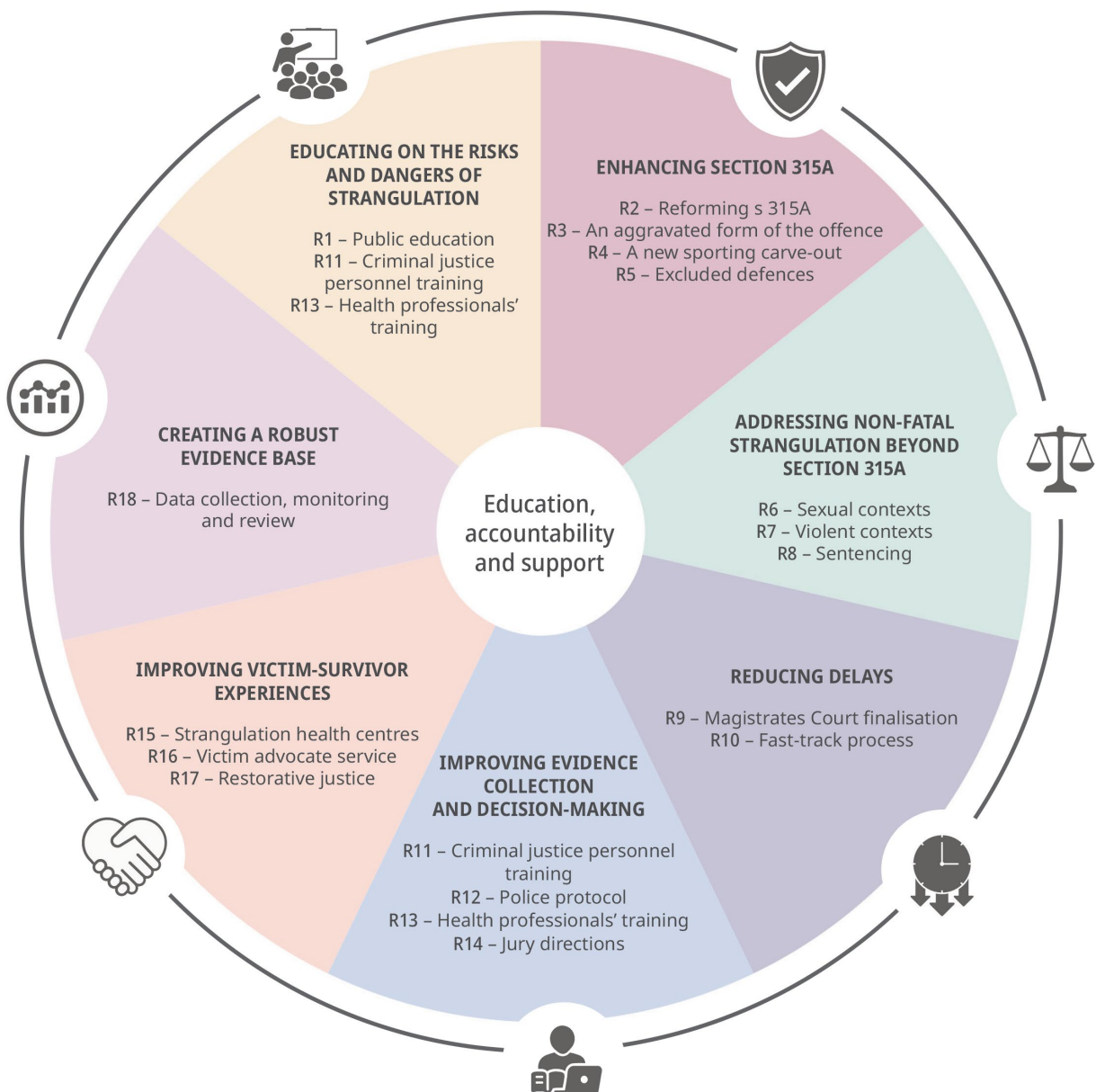
We used information obtained to identify key issues in the review and to formulate proposals (in the consultation paper) and recommendations (in this report) for reform. Key contextual factors underpinning the issues considered in this review include:

- strangulation is dangerous
- many non-fatal strangulation charges are not successful
- non-fatal strangulation matters take a long time to finalise
- many strangulation victim-survivors are reluctant to proceed
- special considerations arise for Aboriginal peoples and Torres Strait Islander peoples in non-fatal strangulation matters
- special considerations arise for child victim-survivors and witnesses in non-fatal strangulation matters.

Our recommendations for reform have also been informed by our five guiding principles and consideration of the compatibility of our recommendations with the Human Rights Act 2019.

During the review, we released five publications, including two background papers, a consultation paper and two research reports.

**Figure 1: Snapshot of our recommendations**








In this report, we make **18 recommendations** for reform (see Figure 1). These 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(b), 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).

We emphasise the importance of a coordinated approach to responding to non-fatal strangulation involving the public, criminal justice personnel, health professionals and support services.


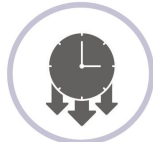
# List of recommendations

Educating on the risks and dangers of strangulation	
	<p><b>R1</b> 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.</p>
Enhancing section 315A	
	<p><b>R2</b> Section 315A of the Criminal Code should be changed to:</p> <ul style="list-style-type: none"><li>(a) also apply to people in a relationship involving coercion, control or domination.</li><li>(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.</li><li>(c) include a legislative note that explains that conduct capable of restricting a person's respiration and/or blood circulation could include:<ul style="list-style-type: none"><li>• applying pressure to the person's neck</li><li>• covering the person's nose or mouth</li><li>• obstructing or interfering with the person's respiratory system or accessory systems of respiration.</li></ul></li><li>(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.</li></ul> <p>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.</p>
	<p><b>R3</b> 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.</p>






	<p><b>R4</b> The Criminal Code should be amended to make it a defence to a section 315A offence where the conduct:</p> <ul style="list-style-type: none"> <li>• is done as part of a socially acceptable function or activity (with function or activity defined to include a sporting event), and</li> <li>• is reasonable in the circumstances.</li> </ul>
	<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>

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> <ol 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> </ol> <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>
	



### Jury directions

- R14** The Evidence Act 1977 should be amended to provide for jury directions on:
- (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.
  - (b) differences in the victim-survivor’s account — in criminal proceedings for a section 315A offence.
  - (c) victim-survivor responses to giving evidence at trial — in criminal proceedings for a section 315A offence.

## Improving victim-survivor experiences



- R15** The Queensland Government should consider funding the development, implementation and resourcing of strangulation health centres in Queensland.



- R16** 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.



- R17** 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.

## 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.





**Part 1**

Part 2

Part 3

Part 4

Part 5



# CHAPTER 1

## Introduction

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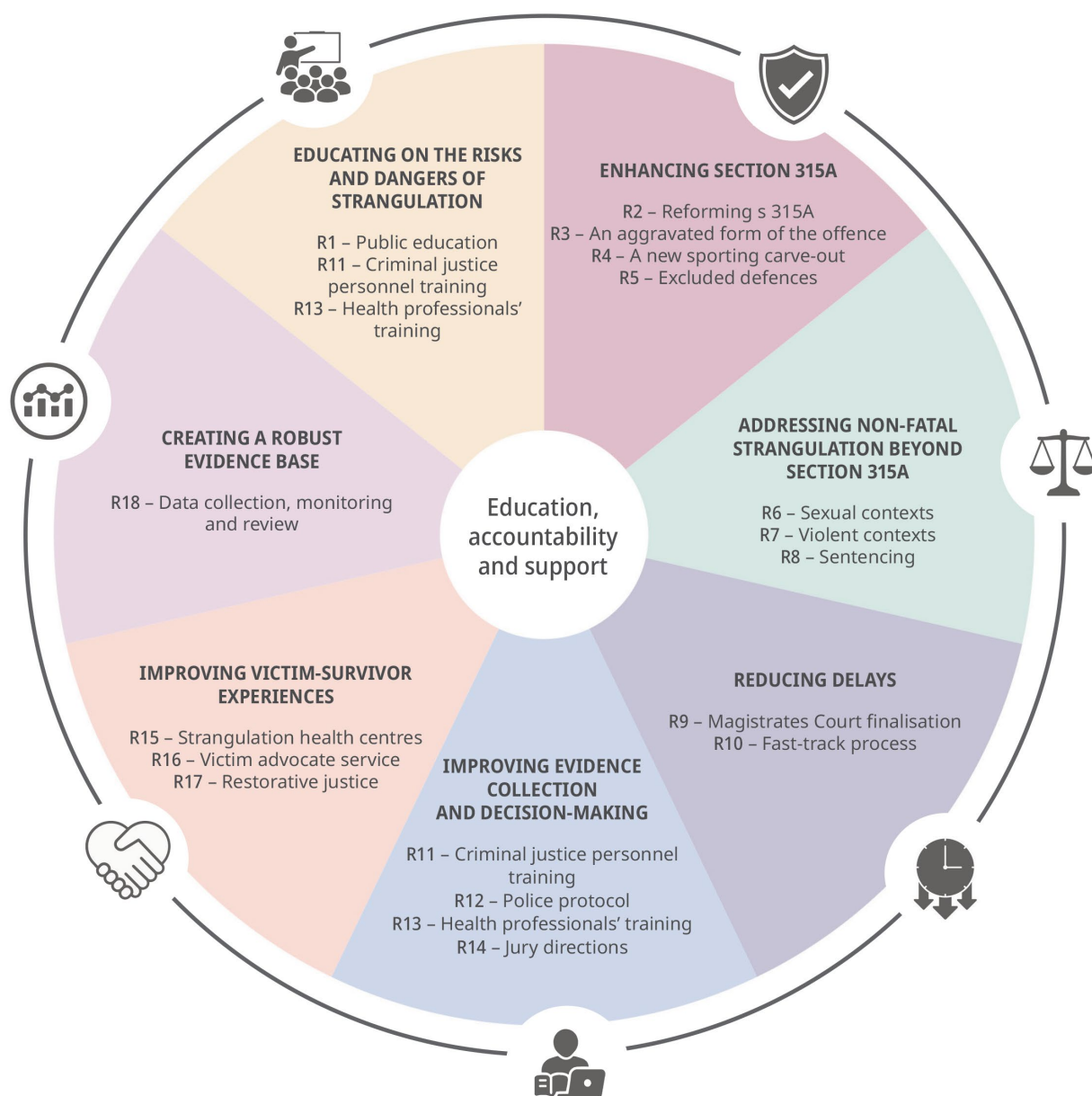
# About our review

- 1.1 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.
- 1.2 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> The non-fatal strangulation offence 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.
- 1.3 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.
- 1.4 We have been asked 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 '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.
- 1.5 We have also been asked to make recommendations about any other matters we consider relevant to the issues in the review. The full terms of reference are found in [Appendix A](#).
- 1.6 In this report, we make **18 recommendations** for reform (see Figure 1.1). These recommendations aim to:
- educate the public and relevant professionals about the risks and dangers of strangulation
  - 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
    - addressing the challenges with proving restriction of a person's respiration and/or blood circulation
    - modifying the way consent is relevant

## 1. Introduction

- better reflecting the seriousness of the conduct involved
- clarifying the defences that should and should not apply
- better respond to non-fatal strangulation in circumstances beyond the scope of s 315A
- address system issues to:
  - reduce delays
  - improve evidence collection and informed decision-making
  - improve victim-survivor experiences
- create a robust evidence base for non-fatal strangulation in Queensland.

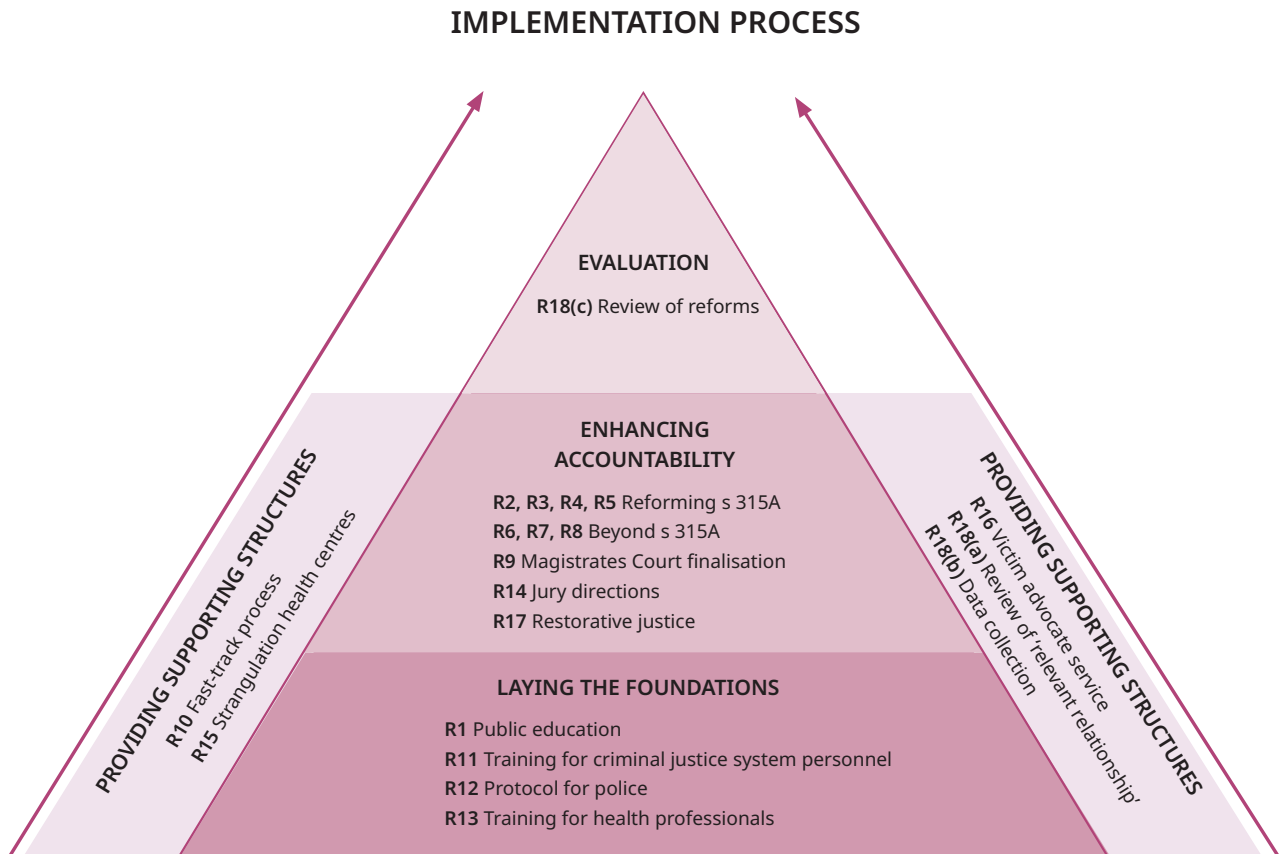
**Figure 1.1: Snapshot of our recommendations**



## 1. Introduction

- 1.7 We do not limit our recommendations to amendments to the non-fatal strangulation offence alone because we identified several other key issues in our review 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.
- 1.8 We propose a phased approach to implementation of the recommendations made in this report — see Figure 1.2.

**Figure 1.2: Implementation process for recommendations made in this report**



## Structure of this report

- 1.9 This report has five parts.
- 1.10 **Part one** (this chapter) sets the scene for the non-fatal strangulation review. It describes our approach to the review and briefly outlines key contextual factors that have underpinned the issues considered in the review. It also contains one recommendation (recommendation 1) for a comprehensive public education and training program.
- 1.11 **Part two** sets out our recommendations for reforming the criminal law response to non-fatal strangulation. It has three chapters.
- 1.12 **Chapter 2** discusses reforms to the scope of the non-fatal strangulation offence, including the types of relationships to which the offence should apply and the conduct the offence should criminalise (recommendations 2–3).
- 1.13 **Chapter 3** considers implications of retaining the ‘unlawfulness’ element in the amended non-fatal strangulation offence and discusses our recommendation to modify the way consent is

relevant to the offence (recommendation 2). It discusses our recommendation to introduce a carve-out for sports (recommendation 4) and our recommendation that certain defences — provocation to assault, prevention of repetition of insult and domestic discipline — should not apply to the amended offence (recommendation 5).

- 1.14 **Chapter 4** outlines reforms that aim to ensure the criminal law responds better to non-fatal strangulation in circumstances beyond the scope of the amended non-fatal strangulation offence. These reforms address non-fatal strangulation in sexual contexts (recommendation 6) and violent contexts (recommendation 7) as well as the sentencing of offences that involve non-fatal strangulation conduct (recommendation 8).
- 1.15 **Part three** sets out our recommendations for reforming practices and procedures relevant to non-fatal strangulation matters. It has three chapters.
- 1.16 **Chapter 5** outlines recommendations aimed at addressing delay in non-fatal strangulation matters (recommendations 9–10).
- 1.17 **Chapter 6** discusses recommendations aimed at improving evidence collection and informed decision-making by criminal justice personnel, health professionals and jurors (recommendations 11–14).
- 1.18 **Chapter 7** contains dedicated recommendations to improve strangulation victim-survivors' experiences (recommendations 15–17). It also makes one recommendation relating to reviewing an aspect of the Domestic and Family Violence Protection Act 2012, creating a robust evidence base for non-fatal strangulation in Queensland, and monitoring and evaluating our reforms (recommendation 18).
- 1.19 **Part four** has one chapter. **Chapter 8** discusses key contextual factors underpinning the review's issues.
- 1.20 **Part five** contains seven appendices including:
- our terms of reference
  - lists of our consultation proposals and questions, consultees and submissions
  - a description of the methodologies used to conduct some of our research projects
  - a discussion of the human rights relevant to our review.

## Our approach

- 1.21 In making our recommendations, our terms of reference asked us to have regard to:
- the findings and recommendations of previous reports<sup>3</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.
- 1.22 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 (see below at [1.26])

## 1. Introduction

- consulting with a diverse range of stakeholders across Queensland (see below from [1.28])
  - analysing submissions (see below from [1.33]).
- 1.23 We used information we obtained to identify the review's key issues and to formulate proposals (in the consultation paper) and recommendations (in this report) for reform.
- 1.24 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 that examined non-fatal strangulation offences in other Australian jurisdictions, maximum penalties for other Queensland offences, and Queensland developments relating to the non-fatal strangulation offence.
- 1.25 Our consultation paper introduced three proposals for reform and posed eight questions about potential reforms (see [Appendix B](#)). It invited feedback on the proposals and questions, other relevant reform options and other issues important for our review.

## Empirical research

- 1.26 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 (DVO) 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 the simpliciter form of assault occasioning bodily harm matters 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.
- 1.27 Findings from research projects 1 and 2 were published as research report 1 and research report 2. Those reports also include detailed information about the methodology we used. Findings from research projects 3, 4 and 5 are incorporated into this report. [Appendix C](#) explains the methodologies we used to conduct those projects.

## Consultations

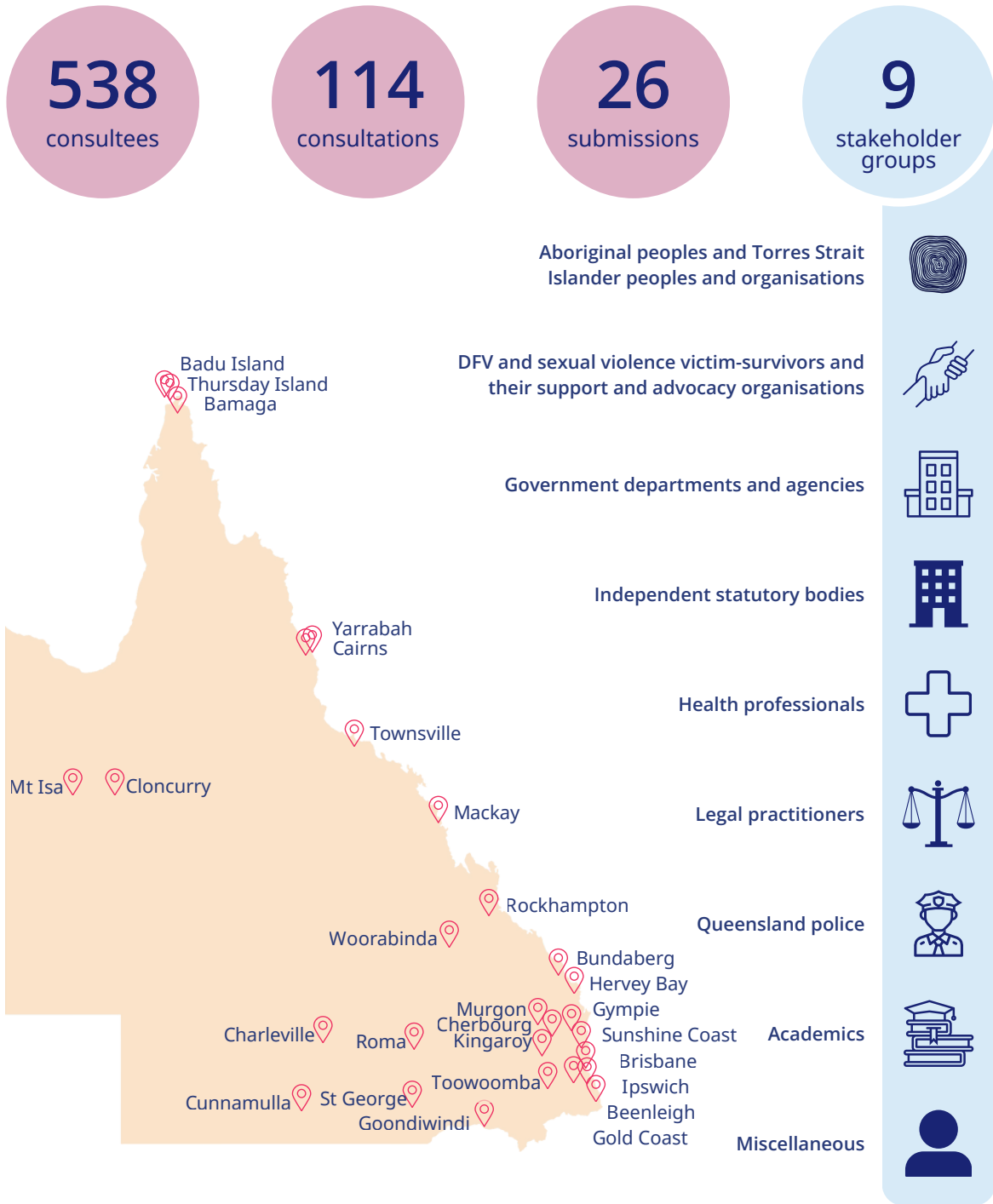
- 1.28 Consultation with stakeholders, including diverse and disadvantaged communities, is an integral part of our law reform process. Prior to release of our consultation paper, we engaged

## 1. Introduction

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 in [Appendix D](#).

- 1.29 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.
- 1.30 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).
- 1.31 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 1.3 shows the locations of our consultations.

**Figure 1.3: Locations of our consultations throughout Queensland**



1.32 [Appendix E](#) lists the organisations we consulted with following release of our consultation paper. We took notes during our consultations to facilitate analysis of stakeholder feedback.

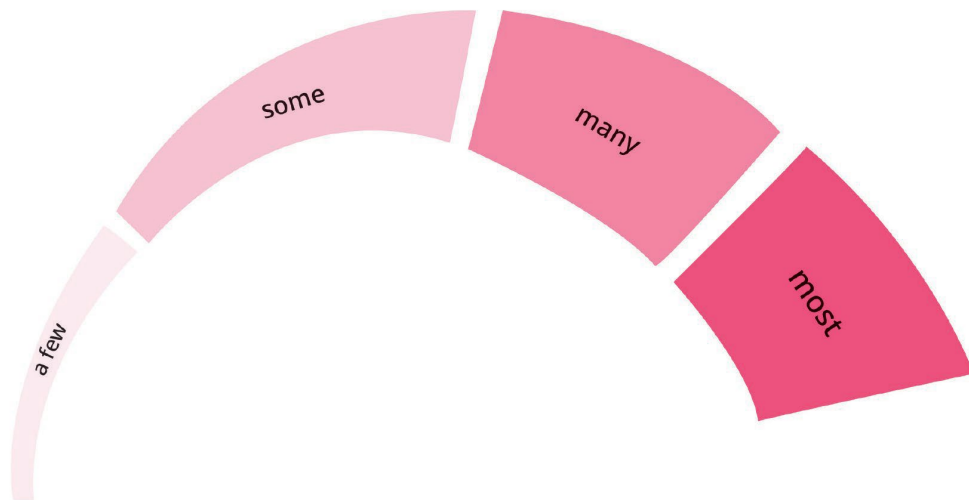
1.33 We received 26 written submissions in response to our consultation paper, including from:

- 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.

- 1.34 A number of these submissions were from bodies representing the views of a significant membership base. [Appendix F](#) contains a list of submissions we received. Most submissions are published on our website.
- 1.35 We analysed stakeholders' feedback in response to the proposals and questions in our consultation paper and published our findings in background paper 2. That paper contains detailed information about the methodology used to obtain feedback and analyse submissions and consultation notes.
- 1.36 In this report, we present stakeholder feedback using the same approach taken in background paper 2 (see Figure 1.4). We describe stakeholder sentiment by looking at stakeholders' perspectives in the context of all the feedback received about the relevant topic. Not all submissions or consultations addressed each topic. As such, we know our approach may not reflect the views of the whole community or certain stakeholders on a particular issue.
- 1.37 When we use a quantifying term in this report to indicate how many stakeholders supported or did not support a question or proposal, this only considers stakeholders who engaged with the issue. Stakeholders who did not engage with a topic were not counted when we worked out the overall level of support.

**Figure 1.4: Quantifying stakeholder sentiment**



## What we heard

1.38 Analysis of feedback from stakeholders showed significant agreement about some issues and divergence on others. However, we distilled six overarching themes following our analysis — see Figure 1.5. Details of what we heard from stakeholders are in background paper 2. We refer to stakeholder feedback throughout this report.

**Figure 1.5: Overview of feedback from stakeholders**

<p><b>Non-fatal strangulation is inherently dangerous and indicates a high risk of future violence and death in some contexts.</b></p> <ul style="list-style-type: none"> <li>• Non-fatal strangulation is always dangerous.</li> <li>• Non-fatal strangulation is often used as a means of control over another person’s life.</li> <li>• In some contexts, particularly those involving DFV, non-fatal strangulation is a risk factor for future injury or death.</li> <li>• 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.</li> </ul>
<p><b>The criminal law should treat non-fatal strangulation more seriously.</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• Defences to non-fatal strangulation should be limited.</li> <li>• Penalties for non-fatal strangulation should be increased.</li> <li>• 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.</li> </ul>
<p><b>Non-fatal strangulation occurs in various contexts.</b></p> <ul style="list-style-type: none"> <li>• Non-fatal strangulation occurs in violent contexts, sexual contexts, sporting contexts and as a means of restraint.</li> <li>• Non-fatal strangulation is increasingly normalised in sexual contexts, particularly between young people.</li> <li>• The situations where non-fatal strangulation could be considered reasonable or socially acceptable should be limited.</li> </ul>
<p><b>The issue of consent is complex and requires a nuanced response.</b></p> <ul style="list-style-type: none"> <li>• Views about whether a person should be able to consent to non-fatal strangulation depend on the context in which the strangulation occurred.</li> <li>• Removing a person’s ability to consent to non-fatal strangulation limits their personal autonomy.</li> </ul>

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- 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.

## Guiding principles

- 1.39 In background paper 1, we proposed five principles to guide our review and briefly explained what those principles mean. These are outlined in Figure 1.6.
- 1.40 Our fifth principle (trauma-informed) requires the non-fatal strangulation offence to promote a trauma-informed, culturally-sensitive and age-appropriate approach to investigation and prosecution. When we use the term 'trauma-informed', we adopt the framework set out by the Substance Abuse and Mental Health Services Administration ('SAMHSA') in the United States of America.<sup>4</sup>
- 1.41 Some of our recommendations explicitly refer to 'trauma-informed practice' while trauma-informed assumptions and principles underpin other recommendations. In conducting our review, and especially when engaging with victim-survivors, we sought to take a trauma-informed approach by applying SAMHSA's framework.

**Figure 1.6: Our guiding principles**



## Human rights

- 1.42 Our terms of reference asked us to have regard to the compatibility of our recommendations with the Human Rights Act 2019, including balancing the rights of victim-survivors and accused persons. The protection of human rights is a factor in our third guiding principle (justice).
- 1.43 The Human Rights Act 2019 seeks to protect 23 human rights. These rights are not absolute and may be subject to reasonable limitations.<sup>5</sup>
- 1.44 As a ‘public entity’ under the Human Rights Act 2019 we must:<sup>6</sup>
- give proper consideration to relevant human rights when making decisions (the ‘procedural obligation’)
  - act and make decisions in a way that is compatible with the Act’s human rights (the ‘substantive obligation’).
- 1.45 A decision will be compatible with human rights where it does not limit, restrict or otherwise interfere with a human right.<sup>7</sup> A decision that limits a right may still be compatible with human rights where the limitation is ‘reasonable and demonstrably justified’.<sup>8</sup>
- 1.46 This report outlines the recommendations arising from our decisions in conducting the non-fatal strangulation review. [Appendix G](#) identifies the human rights relevant to each recommendation and briefly outlines the nature and content of those rights. Throughout the report, where a recommendation limits one or more human rights, we include an analysis of the compatibility of the recommendation with human rights. If a recommendation does not limit human rights, we do not always include this analysis.

# Reform context

- 1.47 There are several key contextual factors underpinning the review's issues. These factors have informed our recommendations in this review and are described briefly below.

## Strangulation is dangerous

There are two ways that strangulation is dangerous:<sup>9</sup>

- It can cause serious harm including death.
- There is an added risk of future violence and homicide for victim-survivors who experience DFV and/or coercion, control or domination.

Despite being dangerous, strangulation can be difficult to prove because:<sup>10</sup>

- visible injuries may not be present or may be delayed, too minor or 'ambivalent' about whether strangulation was the cause. In two recent Australian studies, 23.5% of one study cohort had no observable injury to the neck,<sup>11</sup> while 24.1% of the second study cohort had no signs or symptoms following non-fatal strangulation.<sup>12</sup>
- other consequences of non-fatal strangulation may be delayed, so victim-survivors or health professionals may not link consequences to the strangulation event.
- strangulation particularly impacts parts of the brain responsible for encoding and recalling memories, so victim-survivors may not have clear or consistent memories of the event.

## Many non-fatal strangulation charges are not successful

The Queensland Audit Office found that 51% of non-fatal strangulation charges finalised since 2016 resulted in a conviction, with the remainder not resulting in a finding of guilt. This may have been, for example, because the case was dismissed or the person was found not guilty at trial.<sup>13</sup>

Our court data research found:

- many non-fatal strangulation charges were not successful because they were dismissed or withdrawn
- a significantly higher proportion of non-fatal strangulation charges laid against all perpetrators were dismissed or withdrawn in superior courts compared to assault occasioning bodily harm (DVO) charges
- a significantly higher proportion of non-fatal strangulation charges laid against children were dismissed or withdrawn in magistrates-level courts compared to assault occasioning bodily harm (DVO) charges.

## Non-fatal strangulation matters take a long time to finalise

Our court data research found that non-fatal strangulation charges take significantly longer to finalise on average compared to assault occasioning bodily harm (DVO) charges:

- overall
- in magistrates-level courts
- in superior courts (only for the simpliciter form of assault occasioning bodily harm (DVO))
- that resulted in a guilty plea in superior courts (only for the simpliciter form of assault occasioning bodily harm (DVO))
- that went to trial in a superior court
- against children, overall
- against children, in magistrates-level courts
- against children who pleaded guilty in magistrates-level courts.

Our court data research also found that, for non-fatal strangulation charges, there was a significant difference in average finalisation times depending on charge outcome.

## Many strangulation victim-survivors are reluctant to proceed

A key finding from our research projects, and feedback we heard from stakeholders, was that victim-survivor reluctance to proceed is a key factor in discontinued or unsuccessful non-fatal strangulation prosecutions. We heard of several reasons why strangulation victim-survivors did not proceed or withdrew, including:

- delay in proceedings
- poor experiences or reluctance to engage with police
- not wanting to go through the court process
- lack of understanding about and support to go through the criminal justice system
- pressure from the perpetrator, family, friends or the community
- fear of child protection becoming involved
- not wanting the perpetrator to go to prison
- practical considerations about children and their relationship with the perpetrator, for example, losing income, a home or support.

## Special considerations arise for Aboriginal peoples and Torres Strait Islander peoples in non-fatal strangulation matters

Special considerations arise for Aboriginal peoples and Torres Strait Islander peoples in non-fatal strangulation matters, including that:

- it can sometimes be challenging to proceed with such matters
- Aboriginal peoples and Torres Strait Islander peoples are over-represented as both perpetrators and victim-survivors in such matters.

## Special considerations arise for children as victim-survivors and witnesses in non-fatal strangulation matters

Our research with police, prosecutors and support services found that:

- children are victim-survivors of and witnesses to strangulation in DFV and sexual violence contexts
- children can describe the act of strangulation but may struggle to articulate restriction of breath
- the adequacy of evidence collected depends on how soon after the event police and/or health professionals respond to children
- although statements from children can be powerful evidence in non-fatal strangulation matters, police officers and prosecutors are concerned that taking statements could re-traumatise children
- family and cultural factors can impact whether children give a statement in non-fatal strangulation matters
- criminal justice personnel and health professionals need further training
- children need further support and protection in non-fatal strangulation matters.

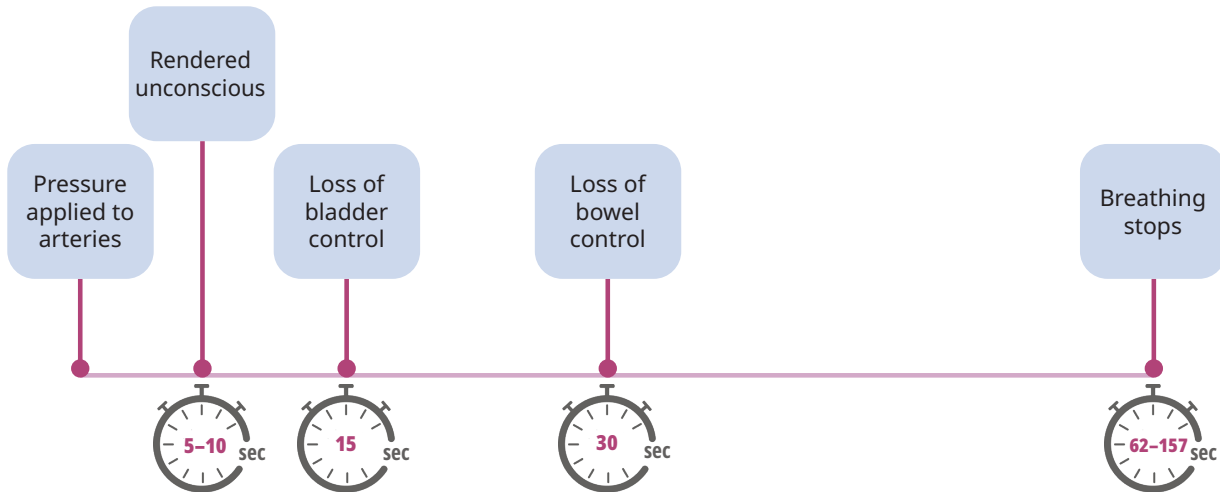
1.48 Below we discuss in detail how strangulation is dangerous. As a reminder, we use the term strangulation to mean strangulation, suffocation or choking. We discuss the remaining contextual factors in detail in [Chapter 8](#).

# Strangulation is dangerous

## Inherent dangers of strangulation

1.49 Strangulation can cause unconsciousness within seconds and death within minutes (see Figure 1.7).<sup>14</sup> Strangulation is recognised as a method of causing death. Death can occur through multiple mechanisms, including obstructing the airway, obstructing blood circulation through the arteries or veins, and/or stimulating nerves that affect pumping of the heart.<sup>15</sup>

**Figure 1.7: Time to unconsciousness and death following restriction of blood circulation in an artery**

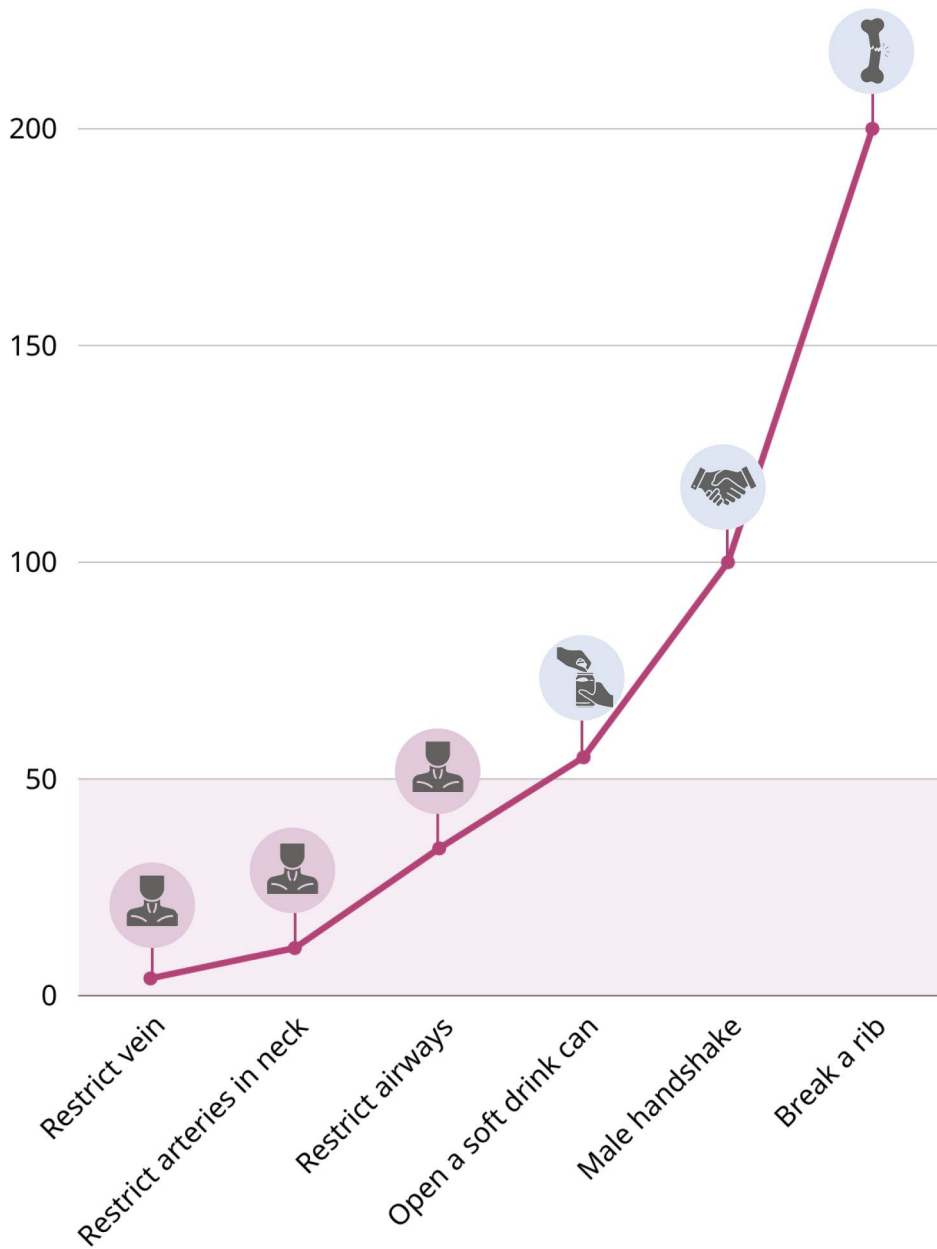


1.50 Non-fatal strangulation can also result in various short and long-term physical, neurological, cognitive and psychological consequences (see Figure 1.9).<sup>16</sup> This is so even with brief or partial restriction of respiration or blood circulation, little force, or no, minor or delayed external injuries.<sup>17</sup> The pressure required to completely restrict:

- arteries is only 11 psi (pounds per square inch, a unit of measurement of pressure), although this depends on the surface area compressed and the depth and position of force
- veins is 4 psi
- the airway is 34 psi, although a longer time is needed to result in loss of consciousness and death.

1.51 In comparison, it only takes 30 to 55 psi to open a soft drink can, while the average male handshake exerts about 80 to 100 psi. However, we heard that hand strength may be irrelevant if the perpetrator is on top of the victim-survivor and can apply the weight of their body through their hands.<sup>19</sup> The pressure required to break a bone depends on the type of bone and how the force is applied. However, generally it takes from 100 to 200 psi to break a small bone, such as a rib, and up to 1700 to 2000 psi to break the femur. Figure 1.8 compares these differences in pressure.

**Figure 1.8: The amount of pressure (psi) needed to restrict respiration and blood circulation, compared**



1.52 Injuries following strangulation can be unpredictable. The Red Rose Foundation submitted:<sup>20</sup>

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. For example, a minor injury to the carotid artery from an earlier incident can weaken the vessel, making a subsequent, seemingly less forceful act potentially fatal. Additionally, sensitivity to brain oxygen deprivation varies widely: some may suffer brain damage within seconds, while others may lose consciousness without warning.

1.53 Further, research indicates that the number and severity of injuries — and impacts on memory, executive function and mood — can increase with repeated strangulations, even if there were no serious consequences following earlier strangulations.<sup>21</sup>

**Figure 1.9: Possible physical, neurological, cognitive and psychological consequences of strangulation**

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

1.54 Even in sporting contexts, where conduct is generally regulated and overseen by referees or trainers, serious harms have been reported in the literature and by stakeholders. This includes, for example, carotid artery dissections (a tear in the wall of the artery that can lead to strokes or other serious injuries), strokes and convulsions.<sup>22</sup>

1.55 In addition to physical consequences, non-fatal strangulation can result in serious psychological consequences, including PTSD — the terrorising effect of strangulation has been likened to waterboarding and torture.<sup>23</sup> North Queensland WLS noted:<sup>24</sup>

[Non-fatal strangulation] has a markedly different quality to other assaults. It is deeply disturbing and chilling behaviour that traumatises victims, often making them fear for the[ir] lives. The psychological effects can be ongoing and are not visible as an injury or ‘result’.

1.56 We heard from victim-survivors who had experienced serious, sometimes life-long consequences following strangulation, including:

- aneurysms (a bulge in the wall of a blood vessel)
- strokes, sometimes causing brain injury

## 1. Introduction

- blood clots
- changes to or loss of vision
- Bells Palsy (weakness or paralysis of muscles on one side of the face)
- epilepsy
- PTSD
- anxiety and/or depression.

1.57 One victim-survivor told us that, following a stroke, they lived in constant fear of suffering another stroke again in future.

1.58 There is evidence that some serious, potentially fatal consequences can be delayed following strangulation and may not arise until anywhere from hours to years later. These consequences include:<sup>25</sup>

- damage to arteries
- strokes
- brain injury, including damage that results in blindness, involuntary movements of the body and pseudobulbar paralysis (inability to control facial movements)
- dementia
- PTSD.

1.59 As the RACGP Queensland noted:<sup>26</sup>

While approximately half of patients strangled will sustain no immediate physical injury, strangulation has potential significant consequences such as carotid dissection, hypoxic brain injury and laryngeal injury. ... For many victims, many injuries are internal or delayed in showing a physical sign.

1.60 The Red Rose Foundation submitted:<sup>27</sup>

Non-fatal strangulation poses a severe risk of neurological damage and fatal outcomes due to its impact on critical anatomical components such as the trachea and major arteries. Applying pressure to the neck disrupts oxygenated blood flow to the brain, which can lead to irreversible harm even with minimal force or brief duration. Immediate consequences may include loss of consciousness or vascular injuries, while delayed effects, such as strokes caused by blood clots formed from damaged vessels, can emerge weeks or months later. ... Notably, many injuries are internal and lack visible signs, creating a false perception of safety despite the profound physiological dangers.

1.61 In a recent District Court of Queensland decision, the Judge recognised the delayed risks of strangulation:<sup>28</sup>

The risks in placing your hands around someone's neck and restricting their airway is significant. People can recover really quickly from that without any lasting injury. People think they have recovered without any lasting injury, and then many, many years later find out that there was a little blood clot sitting in their brain because of the restriction of blood pressure that no-one is able to detect and can cause serious harm.

1.62 Mechanisms that can restrict respiration and/or blood circulation include:

- applying pressure to a person's neck
- covering a person's nose and/or mouth

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- putting something in a person's mouth or throat
  - applying pressure to a person's chest.
- 1.63 As North Queensland WLS submitted, 'there are many methods of terrorising a victim and interfering with her ability to breath[e]/her blood supply'.<sup>29</sup>
- 1.64 Applying pressure to someone's chest can interfere with movement of the chest and/or abdomen, impacting use of the muscles needed to breathe and the ability of the lungs to expand.<sup>30</sup> Further research into the risks arising from such conduct is necessary, particularly as they compare to the risks arising from pressure being applied to the neck. However, in our consultation paper we cited examples where applying pressure to the chest was fatal.<sup>31</sup> Whether pressure to the chest is fatal depends on the length of time pressure is applied, the amount of pressure and whether it is continuous or intermittent.<sup>32</sup>
- 1.65 Research shows that children can experience significant injuries from non-fatal strangulation, even with limited pressure, and these may not be externally visible. Injuries reported in the literature include neurological injuries, such as cerebral oedema (swelling of the brain due to fluid retention) and hypoxic and ischaemic injuries, as well as scarring and narrowing of the airways (although this is rare).<sup>33</sup> Despite the serious injuries that can result, evidence of non-fatal strangulation in children, particularly young children, can be difficult to identify.<sup>34</sup>
- 1.66 Assaults to the head, especially those that result in traumatic brain injury, can have similar physical, neurological, cognitive and psychological consequences as non-fatal strangulation.<sup>35</sup> However, such assaults can be distinguished from strangulation as strangulation directly targets life-sustaining functions of respiration and blood circulation. This is not necessarily the case for head assaults.
- 1.67 As yet there have been no large, long-term studies of adults or children who have experienced non-fatal strangulation regardless of mechanism. Most information about the harms and potential harms of strangulation have been obtained from case studies and reports, case series and expert opinions.<sup>36</sup> As such, there is insufficient information about rates of serious physical and mental injury following strangulation and when injuries develop.<sup>37</sup> In the United States of America, the prevalence of serious injuries following strangulation is estimated at 1% of those who present for medical attention.<sup>38</sup>
- 1.68 We emphasise the need for longitudinal studies into health consequences following strangulation, both within and beyond DFV contexts, including in sporting contexts. However, we note the limitations of Queensland Hospital and Health Services' record management systems to capture such data. To address these limitations, we recommend improving data collection on non-fatal strangulation from a health perspective (recommendation 18(b)).

### Added risk to victim-survivors experiencing DFV, coercion, control or domination

- 1.69 Strangulation is a gendered crime.<sup>39</sup> Research shows that it is one of the most common methods men use to kill women.<sup>40</sup> A United Kingdom study analysed the deaths of 2000 women killed by men since 2009.<sup>41</sup> Twenty-seven and a half percent of those women were killed by strangulation/asphyxiation.<sup>42</sup> Of those, 67.6% were in intimate partner relationships and 10.5% were family members. However, 14.5% of the deaths occurred in circumstances where the perpetrator and victim knew one another but were not intimate partners or family members.<sup>43</sup> Where the victim and perpetrator were believed to be strangers, victims were significantly less likely to be killed by strangulation/asphyxiation.<sup>44</sup>

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1.70 While strangulation is a common method that men use to kill women, there is evidence that people in certain types of relationships who experience strangulation may be at risk of being killed in the future, whether by strangulation or another means.

1.71 Research shows that victims of intimate partner violence who have been strangled by their partner are more than seven times more likely to be killed by their partner in future, compared to victims of intimate partner violence who have not been strangled.<sup>45</sup> Further research is needed to explore the likelihood of future homicide for people experiencing other types of DFV. However, as Professor Heather Douglas submitted:<sup>46</sup>

The future risk of fatality/near fatality associated with previous strangulation has — as far as I am aware ... — only been demonstrated in the intimate partner context, however this is not because other contexts are excluded. It may be the case that future research could demonstrate a broader context of heightened risk.

1.72 In addition to victims of intimate partner violence, research has found that where DFV is present in family relationships<sup>47</sup>

risk assessment tools are unable to distinguish between cases where a mother only or a mother and her children are at risk. As such, it has been recommended that where tools identify the mother to be at risk of lethal harm, the same level of risk should be extended to the child/ren.

1.73 A growing body of research, including our own research with police, prosecutors and support services, indicates that it is not uncommon for children to witness the strangulation of another or to have experienced non-fatal strangulation themselves. This is particularly so in DFV and/or sexual violence contexts where they can experience non-fatal strangulation by a family member or intimate partner (see [Chapter 8](#)).<sup>48</sup>

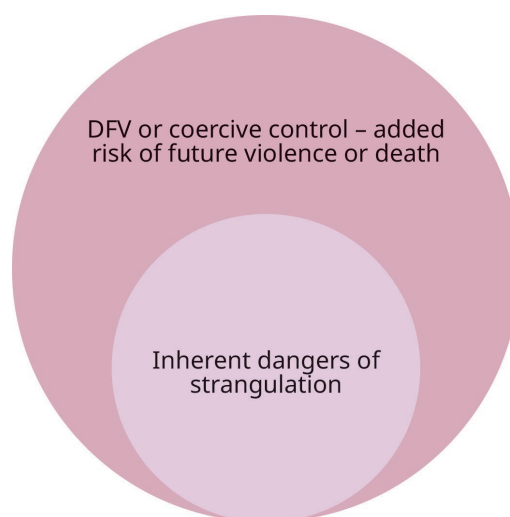
1.74 Practitioner and health guidance material indicates that:<sup>49</sup>

- children, toddlers and babies tend to experience non-fatal strangulation by a parent or caregiver in the context of accidental suffocation, ongoing DFV or excessive discipline, although strangulation of toddlers and babies is generally very rare
- teenagers can experience non-fatal strangulation in the context of intimate partner violence or sexual violence.

1.75 Stakeholders told us that in DFV contexts, victim-survivors often experience non-fatal strangulation alongside other types of abuse and may be strangled repeatedly. Because of this, victim-survivors are at risk of developing complex PTSD.<sup>50</sup> Complex PTSD can arise after a person has experienced prolonged or repetitive traumatic events over their lifetime and can cause significant impairments in personal, family, social, educational, occupational and other areas of functioning.<sup>51</sup>

1.76 In addition to research showing that people in certain types of relationships who experience strangulation may be at risk of being killed in future, research has also found that non-fatal strangulation is a dangerous form of coercive control.<sup>52</sup>

1.77 Stakeholders told us that non-fatal strangulation is often used to control victim-survivors and exert power and dominance over their life — the victim-survivor's life is literally in the



perpetrator's hands.<sup>53</sup> Victim-survivors have repeatedly reported that they thought they were going to die.<sup>54</sup> The Victims' Commissioner submitted:<sup>55</sup>

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. 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.

- 1.78 The Red Rose Foundation similarly submitted that non-fatal strangulation<sup>56</sup> is a method of exerting power, control, and dominance, and is often used to induce fear and submission in victims, including children.
- 1.79 In such contexts, the act of strangulation, regardless of whether respiration and/or blood circulation are restricted, can be enough to achieve the intended effect of control. This is why we recommend reforming the non-fatal strangulation offence so that it does not require proof of restriction of respiration and/or blood circulation (recommendation 2(b)).
- 1.80 We heard from stakeholders that coercively controlling dynamics exist in many types of relationships beyond those currently captured by the non-fatal strangulation offence, including dating relationships, casual sexual relationships and between 'friends with benefits'. Research and feedback from stakeholders indicate that intimate partners, family members (including brothers against sisters), friends and acquaintances perpetrate non-fatal strangulation.<sup>57</sup>

## The role of education

- 1.81 In our consultation paper, we considered the role of the criminal law in regulating non-fatal strangulation, both within and beyond domestic settings. We noted that criminalising such conduct may play an educative role by raising awareness about its dangers. However, we agree with the stakeholders who considered that, in addition to changes to the criminal law, there needs to be public education about strangulation and its risks, particularly for children and young people.

## Our reforms explained



**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.

- 1.82 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.
- 1.83 The public education and training program should, at a minimum, include:
- a statewide public education campaign that:
    - incorporates targeted community-specific campaigns for children and young people, Aboriginal peoples and Torres Strait Islander peoples, people from culturally and linguistically diverse communities, people from LGBTIQ+ communities and people with disability

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- uses multiple channels and modes to target messages effectively to specific groups
  - includes accessible resources
  - a training module available to all people statewide, including priority groups such as:
    - criminal justice personnel, including police, lawyers, judicial officers, court staff (including Court Link staff), Community Justice Groups and restorative justice/dispute resolution facilitators
    - support services, including DFV and sexual violence services
    - health professionals, including allied health
    - sporting bodies and associations where participants engage in conduct that is capable of restricting or does restrict another person's respiration and/or blood circulation
    - law enforcement, corrections and security officers
  - relevant information in respectful relationships education.
- 1.84 The public education and training program should be evidence-based, trauma-informed and culturally-safe, and take an intersectional approach. It should consider the impacts of non-fatal strangulation on people experiencing DFV and/or coercive control, Aboriginal peoples and Torres Strait Islander peoples, people from culturally and linguistically diverse communities, people from LGBTIQ+ communities, people with disability and children and young people.
- 1.85 The program should be co-designed with victim-survivors and experts in the area, such as the Australian Institute for Strangulation Prevention and Strangulation Trauma Centre. At a minimum, it should inform the public:
- about what non-fatal strangulation is and the range of mechanisms that can restrict respiration and/or blood circulation
  - about the risks and dangers associated with strangulation for both children and adults, regardless of the circumstances in which it occurs
  - about the signs, symptoms and injuries that can result<sup>58</sup> and the impacts of strangulation on both child and adult victim-survivors, including physical, psychological, social and behavioural impacts
  - that injuries, including serious or life-threatening injuries:
    - may not arise until anywhere from hours to years later
    - may result even with no or minor visible injuries
    - may occur even with brief or partial restriction of respiration and/or blood circulation, or little application of force
    - may be unpredictable
  - that the effects of strangulation may impair a person's ability to withdraw consent, even if safe words or actions have been agreed upon
  - that the risk of serious injuries increases with repeated strangulations
  - that strangulation is a dangerous form of coercive control
  - that people who are experiencing DFV or coercive control and have been strangled may be at increased risk of future violence and death
  - about the relevant reforms arising from this review, including:

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- the types of relationships that fall within the scope of the amended non-fatal strangulation offence
- the range of conduct that could be captured by ‘conduct capable of restricting or that does restrict a person’s respiration and/or blood circulation’
- the changes to consent
- any other relevant reforms.

- 1.86 It may be necessary to also include targeted community-specific campaigns for law enforcement, corrections and security officers, given the nature of their work. Education for this cohort should address safe mechanisms of restraint and the risks of using conduct capable of restricting a person’s respiration and/or blood circulation, especially for vulnerable cohorts including Aboriginal peoples and Torres Strait Islander peoples, people with disability, children and young people, and people who are intoxicated or drug affected.
- 1.87 Stakeholders, including victim-survivors, considered that there needs to be further education for all in the community, particularly those who engage with strangulation victim-survivors, such as criminal justice personnel and health professionals.<sup>59</sup> Stakeholders thought that the public needs to be informed:<sup>60</sup>
- that non-fatal strangulation may not leave visible injuries
  - that strangulation victim-survivors may appear drug or alcohol affected following the event
  - about the impacts of non-fatal strangulation on memory and cognition and the implications of this for engaging with victim-survivors
  - about the impacts of trauma on strangulation victim-survivors and how to apply trauma-informed practices.
- 1.88 Stakeholders also agreed that any education needs to be culturally safe,<sup>61</sup> given the over-representation of Aboriginal peoples and Torres Strait Islander peoples in non-fatal strangulation matters.
- 1.89 The Domestic and Family Violence Death Review and Advisory Board and a Queensland Coroner have previously recommended public education campaigns on non-fatal strangulation be implemented.<sup>62</sup>

## Case for reform

- 1.90 Research shows that people in the community may not be aware of the dangers of strangulation, including believing it can be done safely in, for example, sexual, sporting and law enforcement contexts.<sup>63</sup> These research findings are consistent with our own research with victim-survivors and with what we heard in consultations.<sup>64</sup> Stakeholders also told us that sometimes perpetrators use strangulation because they believe it is safer than other types of assaults.<sup>65</sup>
- 1.91 Most stakeholders, including victim-survivors, support services, health professionals, police, lawyers and academics, agreed that public education on non-fatal strangulation is necessary, including in educational settings.<sup>66</sup> Professor Douglas submitted:<sup>67</sup>

I generally agree that education about the potential effects of [non-fatal strangulation] should be provided across the community and legal professionals. Information about the dangers of sexual strangulation should also be targeted towards young people. Our research suggests that some perpetrators may not be

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aware of the impacts of strangulation thinking it is 'safer' than assaults more broadly.

- 1.92 Stakeholders considered that education for children and young people is necessary, particularly given the normalisation of strangulation during sex.<sup>68</sup> QSAN submitted:<sup>69</sup>

In young people, victim-survivors are presenting in circumstances where they may have been subject to strangulation multiple times a week and where losing consciousness is perceived as normal. Services are being required to provide significant amounts of education about the health impacts of strangulation as the young people are generally unaware of the short- and long-term health risks associated with strangulation, choking and suffocation. ... Young people as young as 9 or 10 years old are engaging in strangulation of their peers or when they are in peer relationships. ...

The normalisation of strangulation in young relationships and more broadly in the community ... is incredibly common and increasingly normalised through its prevalence in pornography. Young people who have experienced strangulation often present without any visible injuries and, with the challenges of peer pressure it can be difficult to challenge the behaviour.

- 1.93 Similarly, DVAC submitted:<sup>70</sup>

We're seeing examples of this high risk form of violence being perpetrated by younger people within intimate partner relationships, affecting clients who are victims of this in early teenage years. ...

DVAC has identified ongoing concerns regarding children and young people disclosing experiences of strangulation within multiple contexts. This includes children disclosing strangulation being perpetrated by their fathers, stepfathers, boyfriends and perpetrators of all ages who have also raped or sexually assaulted them. We believe it is crucial to provide early intervention and information to ensure children and young people experiencing this dangerous form of abuse and violence receive appropriate support.

- 1.94 The Victims' Commissioner considered that '[e]ducation about the dangers, dynamics and impacts of strangulation must begin early through schools, youth programs and community partnerships to foster prevention.'<sup>71</sup> However, QSAN noted:<sup>72</sup>

Our members have identified concerns that some younger children are at risk of missing out on this vital education as parents can block and prevent children participating, with some parents expressing concerns the programs promote sexual relationships.

- 1.95 Findings from our research show that children are both victim-survivors and witnesses in non-fatal strangulation matters, usually in circumstances of DFV where they are strangled by, or witness the strangulation of, a parent or family member (see [Chapter 8](#)). We also found that children are victim-survivors of strangulation in sexual contexts and that they have been forced to watch pornography depicting strangulation.

- 1.96 We heard from a few stakeholders that education alone would be sufficient to address some of the issues raised in this review, particularly the dangers of strangulation during sex. For example, the Bar Association of Queensland submitted:<sup>73</sup>

If the Commission forms the view that it is not desirable for couples to engage in choking or associated conduct as part of consensual sexual activities due to any inherent risks involved in the restriction of blood circulation or breath, then the answer, in the Association's view, is increased education about the risks of such conduct not criminalisation.

- 1.97 However, others considered that education campaigns alone may not be sufficient to combat the pervasiveness of online content promoting such conduct. We consider that public education and legislative reforms must go hand in hand. As the Victims' Commissioner submitted, 'Any amendments to the scope of the offence must be supported by a public education and health campaign.'<sup>74</sup>

## Human rights considerations

- 1.98 Recommendation 1 seeks to enhance community understanding of strangulation and its risks and dangers (including in sexual contexts), aiming to reduce the use of such conduct and the harms arising from its use. We consider this recommendation is compatible with human rights.
- 1.99 Recommendation 1 promotes the right to recognition and equality before the law, the right to life, the right to protection from torture and cruel, inhuman or degrading treatment, the protection of families and children, and the right to liberty and security of person by ensuring all in the community, including children and other groups, have access to information on the risks and dangers of strangulation.
- 1.100 Recommendation 1 could potentially limit the right to privacy and reputation by requiring children and young people who attend school to be educated through respectful relationships education on the risks and dangers of strangulation, including during sex, even if parents do not wish their children to receive such education.
- 1.101 However, the purpose of this limitation is consistent with a free and democratic society based on dignity, equality and freedom as it ensures children and young people are armed with the information they need to be able to make informed decisions. Potentially limiting the right to privacy and reputation through implementation of recommendation 1 is necessary to achieve this purpose. This purpose cannot be achieved through any other less restrictive and reasonably available means.
- 1.102 As such, we consider any limitation on the right to privacy and reputation is reasonable and demonstrably justifiable, given the need to educate all members of the community about the risks and dangers of strangulation.
- 1.103 In implementing recommendation 1, the right to recognition and equality before the law may be limited if education and training is not made accessible to all people throughout Queensland. Further, it will be necessary to ensure that any education about strangulation included in respectful relationships education be available to all students and delivered in a way that is appropriate to their needs.

## Impact of reform

- 1.104 Recommendation 1 would have resourcing implications for the Queensland Government. Incorporating education on strangulation into existing strategies may ease this burden (see below at [1.107]).
- 1.105 Given the diverse Queensland community, there is a risk that public education may not always be effective. To maximise the effectiveness of education and training on strangulation, targeted community-specific campaigns, programs and resources must be developed, and multiple channels and modes used.
- 1.106 Dedicated training and education on strangulation for certain criminal justice personnel (including police, prosecutors, judicial officers, court staff, Community Justice Groups and

restorative justice/dispute resolution facilitators) as well as health professionals will also be necessary. We make recommendations to this effect that are discussed in [Chapter 6](#).

## Implementation

- 1.107 The Women’s Safety and Justice Taskforce made several recommendations about public education campaigns for DFV and sexual violence as well as respectful relationships education for children.<sup>75</sup> Some of these recommendations are in progress.<sup>76</sup> Others have not yet been implemented. Recommendation 1 could be implemented alongside the Women’s Safety and Justice Taskforce recommendations.
- 1.108 The publicly available training module on strangulation could be delivered in a similar way to the online training modules on coercive control and legislative change for the coercive control offence that were recently developed by the Queensland Government.<sup>77</sup>
- 1.109 In implementing Recommendation 1 as it relates to the publicly available training module, the Queensland Government should work with priority groups to ensure relevant staff are aware of the module. Priority organisations and departments include, but are not limited to, the QPS, ODPP, Bar Association of Queensland, Queensland Law Society, Legal Aid Queensland, community legal centres (including the Aboriginal and Torres Strait Islander Legal Service), Community Justice Groups, National Judicial College of Australia, Department of Justice, Department of Youth Justice and Victim Support, Queensland Council of Social Services, Queensland Health, RACGP Queensland, Judo Queensland, the Australian Jujitsu Federation and Queensland Corrective Services.
- 1.110 Recommendation 1 should be implemented prior to commencement of any legislative reforms arising out of recommendations 2–9 and 14 (see Figure 1.2) to ensure the community understands the risks and dangers associated with strangulation and changes to the law.

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Part 1

**Part 2**

Part 3

Part 4

Part 5



# CHAPTER 2

## Scope of section 315A

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# Introduction

- 2.1 The current non-fatal strangulation offence is reproduced below. Further detail is in our background paper 1 and consultation paper.

## **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).

- 2.2 Our terms of reference asked us to consider several aspects of the non-fatal strangulation offence. These are discussed in [Chapter 1](#).
- 2.3 This chapter sets out our recommendations for reforming the non-fatal strangulation offence (recommendations 2 and 3). It provides an overview of these recommendations, then discusses them in detail, providing an explanation of the:
- relationships to which the offence should apply
  - introduction of a graduated offence framework
  - conduct that should be criminalised.
- 2.4 The chapter then discusses human rights considerations of recommendations 2 and 3, the impact of these reforms and implementation considerations.

# Our reforms explained

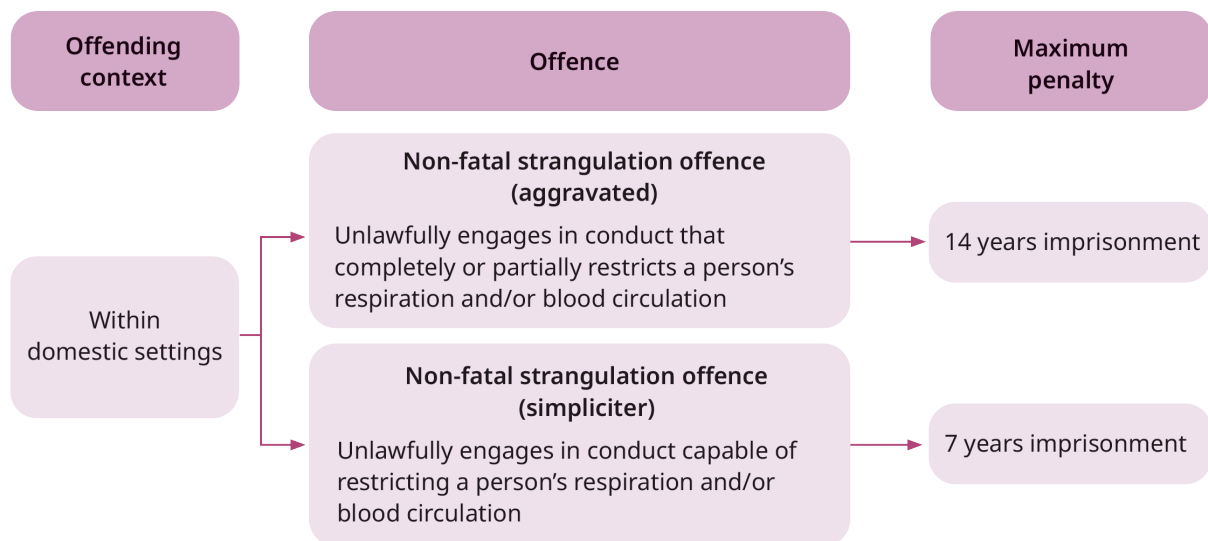
	<p><b>R2</b> Section 315A of the Criminal Code should be changed to:</p> <ul style="list-style-type: none"> <li>(a) also apply to people in a relationship involving coercion, control or domination.</li> <li>(b) make it an offence with a maximum penalty of 7 years imprisonment to unlawfully engage in conduct capable of restricting another person’s respiration and/or blood circulation.</li> <li>(c) include a legislative note that explains that conduct capable of restricting a person’s respiration and/or blood circulation could include: <ul style="list-style-type: none"> <li>• applying pressure to the person’s neck</li> <li>• covering the person’s nose or mouth</li> <li>• obstructing or interfering with the person’s respiratory system or accessory systems of respiration.</li> </ul> </li> <li>(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.</li> </ul> <p>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.</p>
	<p><b>R3</b> Section 315A should include an aggravated form which states that a person who completely or partially restricts the other person’s respiration and/or blood circulation is guilty of an offence with a maximum penalty of 14 years imprisonment.</p>

- 2.5 Recommendations 2 and 3 aim to address some of the limitations with investigating, charging and prosecuting non-fatal strangulation in domestic settings, and holding perpetrators accountable, including the:
- limited range of relationships to which the offence currently 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 which do not reflect the gravity of strangulation.
- 2.6 We recommend the non-fatal strangulation offence be changed in several ways. Section 315 of the Criminal Code (disabling to commit an indictable offence) would continue to operate alongside the amended non-fatal strangulation offence.

## 2. Scope of section 315A

- 2.7 Recommendation 2(a) is to expand the non-fatal strangulation offence to also apply to people who are in a relationship involving coercion, control or domination. This recommendation recognises that non-fatal strangulation is a dangerous, potentially lethal, form of coercive control and that coercive, controlling and dominating dynamics exist in relationships beyond the scope of relationships currently captured by the non-fatal strangulation offence.
- 2.8 We also recommend that the non-fatal strangulation offence be changed to 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)). Implementation of this recommendation would make s 315A(1A) redundant.
- 2.9 For guidance, we recommend including a legislative note in the amended non-fatal strangulation offence explaining that conduct capable of restricting a person’s respiration and/or blood circulation could include applying pressure to the other person’s neck, covering the other person’s nose or mouth, or obstructing or interfering with the other person’s respiratory system or accessory systems of respiration (recommendation 2(c)).
- 2.10 Recommendation 3 is that the non-fatal strangulation offence include an aggravated form with a maximum penalty of 14 years imprisonment if the person completely or partially restricts the other person’s respiration and/or blood circulation. Figure 2.1 shows how recommendations 2 and 3 fit together.

**Figure 2.1: How recommendations 2 and 3 fit together**



- 2.11 Our recommended approach does not include the terms ‘chokes’, ‘suffocates’ or ‘strangles’ in either the simpliciter or aggravated forms of the amended non-fatal strangulation offence. However, the heading of the amended offence should continue to include these terms. We suggest that the term ‘strangles’ appear first, given the type of conduct the offence captures is commonly known as strangulation. The heading of the offence should be updated to refer to domestic settings as well as other relationships involving coercion, control or domination.
- 2.12 We also recommend that the way consent is relevant to the non-fatal strangulation offence be changed by including:
- a defence of affirmative consent if the conduct constituting the offence occurs in a sexual context

- a rebuttable presumption in s 348AA of the Criminal Code that restriction of the person's respiration and/or blood circulation is evidence of lack of consent (recommendation 2(d)).
- 2.13 We do not recommend that lack of consent be included as an element of the offence.
- 2.14 In [Chapter 3](#), we discuss lawfulness, defences and excuses. This includes discussion of consent as a defence to the amended non-fatal strangulation offence as well as our recommendation to introduce a defence to apply in sporting contexts (recommendation 4). In [Chapter 3](#), we also make a recommendation about the defences that should not apply to the amended non-fatal strangulation offence (recommendation 5). This recommendation would mean the provision should not refer to assault and therefore s 315A(2) would be unnecessary.
- 2.15 The non-fatal strangulation offence does not appear in the schedule of offences in the Penalties and Sentences Act 1992 as a serious violent offence.<sup>1</sup> Our terms of reference asked us not to consider whether it should be added to the schedule, given QSAC has previously reviewed this issue.<sup>2</sup>
- 2.16 While we recommend that the non-fatal strangulation offence should apply only within domestic settings or relationships involving coercion, control or domination, we consider the criminal law needs to respond better to non-fatal strangulation that occurs beyond these contexts. We discuss relevant recommendations in [Chapter 4](#).

## Offence scope

### Relationships captured

#### Our reforms explained

- 2.17 The non-fatal strangulation offence currently applies to people in domestic relationships and conduct that is associated domestic violence. Recommendation 2(a) is that the amended non-fatal strangulation offence be expanded to also apply to people in relationships involving coercion, control or domination.
- 2.18 A domestic relationship is a 'relevant relationship' as defined in the Domestic and Family Violence Protection Act 2012.<sup>3</sup> The types of relationships included in that term are intimate personal relationships, that is, spousal relationships, engagement relationships and couple relationships, as well as family relationships and informal carer relationships.<sup>4</sup> Our supporting resources further outline the types of relationships that fall within 'relevant relationships'. We do not propose any change to how those relationships are defined. However, we note our recommendation (recommendation 18(a)) that the Queensland Government review the scope of 'relevant relationship' as defined in the Domestic and Family Violence Protection Act 2012 (see [Chapter 7](#)).
- 2.19 It will be necessary to carefully consider how to appropriately define people in relationships involving coercion, control or domination. We intend for this element to apply to ongoing current or former relationships which:
- involve coercion, control or domination by one person over the other person
  - do not meet the current threshold of 'domestic relationship' or 'associated domestic violence'
  - may be maintained in-person or online.

## 2. Scope of section 315A

- 2.20 This could include dating relationships, casual sexual relationships, friends with benefits, relationships between young people, or housemates.
- 2.21 To achieve the purpose of recommendation 2(a), any definition must not be restricted to domestic relationships or relationships involving DFV, or exclude children, as currently occurs in relation to coercive control in Chapter 29A of the Criminal Code (Qld).<sup>5</sup>

### Case for reform

- 2.22 The non-fatal strangulation offence was introduced in response to research which found that such conduct was an indicator for an increased risk of future violence and homicide in intimate partner settings.<sup>6</sup> The Bar Association of Queensland considered<sup>7</sup>

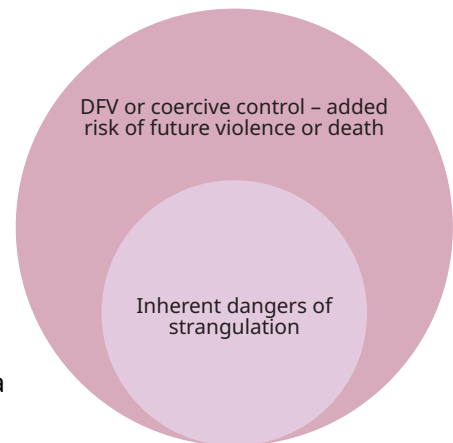
that the basis of any offence of non-fatal strangulation, as a distinct offence separate from other available offences such as assault, serious assault, assault occasioning bodily harm or grievous bodily harm, should reflect the noted predictive nature of strangulation.

- 2.23 We regard this as an important rationale in justifying the retention of a standalone non-fatal strangulation offence that applies to domestic settings and relationships involving coercion, control or domination. QIFVLS submitted:<sup>8</sup>

[H]aving a standalone offence for non-fatal strangulation ... in a domestic setting with a higher penalty distinguishes the pernicious nature of [non-fatal strangulation] in the context of DFV and how it is often used in ongoing patterns of abuse.

- 2.24 In [Chapter 1](#), we explained that while non-fatal strangulation is dangerous, there is an added risk to particular victim-survivors because:

- people in certain types of relationships who experience strangulation, including intimate partners and their children, may be at risk of being killed in future
- non-fatal strangulation is the ultimate form of control over another person's life and is used as a dangerous form of coercive control.



- 2.25 Stakeholders considered that power and control are at the heart of non-fatal strangulation.<sup>9</sup> Yumba-Meta submitted that strangulation 'is a form of control, not just physical violence'.<sup>10</sup>

- 2.26 Stakeholders noted that controlling dynamics exist beyond the relationships currently captured by the non-fatal strangulation offence.<sup>11</sup> QSAN submitted:<sup>12</sup>

Similarly to other relationships when strangulation is used, it is used in young people's relationships as a means of exerting power and control. Strangulation or 'sexual choking' is seen as a new and exciting thing to engage in. In these relationships consent is not being sought as strangulation is viewed as a social norm. Strangulation is also used in sexual relationships to re-establish control or to threaten the victim so they will be submissive in relation to other aspects of the relationship.

- 2.27 Stakeholders also raised concerns that the domestic setting scope of the current non-fatal strangulation offence does not adequately capture modern relationships in which this conduct occurs.<sup>13</sup> For example, the Victims' Commissioner submitted:<sup>14</sup>

Noting recent data that shows more than half of young people are using strangulation during sex, and that a 'domestic relationship' may be difficult to

## 2. Scope of section 315A

establish between two young people, the current offence of non-fatal strangulation may fail to provide protection to young victim-survivors. ... [I]t may also fail to protect vulnerable cohorts including LGBTIQ+ community, and people experiencing homelessness.

2.28 DVAC noted that the normalisation of strangulation during sex was occurring both in the context of DFV and in other types of relationships:<sup>15</sup>

We are alarmed by the reported normalisation of strangulation within sex within the broader community and those we support. We are seeing the normalisation of extreme and high-risk violence against predominantly women, non-fatal strangulation, not only within the context of domestic and family violence but within all forms and types of relationships.

2.29 Our research found that the current domestic setting scope of the non-fatal strangulation offence may not be fit for purpose. For example, police and lawyers had experience of non-fatal strangulation charges not proceeding when the people involved were in a dating relationship, had a casual sexual encounter, or were children or young people.<sup>16</sup>

2.30 This is despite the explanatory notes to the Domestic and Family Violence Protection Bill 2011. Those explained that couple relationships as included within the scope of intimate partner relationships, which are relevant relationships under the Act (see above at [2.18]), were intended to include a broader range of relationships, including those between young people. According to the explanatory notes:<sup>17</sup>

Two young people who form a relationship while they are still each residing with their parents could be in a couple relationship. The relationship could be largely comprised of contact through a social networking website and may not be a relationship of a sexual nature, but the relationship could involve frequent contact between the parties and declarations of their trust and commitment towards one another.

2.31 Some of the victim-survivors who participated in our research told us they were in a current or former dating relationship with the perpetrator, had engaged in casual sex with them, or were current or former housemates or lived together.<sup>18</sup>

2.32 Our sentencing remarks research for common assault and assault occasioning bodily harm convictions involving non-fatal strangulation conduct revealed that such conduct is a gendered form of violence men used against women in a range of relationships and settings. Relationships included current and former partners and family members. They also included people who were dating, people who met with an expectation of sexual intimacy (such as those who met over apps, at a bar or through sex work), associates (such as friends and neighbours) and strangers. This is consistent with other research, which has found that even beyond intimate partners and family members, strangulation is one of the most common methods men use to kill women.<sup>19</sup>

2.33 In addition to analysing sentencing remarks for common assault and assault occasioning bodily harm convictions involving non-fatal strangulation conduct, we analysed sentencing remarks for murder and manslaughter cases sentenced in Queensland superior courts between 2010 and 2024 where the cause of death was strangulation. Our research found that:

- 58% of those murders were carried out in 'domestic relationships'
- 15% were carried out during sexual violence
- 10% were carried out in either a casual sexual relationship or housemate relationship.

2.34 We recommend expanding the non-fatal strangulation offence to relationships involving coercion, control or domination that do not otherwise fall within the scope of domestic settings

(recommendation 2(a)). In this way, our recommendation aligns with our fourth guiding principle (DFV and coercive control) and ensures that resourcing and support for those experiencing DFV or coercive control is preserved.

- 2.35 While it is evident that strangulation is occurring in a range of relationships beyond the current domestic setting scope of the non-fatal strangulation offence, we do not recommend the offence be expanded to all these relationships. This is because the risk of future violence and homicide is more well-established for people in ongoing relationships involving coercion, control or domination, as well as children of victim-survivors.<sup>20</sup>
- 2.36 We make other recommendations (recommendations 6–8) to ensure the criminal law effectively responds to strangulation victim-survivors in relationships that do not involve coercion, control or domination, and do not fall within the definition of domestic relationships or associated domestic violence.
- 2.37 Given the feedback we heard from stakeholders about the range of relationships in which non-fatal strangulation — and DFV — is occurring, we consider that a review of the scope of ‘relevant relationships’ as it applies more broadly is needed and we recommend accordingly (recommendation 18(a)). This review should consider how the current scope of the term impacts Aboriginal peoples and Torres Strait Islander peoples and their communities as well as whether it is broad enough to capture the dynamics of modern relationships. We discuss this recommendation in [Chapter 7](#).

## Alternatives not recommended

- 2.38 In our consultation paper, we proposed a three-offence model for non-fatal strangulation that included an offence that was to apply beyond domestic settings.
- 2.39 Many stakeholders considered that the non-fatal strangulation offence should be expanded beyond domestic settings given the inherent dangers of the conduct.<sup>21</sup> Stakeholders thought that a separate offence for non-fatal strangulation in any setting would send a clear message to the community about those dangers.<sup>22</sup> The Red Rose Foundation submitted:<sup>23</sup>
- The law needs to provide protection and accountability for all victims and send a clear message that the conduct is criminal, regardless of relationship to the perpetrator.
- 2.40 The non-fatal strangulation offences in New South Wales, Tasmania, England and Wales, Northern Ireland, Canada, New Zealand and some United States of America jurisdictions are not limited to domestic settings.<sup>24</sup>
- 2.41 However, a few stakeholders considered that the non-fatal strangulation offence should not be expanded beyond domestic settings because of the lack of evidence of the increased risk of future lethality.<sup>25</sup> The Bar Association of Queensland submitted:<sup>26</sup>
- Given the considerable body of research concerning the risks associated with non-consensual strangulation as an indicator of future violence and homicide in the context of relationships involving domestic and family violence, it is the Association’s view that any amended form of s 315A should be focused squarely on the criminalisation of non-consensual strangulation which occurs in a domestic setting.
- 2.42 Other stakeholders considered that existing offences were available to address non-fatal strangulation beyond domestic settings.<sup>27</sup> Professor Andrew Hemming submitted:<sup>28</sup>
- [T]his proposed three-offence model for non-fatal strangulation appears to be unnecessary based on the alternative suite of offences already available to the

police ranging from common assault and assault occasioning bodily harm to grievous bodily harm and attempted murder.

- 2.43 In [Chapter 4](#), we explain the limitations of some of these existing offences and discuss recommendations to improve the criminal law response to non-fatal strangulation that occurs beyond the scope of the amended non-fatal strangulation offence.
- 2.44 Some stakeholders were concerned that expanding the scope of the non-fatal strangulation offence would criminalise people who engage in consensual non-fatal strangulation during sex, including sex workers. To address these concerns, we recommend that the amended offence include a defence of consent to non-fatal strangulation that occurs in sexual contexts. This is discussed in [Chapter 3](#).
- 2.45 Our recommended approach is an appropriate and effective means of ensuring the law recognises:
- the added dangers to strangulation victim-survivors who experience DFV or coercive control
  - the inherent dangers of non-fatal strangulation.

## A graduated offence framework

### Our reforms explained

- 2.46 Recommendation 2(b) in conjunction with recommendation 3 would, if implemented, change the non-fatal strangulation offence so that it consists of:
- a simpliciter form with a maximum penalty of 7 years imprisonment that does not require proof that a person's respiration and/or blood circulation were restricted
  - an aggravated form with a maximum penalty of 14 years imprisonment that applies when a person completely or partially restricts the other person's respiration and/or blood circulation.
- 2.47 In accordance with s 575 of the Criminal Code (Qld), if restriction of respiration and/or blood circulation is not established but all other elements of the simpliciter form of the amended non-fatal strangulation offence are proved, the perpetrator may still be convicted of the simpliciter form of the offence, even where the aggravated form alone is indicted.

### Case for reform

- 2.48 The current non-fatal strangulation offence requires evidence of complete or partial restriction of a person's respiration and/or blood circulation, whether this be by applying pressure to the person's neck or other means.<sup>29</sup> This requirement has created a barrier to charging and prosecuting the non-fatal strangulation offence and has undermined a key goal of the offence — to allow for better recording of such events and to assist in identifying and assessing risk to DFV victim-survivors.<sup>30</sup> The terrorising and controlling effect of strangulation is achieved regardless of whether respiration and/or blood circulation are restricted.
- 2.49 The non-fatal strangulation offences in Victoria, the Australian Capital Territory and the Northern Territory apply to particular conduct, such as applying pressure to a person's neck or covering their nose or mouth, even where there is no evidence of restriction of respiration and/or blood circulation.<sup>31</sup>
- 2.50 Section 37(1A) of the Crimes Act 1900 (NSW) has also been interpreted in this way.<sup>32</sup> The genesis of that offence<sup>33</sup>

## 2. Scope of section 315A

was not a recommendation to create a new offence criminalising the specific act of non-fatal strangulation in a domestic setting, but rather a recommendation to consider whether to expand the scope of an existing offence of ‘choking, suffocation or strangulation’ to remove the requirement that the conduct had certain consequences as an element of the offence. In its report to Parliament ... the DVDRT [Domestic Violence Death Review Team] noted that strangulation offences were being charged as common assault or assault occasioning bodily harm offences. The DVDRT concluded ... that ‘[t]his raised questions about the current form of the strangulation offence in NSW and whether difficulty in proving the elements of the offence has resulted in perpetrators being charged with lesser offences where strangulation has been alleged to have occurred’.

- 2.51 Our research found that information about restriction of respiration largely relies on the victim-survivor being able to give this evidence.<sup>34</sup> Information about restriction of blood circulation may also require evidence from the victim-survivor about the symptoms they experienced.
- 2.52 However, strangulation victim-survivors, including those who participated in our research, have reported being unable to remember the event clearly and to have given inconsistent accounts over the course of the investigation and trial process.<sup>35</sup> Legal Aid Queensland (FLS) submitted:<sup>36</sup>

The observations in the consultation paper about the difficulty often experienced by victim-survivors in obtaining evidence of restricted respiration and/or blood circulation concur with the practice experience of FLS’ lawyers and social workers. Non-fatal strangulation is an act of violence that occurs most often within the home, without the presence of witnesses. Victim-survivors very often do not disclose their experiences for some time and often do not seek medical assistance until well after the incident, if at all. In some cases, it may take years for the victim-survivor to process their traumatic experience and understand and name the act of violence perpetrated against them. As noted in the consultation paper, the impact of trauma on memory may result in the victim-survivor being unable to particularise the restriction to their breath and/or circulation.

- 2.53 Our research also found that victim-survivors who are children may face particular issues giving evidence (see [Chapter 8](#)). We found that they can describe the act of strangulation but may struggle to articulate that their breath was restricted. Further, family and cultural factors may impact whether the child victim-survivor provides a statement at all.
- 2.54 Other stakeholders also raised concerns about proving restriction of respiration and/or blood circulation.<sup>37</sup> For example, Clinical Excellence Queensland submitted:<sup>38</sup>

[E]vidence of result ... is difficult to obtain due to marks on neck often not being visible, the impact of hypoxia on memory (impacts the victim/survivors’ ability to accurately remember the incident) and the fact that some impacts of strangulation/suffocation/choking may not be evident for weeks, months, or years, however can be catastrophic ... Additionally, development/discovery of these symptoms may not be obviously linked to the strangulation/choking/suffocation by the victim/survivor or treating health professionals when the symptoms emerge.

- 2.55 Lack of information about restriction of respiration and/or blood circulation has resulted in charges not proceeding at committal, being withdrawn completely or replaced with a different charge — sometimes common assault or assault occasioning bodily harm — or resulting in an acquittal.<sup>39</sup> When perpetrators are charged and convicted of other charges, the sentences received may be inadequate to reflect the gravity of the conduct involved.

## 2. Scope of section 315A

- 2.56 For example, in one case we reviewed,<sup>40</sup> a man was charged with the non-fatal strangulation of his partner. The victim-survivor gave evidence, but it was not sufficient to establish restriction of respiration. As a result, the prosecution withdrew the charge and replaced it with two counts of common assault, to which the perpetrator entered a plea of guilty. The Judge referred to this as offending of a 'very low-level nature' and thought that if the perpetrator had not been remanded in custody, he should have received a community-based order and not have gone to prison at all. The perpetrator had served 10 months in prison on remand, and in the circumstances the Judge ordered no further penalty.
- 2.57 Many stakeholders supported introducing a non-fatal strangulation offence that does not require proof of restriction of a person's respiration and/or blood circulation.<sup>41</sup> Such an offence would allow for prosecution of non-fatal strangulation even when victim-survivors do not articulate that their respiration was restricted or describe symptoms consistent with restriction of blood circulation. It would also not require medical experts to testify that certain conduct did or may have resulted in restriction of respiration and/or blood circulation.
- 2.58 North Queensland WLS submitted:<sup>42</sup>
- This proposed offence captures matters that are currently out of reach of s 315A. Having an offence that does not require an (obvious) result/injury or where the proof of such a result is too difficult to prove beyond reasonable doubt, will allow this type of terrifying conduct to be charged for what it is and not, for example, as an assault (if at all.)
- We cannot stress enough how meaningful this will be for victims to have this type of conduct recognised as an offence of strangulation, and not a more generic assault offence. [Non-fatal strangulation] has a markedly different quality to other assaults. It is deeply disturbing and chilling behaviour that traumatises victims, often making them fear for their lives. The psychological effects can be ongoing and are not visible as an injury or 'result'.
- 2.59 Many stakeholders also supported retention of a non-fatal strangulation offence that criminalises restriction of respiration and/or blood circulation as a more serious offence.<sup>43</sup>
- 2.60 Professor Douglas supported retaining an offence that restricts respiration and/or blood circulation because of the inherent dangers associated with such conduct: 'Placing pressure on the neck that restricts breathing or blood flow to any extent is dangerous of itself as the consultation paper's review of the research shows'.<sup>44</sup>

## Penalties

- 2.61 The penalties we recommend are the same as those proposed in our consultation paper. Many stakeholders supported the proposed penalties, with some arguing that they better reflect the seriousness of the offending.<sup>45</sup> For example, Yumba-Meta said the model we proposed provides<sup>46</sup>
- an appropriate distinction between different levels of severity in strangulation offences. If properly implemented, it has the potential to improve legal responses to this form of violence and reflect the serious and often life-threatening nature of strangulation.
- 2.62 Currently, imprisonment is the most common sentence ordered for adults convicted of non-fatal strangulation. From 2019–20 to 2023–24, the average length of imprisonment for the non-fatal strangulation offence was 2.7 years.<sup>47</sup> The Victims' Commissioner questioned whether 'the current sentences for non-fatal strangulation are actually meeting the community's expectations'.<sup>48</sup> North Queensland WLS submitted that an increase from the 7 year maximum penalty may increase the average sentence ordered for non-fatal strangulation.<sup>49</sup>

## 2. Scope of section 315A

- 2.63 QSAC recommended that non-fatal strangulation be included as a serious violent offence in the schedule of the Penalties and Sentences Act 1992.<sup>50</sup> Without the ability to declare non-fatal strangulation as a serious violent offence, a sentence of imprisonment for the non-fatal strangulation offence is subject to ordinary parole rules. This means that, usually, where the court does not otherwise fix a parole eligibility date, the perpetrator will serve 50% of their sentence before they are eligible to be released on parole.<sup>51</sup> However, if the person pleads guilty they will usually receive a discount, allowing a parole eligibility date to be set at 30% of the imprisonment order.<sup>52</sup> In contrast, where an offence is declared a serious violent offence, the perpetrator must serve a minimum of 80% of their sentence before being eligible for parole.<sup>53</sup>
- 2.64 QSAC recommended the non-fatal strangulation offence be included as a serious violence offence because 'the conduct involved has potential to lead to serious long-term harm'.<sup>54</sup> After analysing sentencing data, QSAC said:<sup>55</sup>
- While few offences are likely to meet the recommended 5-year threshold ... it is important to ensure that the most serious examples of this form of offending are formally recognised as serious offences under the new scheme to send a clear message to the community about the seriousness of this conduct.
- This recommendation has yet to be implemented.
- 2.65 In a recent District Court decision, a perpetrator entered a plea of guilty to two counts of non-fatal strangulation, three counts of assault occasioning bodily harm (DVO) and an aggravated form of contravention of a domestic violence order.<sup>56</sup> The two non-fatal strangulation offences were committed against the same victim-survivor in two separate and distinct incidents just over a month apart.
- 2.66 For the first of the non-fatal strangulation offences, the victim-survivor lost consciousness three to four times. At the time of that offending, the perpetrator was on parole for a non-fatal strangulation offence against a different victim-survivor.
- 2.67 The second non-fatal strangulation offence occurred only days after the perpetrator had been released from custody. For the second offence the strangulation was prolonged. The victim-survivor lapsed in and out of consciousness on at least five occasions and ended up urinating and defecating on herself. The Judge remarked:<sup>57</sup>
- General deterrence is clearly a very, very important sentencing consideration in a matter such as this, and that is because the sentence must make it clear that the community acting through the courts denounces this sort of conduct. Domestic violence against women in this way is abhorrent to the community.
- 2.68 The 7-year maximum penalty and the inability to make a serious violent offence declaration may have influenced the structure of the sentence. The Judge stated that 'it is appropriate to accumulate the sentences with a structure on a cumulative basis, moderated to reflect the totality principle'. A total sentence of 8 years imprisonment was imposed, comprised of 4 years for the first non-fatal strangulation offence, 3.5 years for the second non-fatal strangulation offence and 6 months for contravention of the domestic violence order. Those periods of imprisonment were ordered to be served cumulatively. Parole eligibility was set from the date of the order as the perpetrator had spent 1,046 days in pre-sentence custody.
- 2.69 We consider a maximum penalty of 7 years imprisonment to be appropriate for the simpliciter form of the amended non-fatal strangulation offence because such conduct indicates a perpetrator's willingness to take the victim-survivor's life in their hands, even if restriction of the victim-survivor's respiration and/or blood circulation cannot be proved.<sup>58</sup>
- 2.70 As one District Court Judge explained to a perpetrator of non-fatal strangulation on sentence:<sup>59</sup>

## 2. Scope of section 315A

Your offending reflects an underlying belief that you can control the actions of other people with violence and you must get the message very clearly that you cannot do that; and if you do, serious consequences will follow.

2.71 Another District Court Judge said:<sup>60</sup>

[T]he nature of the offence in itself is an exhibition of controlled violence against your partner. The capacity to restrict airways is you signalling, 'If I wanted to, I could end it for you.'

2.72 The 14 year maximum penalty for the aggravated form of the non-fatal strangulation offence reflects the additional seriousness of conduct that results in restriction of respiration and/or blood circulation. Such conduct can result in serious adverse health consequences or even death (see [Chapter 1](#)), justifying a maximum penalty equivalent to that of grievous bodily harm, which is 14 years imprisonment.

2.73 Such conduct could be charged as an existing offence with a higher maximum penalty than the current non-fatal strangulation offence, such as grievous bodily harm, manslaughter or murder, where that level of injury or death results. However, as discussed from [1.47] (see [Chapter 1](#)), there is sometimes difficulty proving evidence of those levels of injuries, injuries can be delayed and it can be difficult to establish causation.

2.74 A District Court Judge in sentencing non-fatal strangulation said:<sup>61</sup>

[T]he serious and dangerous nature of an act and the fact that it has been shown to be a predictive indicator of escalating domestic violence, and the concerning prevalence of this act in domestic violence offending all support the need for stern punishment in cases of that kind.

There is a focus then by the community that is self-evident through the decisions from the appellate court and changes in legislation that the community are going to do their utmost to ensure that vulnerable people in the community are protected from their partners, that their children should be protected from seeing that violence against their parents, and in particular when it comes to strangulation or suffocation, there needs to be a real appreciation of the inherent risk in that activity. ...

The inherent risk that they are talking about .... [i]s it simply unknown to a victim when they have a restriction of their airway and their blood vessels as to what future risk will happen to them.

Fortunately, [the victim-survivor] did not die. She could have. That is the risk in conducting yourself in the way that you did. You have no real control over that. There could have been a blood clot that moved from her blood vessels up into her brain. I remark upon that not to punish you for that, but that is the inherent risk that you did, and you did on repeated occasions.

2.75 Apart from the support for these penalties evident in feedback from stakeholders, we refer to community attitudes research on sentencing for rape and sexual assault completed as part of QSAC's recent review.<sup>62</sup> Noting the limitation that this was qualitative research with Queenslanders, we considered the finding that<sup>63</sup>

[o]ffences that resulted in death, or were potentially lethal, emerged as most serious of all offences ... Offences that were potentially, but not actually, lethal (such as grievous bodily harm and strangulation) were ranked as approximately equivalent in seriousness as high-level sexual offences, such as multiple party rape.

2.76 In the community attitudes research, participants were asked to compare a scenario where a husband put his hands on his wife's throat, stopping her breathing for a short period of time, against an over the clothes sexual assault of touching breasts or against an oral rape (of a child) or a digital rape. Upon conviction, the maximum penalty for the sexual assault would be

10 years imprisonment, while the maximum penalty for the rapes would be life imprisonment. Participants ranked the non-fatal strangulation as more serious than both the sexual assault and the digital rape.<sup>64</sup> The oral rape of the child was considered, by a slight majority, to be more serious than the non-fatal strangulation.<sup>65</sup> Our recommended maximum penalty for the aggravated form of the non-fatal strangulation offence, which is more than the 10 years for sexual assault but less than life imprisonment for rape, aligns with those community expectations.

## Alternatives not recommended

- 2.77 A few stakeholders did not support introduction of a non-fatal strangulation offence that applied to specified conduct without a requirement to restrict a person's respiration and/or blood circulation.<sup>66</sup> Legal Aid Queensland (CLS) opposed such an offence given the breadth of conduct which the offence could capture, submitting:<sup>67</sup>
- CLS opposes criminalising, with a maximum penalty of 7 years imprisonment, conduct of applying pressure to certain parts of the body without either a result element of restricting breath or a mental element of intending to restrict breath.
- 2.78 Rather than listing certain types of conduct to which the offence applies which may not, in the circumstances, be capable of restricting respiration and/or blood circulation, we recommend a simpler form of the non-fatal strangulation offence that focuses on the conduct involved and its capacity to restrict a person's respiration and/or blood circulation. The conduct criminalised by the offence is discussed further below from [2.87].
- 2.79 A few stakeholders did not support the three-offence model proposed in our consultation paper. They thought it would cause trial delays and could retraumatise complainants.<sup>68</sup> For example, the Bar Association of Queensland submitted three offences<sup>69</sup>
- each with a different focus, elements and available defences, has the potential to create a legal framework that is unnecessarily complex and not fit for purpose.
- 2.80 Some of these stakeholders instead suggested that a single non-fatal strangulation offence with aggravated forms be introduced.<sup>70</sup> Professor Douglas suggested:<sup>71</sup>
- One possible way forward is to ... maintain a 7 year offence with an aggravation (and higher penalty of 14 years) in cases where the prosecution can prove that breath or blood flow is restricted.
- This is the approach we have taken.
- 2.81 A few stakeholders considered that the penalties proposed in the consultation paper were too high. The Queensland Law Society submitted:<sup>72</sup>
- 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.
- 2.82 Legal Aid Queensland (CLS) submitted that increasing the maximum penalty because of the potential for serious harm, rather than responding to actual harm as is done for most other offences, breaches the De-Simoni principle. This principle prevents a court from considering conduct that may warrant a conviction for a more serious offence.<sup>73</sup> We note that the non-fatal strangulation offence was expressly introduced to address the risk of future violence and homicide in domestic settings. A maximum penalty of 14 years imprisonment for the aggravated form of the amended non-fatal strangulation offence is consistent with the maximum penalty for coercive control, of which non-fatal strangulation can be a dangerous form.<sup>74</sup> Both the simpler and aggravated forms of the amended non-fatal strangulation

offence criminalise the same conduct — it is the consequence of the conduct that attracts a higher maximum penalty.

- 2.83 Legal Aid Queensland (CLS) further submitted that a comparison to coercive control is not appropriate as this legislation is yet to be tested and noted that increasing the maximum penalty would not effectively deter and protect the community.<sup>75</sup> We reiterate that deterrence is not the only purpose of sentencing — there are other purposes, such as denunciation and appropriately recognising the harm to victim-survivors and the community, that are particularly important to this offending conduct.
- 2.84 Other stakeholders, including victim-survivors, considered that the proposed penalties were not high enough.<sup>76</sup> Some thought life imprisonment was more appropriate because:
- non-fatal strangulation is more akin to attempted murder
  - the non-fatal strangulation offence should prescribe the same penalty as s 315 of the Criminal Code (Qld).
- 2.85 Others thought that both the simpliciter and aggravated forms of the amended non-fatal strangulation offence should prescribe the same maximum penalty of 14 years imprisonment given the risks associated with such conduct in circumstances of DFV.<sup>77</sup>
- 2.86 We consider that our recommended approach appropriately reflects the nature of the dangers and risks that each form of the offence is intended to address.

## The conduct criminalised

### Our reforms explained

- 2.87 Recommendation 2(b) is that a simpliciter form of the non-fatal strangulation offence should apply to conduct capable of restricting a person's respiration and/or blood circulation. Recommendation 3 is that the aggravated form of the offence should apply to conduct that completely or partially restricts a person's respiration and/or blood circulation.
- 2.88 We intend conduct 'capable of' to mean conduct that has a realistic possibility of restricting a person's respiration and/or blood circulation. It is not necessary for the conduct to meet the higher standard of being 'likely to' or 'probable to' restrict respiration or blood circulation.
- 2.89 In assessing whether conduct is capable of restricting respiration and/or blood circulation, it may be necessary to consider the nature of the conduct involved and the amount of pressure applied. As outlined in New South Wales:<sup>78</sup>
- [I]t may be that only very slight pressure being applied to some areas of the neck of a victim may be capable of affecting the breath or the flow of blood to or from the head. ... To be clear, however, simply to place any slight pressure on the neck, in a way not capable of affecting the breath or the flow of blood to or from the head of the victim, even if accompanied by a threat to apply further pressure in the event of non-compliance [does not satisfy the offence].
- 2.90 We suggest the Queensland Government consider progressing reforms to s 315 of the Criminal Code (Qld) (disabling to commit an indictable offence) to promote consistency between that offence and the amended non-fatal strangulation offence. Currently, s 315 applies to 'any person who, by any means calculated to choke, suffocate, or strangle ...'.<sup>79</sup> The courts have held that calculated means likely.<sup>80</sup> It may be appropriate for that offence to also refer to conduct capable of restricting the other person's respiration and/or blood circulation.

### 315 Disabling in order to commit indictable offence

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

## Case for reform

- 2.91 Our research findings indicate that lack of definitional clarity still creates confusion about what constitutes choking, suffocation or strangulation and that this can lead to contest.<sup>81</sup> Because of this, the amended non-fatal strangulation offence should clearly describe the conduct it criminalises. Our recommended approach aims to do this in a way that avoids medicalising the offence and focuses on the conduct central to choking, suffocation and strangulation — conduct that does restrict or is capable of restricting a person’s respiration and/or blood circulation.
- 2.92 In all Australian jurisdictions, except Tasmania, as well as New Zealand, England, Wales and some United States of America jurisdictions, non-fatal strangulation offences apply to conduct that restricts respiration.<sup>82</sup> In Queensland, New South Wales, Western Australia, New Zealand and some United States of America jurisdictions, the offences also apply to restriction of blood circulation.<sup>83</sup> As such, we consider that conduct capable of either of these results is appropriate.
- 2.93 We heard from stakeholders who considered that existing definitions of ‘chokes’, ‘suffocates’ and ‘strangles’ may be too narrow.<sup>84</sup> For example, Respect Inc submitted that the current definition is ‘too narrow to reflect diverse experiences of non-fatal strangulation’ and that it should ‘be approached collectively using the definition “impeding, restricting or hindering respiration, breathing or blood circulation”’.<sup>85</sup>
- 2.94 Stakeholders, including victim-survivors, told us about the range of conduct used to restrict respiration and/or blood circulation. For example, perpetrators:<sup>86</sup>
- placed their hands, foot or forearm to the victim-survivor’s throat or neck
  - used chokeholds
  - used ligatures, such as lamp cords and seatbelts
  - covered the victim-survivor’s nose and/or mouth with their hands
  - smothered the victim-survivor
  - sat on or otherwise squashed or compressed the victim-survivor’s chest
  - pinned the victim-survivor down.
- 2.95 Yumba-Meta submitted:<sup>87</sup>
- [A]ll methods of breath restriction, whether through neck compression, airway obstruction, or chest pressure, should be equally recognised under the offence structure and treated with the same level of seriousness under the law.
- 2.96 In our research examining children as victim-survivors and witnesses in non-fatal strangulation matters, we were told that children use different words to describe non-fatal strangulation conduct, some of which do not refer to any of the three words choking, suffocation or strangulation. Instead, we found that children sometimes reported that there were hands on

the neck or squeezing of the throat, or demonstrated the actions with non-verbal cues (see [Chapter 8](#)).

- 2.97 Our recommended approach aims to ensure the non-fatal strangulation offence is capable of applying to the varied conduct that may be used to restrict a person's respiration and/or blood circulation, whether or not such restriction is actually caused. We aim to ensure that the approach is flexible enough to evolve over time.
- 2.98 However, this approach may also create some ambiguity about the type of conduct to which the offences apply. The Bar Association of Queensland submitted that<sup>88</sup>
- to avoid a circular definition, the conduct and its result should be distinct, and should not, for example, both relate to circulation.
- 2.99 To provide clarity, we recommend including a legislative note in the amended non-fatal strangulation offence that provides non-exhaustive examples of conduct that could be capable of restricting a person's respiration and/or blood circulation (recommendation 2(c)). This should include applying pressure to the person's neck, covering the person's nose or mouth, or otherwise obstructing or interfering with the other person's respiratory system or accessory systems of respiration. This last example could capture a range of conduct, such as putting something in a person's mouth or down their throat, or applying pressure to their chest.
- 2.100 Further, the explanatory note to the Bill introducing these reforms should clearly describe the conduct the amended offence is designed to capture and conduct that is beyond the scope of the offence.

## Alternatives not recommended

- 2.101 In our consultation paper, we listed certain types of conduct to which the amended non-fatal strangulation offence could potentially apply. Some stakeholders did not support inclusion of some of the listed conduct within the amended offence, considering that such conduct could inappropriately broaden the offence scope, especially if proof of restriction of respiration and/or blood circulation was not required.<sup>89</sup>
- 2.102 For example, stakeholders were concerned that including pressure to the chest may broaden the offence to conduct that may have little or no impact on respiration.<sup>90</sup> The Bar Association of Queensland submitted:<sup>91</sup>
- [T]he extension of the offence of non-fatal strangulation to conduct which involves pressure to the chest is neither necessary nor desirable. ...
- [I]t is difficult to foresee how pressure to the chest could be adequately defined without leading to unintended consequences. There are many types of conduct, including lawful conduct, which would involve some application of pressure to the chest.
- 2.103 However, other stakeholders considered that pressure to the chest should be included.<sup>92</sup> In United States of America jurisdictions such as West Virginia, Indiana and Kansas, non-fatal strangulation offences capture pressure applied to the chest or torso.<sup>93</sup>
- 2.104 Our recommended approach focuses on whether the conduct is capable of restricting or does restrict a person's respiration and/or blood circulation, instead of listing particular conduct.
- 2.105 A few stakeholders were concerned that the non-fatal strangulation offence would capture conduct the offence is not intended to capture, such as a fleeting push to the chest or a punch to the nose.<sup>94</sup> We have addressed these concerns by:
- ensuring the simpler form of the non-fatal strangulation offence applies only to conduct that occurs in the context of specified relationships, that is, domestic

relationships, associated domestic violence or relationships involving coercion, control or domination.

- requiring the simpliciter form of the offence to apply to conduct 'capable of' restricting respiration and/or blood circulation
- requiring the aggravated form of the offence to 'completely or partially' restrict respiration and/or blood circulation.
- including a carve-out for non-fatal strangulation that occurs in sporting contexts (see [Chapter 3](#))
- making recommendations to ensure that police take into account the nature of the conduct and the relationship of the parties when considering charging under the amended non-fatal strangulation offence.

2.106 A few stakeholders thought the non-fatal strangulation offence should include an element of intent. We have not recommended this approach be taken because the aim of the offence is to respond to the inherent dangerousness of non-fatal strangulation and the risk of future lethality for victim-survivors experiencing DFV or coercive control, which is not impacted by the perpetrator's intention. Further, as we note in [Chapter 3](#), the structure of Queensland's Criminal Code means that criminal responsibility provisions would continue to apply.

## Human rights considerations

2.107 Recommendations 2 and 3 aim to ensure the amended non-fatal strangulation offence more effectively responds to strangulation in domestic settings by:

- recognising the types of relationships where victim-survivors are at risk of future violence or homicide
- capturing the range of conduct used by perpetrators
- ensuring penalties reflect the seriousness of conduct involved.

2.108 These reforms aim to overcome barriers to investigating, charging and prosecuting non-fatal strangulation, and holding perpetrators accountable. We consider these recommendations are compatible with human rights.

### Rights promoted

2.109 Non-fatal strangulation and DFV are gender-based violence that discriminate against women. Gender-based violence violates women's right not to be subject to torture or cruel, inhuman or degrading treatment or punishment.<sup>95</sup> International law considers that DFV is a form of torture.<sup>96</sup> The United Nations Special Rapporteur on Torture has indicated that they will apply the definition of torture to a range of practices commonly understood to be within the scope of DFV, analyse State's legal obligations under the prohibition of torture with respect to DFV and make recommendations to improve protection against torture in the context of DFV.<sup>97</sup>

2.110 Recommendations 2 and 3 seek to protect the lives of strangulation victim-survivors, especially those who experience DFV and coercive control, ensure women and children can live safely in their homes, and reduce children's exposure to acts of DFV. In doing so they promote the right to recognition and equality before the law, the right to life, protection from torture and cruel, inhuman or degrading treatment, the right to liberty and security of person, the right to privacy and reputation, and the protection of families and children.

## Rights not limited

- 2.111 Recommendations 2 and 3 do not limit the right to liberty and security of the perpetrator. Expanding the non-fatal strangulation offence and increasing the maximum penalty available may result in more people being criminalised and subject to higher sentences of imprisonment. However, if accepted, these recommendations will be implemented into law and any deprivation of liberty will not be unlawful.

## Potential limitations that are reasonable and demonstrably justifiable

- 2.112 Recommendations 2 and 3 potentially limit the right to recognition and equality before the law by:
- limiting the amended non-fatal strangulation offence to people with a certain relationship status and prescribing higher maximum penalties for the offence than for offences which would apply to other people, such as common assault, assault occasioning bodily harm or sexual assault
  - perpetuating disproportionate impacts on Aboriginal peoples and Torres Strait Islander peoples by applying to people in 'domestic relationships'. The way this term is defined applies to a broader range of relationships involving Aboriginal peoples and Torres Strait Islander peoples compared to other people. This may contribute to over-representation of Aboriginal peoples and Torres Strait Islander peoples in non-fatal strangulation offending and other offences which rely on the term. This is discussed further in [Chapter 7](#) and [Chapter 8](#).
- 2.113 The recommendations aim to ensure the amended non-fatal strangulation offence better protects victim-survivors of DFV and coercive control and holds perpetrators accountable for conduct which can have serious consequences. This aim promotes victim-survivors' dignity and freedom.
- 2.114 There are no less restrictive and reasonably available ways to achieve the purpose of the recommendations. The recommendations appropriately limit the non-fatal strangulation offence to relationships where victim-survivors are most at risk of future violence and homicide, with the increase in maximum penalties reflecting the significant dangers that such victim-survivors face, including death.
- 2.115 It is critical that the Queensland Government review the scope of the term 'relevant relationships' as it applies more broadly, particularly with a view to addressing the systemic issue of over-representation of Aboriginal peoples and Torres Strait Islander peoples in relation to DFV offences. We discuss this further in [Chapter 7](#).
- 2.116 One option to potentially narrow the scope of the simpliciter form of the amended non-fatal strangulation offence could be to list specific conduct, such as applying pressure to a person's neck or covering their nose or mouth, rather than criminalising any conduct capable of restricting a person's respiration and/or blood circulation. However, this approach may not capture the range of conduct perpetrators use to instil terror or control. It also risks capturing conduct which might not have any real connection to respiration and/or blood circulation restriction, such as fleeting pressure applied to the back of a person's neck.
- 2.117 Having regard to the purpose of any limitation on the right to recognition and equality before the law, we consider it is reasonable and demonstrably justifiable.

# Impact of reform

- 2.118 Recommendations 2 and 3, if implemented, would expand the scope of the non-fatal strangulation offence. The amended non-fatal strangulation offence would apply to a broader range of relationships than the current non-fatal strangulation offence and other DFV offences, specifically, relationships involving coercion, control or domination that do not fall within the scope of domestic relationships or associated domestic violence. The amended non-fatal strangulation offence would also apply to a broader range of conduct as the simpliciter form of the offence would not require proof of restriction of respiration and/or blood circulation.
- 2.119 An unintended consequence of these reforms may be to increase the over-representation of Aboriginal and Torres Strait Islander perpetrators and victim-survivors in non-fatal strangulation offences. There is potential that more charges could be laid, more people could be held on remand and more people could plead guilty in these communities. It will be crucial for the Queensland Government to examine these issues when conducting its review of the scope of 'relevant relationships' (recommendation 18(a)).
- 2.120 The flexible nature of the conduct the amended non-fatal strangulation offence would capture means the offence may particularly impact sport. These issues are discussed and addressed in [Chapter 3](#).
- 2.121 Given the expansion of the non-fatal strangulation offence, recommendations 2 and 3 will have resourcing implications for the QPS, ODPP and judicial officers, and may have resourcing implications for Queensland Corrective Services, Legal Aid Queensland, community legal centres, including the Aboriginal and Torres Strait Islander Legal Service, and Queensland Health.
- 2.122 Because of the nature of the conduct criminalised by the simpliciter form of the amended non-fatal strangulation offence, the availability and resourcing of medical experts may need to be investigated to ensure there are experts available to provide evidence of whether conduct is capable of restricting respiration and/or blood circulation, as well as any medical evidence required for the aggravated form of the offence. Ensuring adequate availability of experts will reduce the risk of delays.
- 2.123 In addition to impacts arising from expanding the scope of the offence, an increase in maximum penalties and potential increase in guilty pleas could place an increased burden on Queensland Corrective Services both for custodial sentences and management of parole orders.
- 2.124 Introducing simpliciter and aggravated forms of the amended non-fatal strangulation offence may also complicate charging and prosecutorial decisions.
- 2.125 Further, as the Queensland Law Society submitted, an increase in penalties could lead to more contested charges:<sup>98</sup>

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.

## 2. Scope of section 315A

- 2.126 Education and training on the nature of these reforms for the public as well as relevant cohorts — such as the QPS, ODPP, lawyers, judicial officers (including Magistrates) and Queensland Health — will be necessary. In particular, education and training should address:
- the differences between the simpliciter and aggravated forms of the offence
  - the range of conduct that the offence could capture and the range of signs, symptoms and injuries a victim-survivor might present with
  - the types of relationships that fall within the scope of the offence.
- 2.127 Recommendations relevant to education and training are discussed in [Chapter 1](#) (recommendation 1) and [Chapter 6](#) (recommendations 11 and 13).

# Implementation

- 2.128 Reforms arising from recommendations 2 and 3 should not come into effect until after recommendations 1, 11 and 13 have been implemented (see Figure 1.2 in [Chapter 1](#)) to ensure the community understands the changes to the law as well as the risks and dangers associated with strangulation.

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# CHAPTER 3

## Lawfulness, defences and excuses

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# Introduction

- 3.1 Currently, the non-fatal strangulation offence applies to ‘unlawful’ choking, suffocation or strangulation where it is done ‘without the other person’s consent’. To be unlawful the conduct must be contrary to law or not otherwise excused.<sup>1</sup> Non-fatal strangulation may be excused or considered not contrary to law where certain defences apply.<sup>2</sup>
- 3.2 All defences except the complete defence of provocation to assault in s 269 of the Criminal Code (Qld) currently apply to the non-fatal strangulation offence. The complete defence of provocation does not apply because s 315A(2) specifies that assault is not an element of the offence.<sup>3</sup>
- 3.3 Our terms of reference asked us to examine the scope, structure and interpretation of the non-fatal strangulation offence, particularly whether the requirement of lack of consent should be removed or amended, as well as any other matters relevant to the issues in the review.<sup>4</sup>
- 3.4 The element of unlawfulness is part of the offence and becomes more relevant when considering whether to amend the requirement for the offence to be without the other person’s consent. The defences that apply and do not apply to the offence are other relevant matters.
- 3.5 This chapter discusses three recommendations which relate to defences to the amended non-fatal strangulation offence. The chapter considers:
- the element of unlawfulness (recommendation 2(b))
  - the defence of consent if the non-fatal strangulation offence was committed in a sexual context (recommendation 2(d))
  - a carve-out for sporting contexts (recommendation 4)
  - excluding the defences of provocation to assault, prevention of repetition of insult and domestic discipline from the amended non-fatal strangulation offence (recommendation 5).

## Lawful non-fatal strangulation

### Our reforms explained

- 3.6 The effect of recommendation 2(b) is to retain the element of unlawfulness in the amended non-fatal strangulation offence.
- 3.7 In his submission, Professor Andrew Hemming suggested:<sup>5</sup>
- The Griffith formula of using for every offence the term ‘unlawfully’, which is defined in s 291 as without authorisation, justification or excuse, needs to be abandoned and substituted with positive language identifying the fault elements that constitute the offence as one would expect in a modern Code like the Criminal Code 1995 (Cth).
- 3.8 Some may consider the structure of the Criminal Code regarding fault elements and reliance on ‘unlawfulness’ complicated. However, our terms of reference are limited to the non-fatal strangulation offence. A wholesale re-examination of the structure of fault elements in the Criminal Code (Qld) is outside the scope of this review.

- 3.9 Working within the current Criminal Code (Qld) framework, we recommend retaining the unlawfulness element in the amended non-fatal strangulation offence to permit the use of relevant defences and ensure that non-fatal strangulation conduct is not considered contrary to law when used in certain, legally defined circumstances.

## Case for reform

### Avoiding over-criminalisation and unintended consequences

- 3.10 Our recommendation to retain the unlawfulness element is consistent with the approach taken in other Australian jurisdictions. Most jurisdictions provide protection from criminal responsibility for lawful non-fatal strangulation.<sup>6</sup> While New South Wales and the Northern Territory do not refer to ‘unlawfulness’ or any equivalent, they instead require the choking, suffocation or strangulation to be ‘intentional’.<sup>7</sup>
- 3.11 Many stakeholders agreed that the unlawfulness element should be retained, providing examples of circumstances in which non-fatal strangulation should not attract criminal responsibility.<sup>8</sup> Circumstances relevant to the non-fatal strangulation offence include:<sup>9</sup>
- appropriate and proportionate instances of self-defence or in defence of another
  - incidental physical contact, accident or emergency
  - as part of a consensual sexual act
  - sporting contexts.
- 3.12 This section considers self-defence and other related defences, as well as incidental physical contact, accident and emergency. Under our recommended approach, these defences would continue to be available to the amended non-fatal strangulation offence. Consensual non-fatal strangulation in sexual contexts and sporting contexts are each addressed separately in other sections in this chapter.
- 3.13 Other circumstances raised by stakeholders that are not likely to be raised in defence to the amended non-fatal strangulation offence include when the non-fatal strangulation occurs:
- in instances of medical necessity
  - by police, security and others trained to use certain techniques for restraint with minimal impact.
- These examples are considered in [Chapter 5](#).
- 3.14 Some stakeholders supported removing the element of unlawfulness from the non-fatal strangulation offence.<sup>10</sup> Concerns were raised about the ability to misuse or manipulate defences.<sup>11</sup> Other stakeholders thought that non-fatal strangulation should never be lawful because it:
- is so inherently dangerous there would never be a situation in which it should be considered reasonable to use (see [Chapter 1](#) for discussion of the inherent dangers of strangulation)
  - would relay an inconsistent message where non-fatal strangulation was permitted in certain situations, which may risk further normalising the behaviour.
- 3.15 On balance, we consider the element of unlawfulness is necessary to align with our third guiding principle (justice) and avoid over-criminalisation and unintended consequences. Without this requirement, the amended offence risks unjust outcomes and would be inconsistent with human rights.

## Self-defence, defence of others and defence of property

- 3.16 Retaining the element of unlawfulness would mean that the defences relating to defensive use of force (ss 267, 271–279 of the Criminal Code (Qld)) can continue to apply to the amended non-fatal strangulation offence. We heard different views as to whether non-fatal strangulation should ever be considered lawful as defensive conduct.
- 3.17 Stakeholders in support suggested that the requirements in these defences for responses to be reasonable and necessary appropriately balance the rights of perpetrators and victim-survivors.<sup>12</sup> Legal Aid Queensland (FLS) submitted:<sup>13</sup>
- In some cases, non-fatal strangulation may be lawful when used in self-defence or in defence of others. However, FLS suggests that the circumstances of each case need to be considered carefully. In considering whether the act was lawful, an assessment should be made as to whether the use of force by the person performing the act of strangulation was proportionate to the level of risk posed by the person being strangled.
- 3.18 Clinical Excellence Queensland provided a hypothetical example of when non-fatal strangulation should arguably be lawful:<sup>14</sup>
- Non-fatal strangulation is commonly taught as an effective self-defence, particularly for women as it enables the woman to subdue and escape from a larger/stronger person if being attacked. In cases of self-defence particularly when physical capability is disproportionate, non-fatal strangulation should be lawful.
- 3.19 Stakeholders who supported excluding self-defence (and other related defences) from application to the non-fatal strangulation offence thought it would always be unreasonable to use non-fatal strangulation conduct. They were also concerned about misuse of the defence. The Red Rose Foundation, for example, submitted:<sup>15</sup>
- While self-defence is critical in genuine threats, it is frequently misused in domestic violence contexts to justify retaliatory violence. For example, perpetrators may falsely claim they strangled a victim to ‘protect themselves’ during a confrontation, obscuring patterns of coercive control. Given [non-fatal strangulation’s] role as a tool of dominance, not protection, this defence risks perpetuating victim-blaming narratives.
- 3.20 We are currently reviewing self-defence (and related defences) as part of the review of particular criminal defences. That review is considering whether the defences promote just outcomes and protect human rights, whether they are fit for purpose and whether they reflect circumstances involving DFV.<sup>16</sup> Generally, we have left assessment of those issues to the criminal defences review. However, we have considered whether there is evidence to suggest these defences are operating problematically in relation to the non-fatal strangulation offence and whether there are particular circumstances where it may be necessary to retain the defence for this type of conduct.
- 3.21 To do so, we spoke to legal practitioners and reviewed appeal decisions and case transcripts about matters where self-defence (or other related defences) were argued to defend non-fatal strangulation charges.<sup>17</sup>
- 3.22 We heard from legal practitioners who considered that it is difficult to use self-defence to justify non-fatal strangulation because it is hard to argue that such conduct could be reasonable.<sup>18</sup> In some cases we reviewed, perpetrators initially told police that the victim-survivor was the aggressor and that they acted in self-defence, but the perpetrator subsequently pleaded guilty to the offence, potentially after obtaining legal advice about the

requirements for self-defence.<sup>19</sup> Self-defence and defence of property or dwelling have also been raised in non-fatal strangulation trials.

- 3.23 Self-defence has been argued unsuccessfully in trials for non-fatal strangulation. For example, in one case we reviewed, the victim-survivor pushed the perpetrator out the door during an argument when a struggle ensued. During the struggle, the victim-survivor pulled the perpetrator's hair and hit him on the nose. The perpetrator then applied pressure to the victim-survivor's throat, hindering her breathing. This resulted in the victim-survivor falling to the ground, probably unconscious or at least dizzy and confused. The perpetrator immediately stopped applying pressure. There was no evidence of any previous or subsequent DFV in that case. The jury found the perpetrator guilty, which means any suggestion that the non-fatal strangulation was reasonably necessary for self-defence was rejected in that case.<sup>20</sup>
- 3.24 However, both male and female perpetrators of non-fatal strangulation have been acquitted in cases in which self-defence was raised. In one case we reviewed, a female was charged with several offences, including non-fatal strangulation of a male with whom she had been in an undisputed couple relationship.<sup>21</sup> Self-defence was left to the jury. Body-worn camera footage from the police who attended showed the female perpetrator saying that she responded in the way she did because the male had punched her in the head and 'choked' her, and she was fearful of what he would do to her. Relationship evidence was also tendered which suggested that the male had been the perpetrator of DFV in the past, including previous instances in which the female was hospitalised. There was also evidence that there were cross-orders in place. The jury found the female perpetrator not guilty of all offences.
- 3.25 The Victims' Commissioner urged us 'to specifically consider any reforms through the lens of misidentification'.<sup>22</sup> The case discussed at [3.24] provides an example where self-defence was an important protection for a female who had potentially been misidentified and charged as the primary perpetrator, despite telling the police she acted in self-defence.
- 3.26 Therefore, we consider self-defence (and related defences) should continue to be available to avoid the unintended consequence of a misidentified perpetrator being held criminally responsible. The requirements of reasonableness and necessity in these defences can protect against their misuse, particularly when combined with improvements in police investigative processes and the ability for the prosecution to lead relationship evidence.
- 3.27 We make recommendations for public education about the risks of non-fatal strangulation as well as for training of criminal justice personnel (recommendations 1 and 11). Implementation of these recommendations may increase understanding within the community from which jurors are selected and among the professionals who make decisions about laying or continuing charges. In doing so, it may be more difficult to argue that use of non-fatal strangulation was reasonable.

### **Incidental or accidental conduct**

- 3.28 Retaining the unlawfulness requirement also means that other provisions of the Criminal Code (Qld) that excuse criminal responsibility, such as lack of will (s 23(1)(a)), accident (s 23(1)(b)) and emergency (s 25), would continue to apply to the amended non-fatal strangulation offence. This is particularly important given our recommendation for the amended offence to apply to 'conduct capable of restricting a person's respiration and/or circulation'. Retaining unlawfulness goes some way to 'protect against the unintended capture of innocuous behaviour or behaviour that should not reach the threshold of criminality.'<sup>23</sup>
- 3.29 Stakeholders provided examples of instances where non-fatal strangulation may result from lack of will, be done in an emergency situation, or result from an incidental obstruction of the airway (an accident).

- 3.30 For example, lack of will could arise if someone was pushed by another and put their hands out to steady themselves, unwillingly grabbing the other person in the neck area. An emergency could include, for example, pulling someone back from stepping into the path of an oncoming vehicle by grabbing them by the hood or the scruff of their shirt.
- 3.31 We were told of a case in which both accident and self-defence were left to the jury and the perpetrator was found not guilty. That case involved a much smaller male perpetrator responding to his larger female partner lunging at him while she was having a mental health episode by putting his hand up to the base of her throat. She continued to lean in to him.
- 3.32 The GCCASV submitted that, among others, the defence of accident should not apply to non-fatal strangulation.<sup>24</sup> Similarly, the Red Rose Foundation specifically asked us to consider excluding accident from applying to the non-fatal strangulation offence, submitting:<sup>25</sup>
- [Non-fatal strangulation] is a deliberate act of power, not an accidental occurrence. Section 23[1](b) allows defendants to claim they did not foresee harm, but medical evidence confirms that any restriction of respiration/blood flow carries catastrophic risks. Permitting this defence would undermine the gravity of strangulation as an intentional, high-risk act.
- 3.33 The Criminal Code (Qld) removes the defence of accident for the results-based offence of unlawful striking causing death (s 314A).<sup>26</sup> This is the only provision in the Criminal Code (Qld) to do so. The reasons for removing accident were specific to the conduct under consideration in s 314A. That offence was introduced due to difficulties proving the requisite intent for murder in ‘one punch’ situations and in securing manslaughter convictions because of the operation of s 23(1)(b).
- 3.34 The issue of accident being raised inappropriately in non-fatal strangulation matters was not something we heard often from stakeholders or found through our review of cases.
- 3.35 Although we recognise that the exclusion of accident would send a strong message that non-fatal strangulation is unacceptable, we consider it is more appropriate to send this message through public education (recommendation 1). We consider that the impact of public education would make it more difficult for the defence to successfully raise accident inappropriately as, for example, it would be much easier for the prosecution to say that an ordinary person, in the position of the defendant, would have reasonably foreseen restriction of a person’s respiration or blood circulation as a possible consequence of their conduct.

## Consent as a defence in a sexual context

### Our reforms explained

- 3.36 Recommendation 2(d) is that the amended non-fatal strangulation offence (both simpliciter and aggravated forms) include a defence of affirmative consent if the conduct constituting the offence occurs in a sexual context. This includes where non-fatal strangulation occurred during a sexual act or where the non-fatal strangulation was, itself, a sexual act.
- 3.37 For the purposes of the amended non-fatal strangulation offence, consent should not be a defence to conduct that occurs outside sexual contexts. This is justified by the increased risk of future violence, including lethal violence, in the types of relationships captured by the offence.

- 3.38 Consent should be defined in accordance with s 348 of the Criminal Code (Qld), that is, the affirmative consent model which means free and voluntary agreement. Other relevant provisions, including ss 348AA (circumstances in which there is no consent) and 348A (mistake of fact in relation to consent) should also apply. These provisions apply to sexual offences in Chapter 32 of the Criminal Code (Qld).

#### 348 Consent

- (1) In this chapter, consent means free and voluntary agreement.
- (2) A person may withdraw consent to an act at any time.
- (3) A person who does not offer physical or verbal resistance to an act is not, by reason only of that fact, to be taken to consent to the act.
- (4) A person does not consent to an act just because they consented to—
  - (a) a different act with the same person; or
  - (b) the same act with the same person at a different time or place; or
  - (c) the same act with a different person; or
  - (d) a different act with a different person.

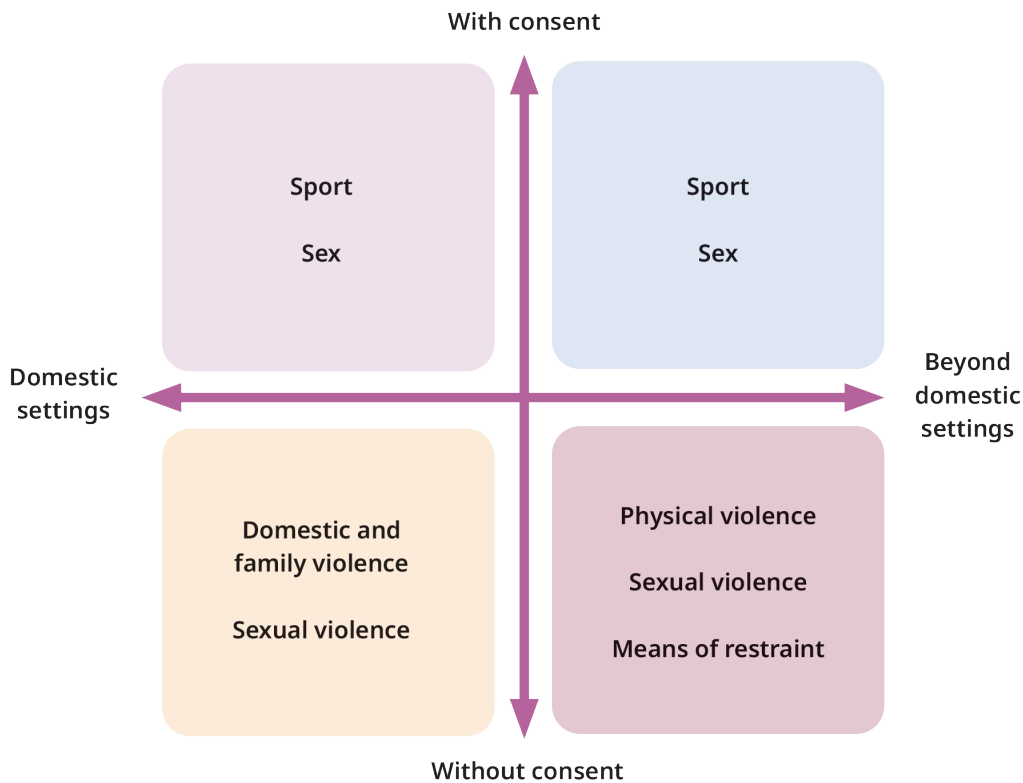
- 3.39 We also recommend that s 348AA of the Criminal Code (Qld) be amended to include a rebuttable presumption that applies to all sexual offences that provides that complete or partial restriction of a person's respiration and/or blood circulation is evidence of lack of consent unless the contrary is proved (recommendation 2(d)). This rebuttable presumption is similar to the existing rebuttable presumption in s 348AA(2) for sexual offending that results in grievous bodily harm.

## Case for reform

### Protecting personal autonomy in sexual contexts

- 3.40 Most stakeholders who thought consent should be included as part of the non-fatal strangulation offence framework spoke about consent to strangulation in sexual contexts.<sup>27</sup> This is consistent with our research which found that where consent to non-fatal strangulation is an issue, it is most often raised in sexual contexts.<sup>28</sup> Some stakeholders also discussed consent to non-fatal strangulation conduct in sporting contexts.<sup>29</sup> A carve-out for sport is discussed further below from [3.112].
- 3.41 Research shows that strangulation during sex has become normalised, particularly among young people.<sup>30</sup> This research shows that many young people explicitly consent. However, sometimes consent to future strangulation is negotiated during previous sexual encounters or is not given.<sup>31</sup> We heard from victim-survivors who had been strangled during sex without their consent. This is a form of sexual violence.

**Figure 3.1: The contexts and complexities of non-fatal strangulation**



3.42 Some stakeholders considered that people should have the autonomy to consent to strangulation during sex. For example, Legal Aid Queensland (CLS) submitted:<sup>32</sup>

People ought also have the freedom and autonomy, which they currently enjoy, to choose to engage in an act of restricting breath as part of consensual sexual activities.

3.43 Respect Inc was also concerned that<sup>33</sup>

[c]riminalising consensual sexual acts risks:

- Disproportionately targeting sex workers and clients.
- Creating legal ambiguity for BDSM or kink-involved sexual expression.

3.44 Some stakeholders raised concerns that removing consent altogether may create a barrier to disclosing to police or medical professionals, especially where consensual sexual strangulation has occurred in the relationship. Some legal stakeholders and research participants considered that consent is rarely raised as an issue during proceedings, so the without consent element should be retained.<sup>34</sup>

### Clarity and consistency

3.45 The non-fatal strangulation offence currently requires the choking, suffocation or strangulation to be ‘without the other person’s consent’. Consent for the purposes of the offence is not defined and it is unclear whether the common law approach or some other definition of consent applies. Stakeholders considered that, to provide clarity, consent should be legislatively defined.

### 3. Lawfulness, defences and excuses

- 3.46 In sexual contexts, most stakeholders who engaged with the question of consent thought that the affirmative consent model should apply.<sup>35</sup> This is the approach taken in Victoria.<sup>36</sup> Professor Heather Douglas submitted:<sup>37</sup>
- In most cases where consent has been raised it has been raised in the context of sexual strangulation. If consent is a defence to the basic form of the offence it should be framed as per the affirmative consent model in 348 and 348AA of the Criminal Code.
- 3.47 Similarly, DVAC submitted:<sup>38</sup>
- DVAC supports the use of affirmative consent models that demonstrate an understanding of trauma and trauma responses (fight/flight/freeze/fawn) and would refer the QLRC to consider the affirmative consent model and how consent is defined within that legislation.
- 3.48 Clinical Excellence Queensland considered that consent should be defined consistently with ss 348, 348AA and 348A of the Criminal Code (Qld).<sup>39</sup> Defining consent according to these provisions would promote consistency across the Criminal Code (Qld) with respect to sexual offending.
- 3.49 We also make a recommendation to clarify that conduct that completely or partially restricts a person's respiration and/or blood circulation which occurs in a sexual context without consent and does not fall within the scope of the amended non-fatal strangulation offence is the offence of sexual assault (recommendation 6).

## Addressing risks and dangers of strangulation

- 3.50 Defining consent consistently with the affirmative consent provisions in Chapter 32 of the Criminal Code (Qld) would also address concerns raised by stakeholders about the ability of those experiencing DFV or coercive control to genuinely consent.<sup>40</sup> Yumba-Meta submitted:<sup>41</sup>
- [I]n the context of domestic and family violence, the line between consent and coercion can be blurred. Victim-survivors may 'consent' due to pressure, fear, or as a means of avoiding further harm.
- 3.51 Similarly, North Queensland WLS submitted:<sup>42</sup>
- It is our experience that so-called consensual [non-fatal strangulation] occurs between parties that feature a significant power disparity; specifically, coercively controlling relationships where other forms of domestic violence designed to exert control and dominance are present. We must question whether consent to [non-fatal strangulation] obtained in these relationships has truly been given freely or is simply another manifestation of control?
- 3.52 DVAC had a similar experience:<sup>43</sup>
- We commonly hear from women 'consenting' to strangulation in a domestic violence relationship to placate and reduce the risk of their partner escalating in violence towards themselves and their children.
- 3.53 Section 348AA of the Criminal Code (Qld) provides that a person does not consent to an act if:
- (f) the person participates in the act because of force, a fear of force, harm of any type or a fear of harm of any type, whether to that person or someone else or to an animal or property, regardless of—
    - (i) when the force, harm or conduct giving rise to the fear occurs; or
    - (ii) whether it is, or is a result of, a single incident or is part of an ongoing pattern;

### 3. Lawfulness, defences and excuses

(g) the person participates in the act because of coercion, blackmail or intimidation, regardless of—

(i) when the coercion, blackmail or intimidation occurs; or

(ii) whether it occurs as a single incident or as part of an ongoing pattern

3.54 In certain criminal proceedings, relevant evidence of DFV would be admissible to establish whether the victim-survivor participated in the non-fatal strangulation conduct because of force, harm, fear of force or harm, or coercion.<sup>44</sup>

3.55 We heard from many stakeholders who considered that because of the inherent dangers of non-fatal strangulation, no one should be able to consent to such conduct — a blanket approach of removing consent altogether is necessary to send a strong message to the community.<sup>45</sup> Women’s Legal Service submitted:<sup>46</sup>

The law recognises that certain forms of conduct are so inherently harmful that, as a matter of public policy, consent cannot be given — grievous bodily harm being one such example. We consider non-fatal strangulation to fall within this category. ... [R]emoving the notion of consent to unlawful [non-fatal strangulation] from the offence sends a strong message to the community that this type of sexual activity is never safe and should not be considered normal.

3.56 Yumba-Meta submitted:<sup>47</sup>

While some people do engage in non-lethal choking during consensual sex, it raises significant concerns about safety and risk. Strangulation can cause serious or delayed health consequences, including unconsciousness, brain damage, and even death, even when it appears ‘controlled.’ Many people may not fully understand these risks when they agree to this kind of act.

3.57 North Queensland WLS expressed a similar view:<sup>48</sup>

We echo other stakeholders’ views that no one would willingly consent to the potential harm that can result from strangulation, suffocation and choking. The possible consequences, even for those who supposedly consent, are too serious.

3.58 We acknowledge the importance of a nuanced approach to consent that upholds personal autonomy while sending a strong message to the community that non-fatal strangulation is dangerous. We consider these aims can be achieved in part by adopting the existing affirmative consent model in the Criminal Code (Qld) which contemplates circumstances where serious harm occurs.

3.59 Specifically, s 348AA(1)(e) of the Criminal Code (Qld) states that a person does not consent if they are unconscious. If a person loses consciousness following strangulation, this would negate consent. Section 348AA(2) further provides a rebuttable presumption that if a person suffers grievous bodily harm as a result of, or in connection with, the offence, the harm is evidence of a lack of consent unless the contrary is proved.

3.60 Some stakeholders raised concerns that the effects of strangulation can impair a person’s ability to withdraw consent, even if safe words or actions have been agreed upon, which is at odds with the affirmative consent model.<sup>49</sup> For example, the Red Rose Foundation submitted:<sup>50</sup>

[T]he act of strangulation inherently compromises the ability to maintain or withdraw consent. Reduced oxygen to the brain during strangulation impairs cognitive function, often leaving individuals unable to speak, move, or recall safe words/actions, even if consent was initially given. This renders the concept of ongoing consent physiologically unworkable. As experts note, ‘the very organ needed to provide consent — the brain — is compromised by strangulation’.

- 3.61 In the New South Wales case of *R v Toyer*, the perpetrator was found not guilty of manslaughter after the victim died while the pair engaged in erotic asphyxia. The Judge found that although there was no discussion as to boundaries during sex, there was an understanding that the victim would tap the perpetrator's arm if she was distressed or wanted him to stop strangling her.<sup>51</sup> On this occasion, the victim did not do this.
- 3.62 To address these concerns, we recommend introduction of a second rebuttable presumption into s 348AA which provides that if a person's respiration and/or blood circulation is completely or partially restricted as a result of, or in connection with, the offence, that is evidence of lack of consent unless the contrary is proved (recommendation 2(d)). This rebuttable presumption would also work to send a strong message to the community that such conduct is dangerous. This amendment was suggested by the Victims' Commissioner:<sup>52</sup>
- I also recommend amending s 348AA(2) of the Criminal Code to include evidence of non-fatal strangulation as creating a rebuttable presumption against consent in sexual violence matters.
- 3.63 The proposed rebuttable presumption would apply to all sexual offending involving conduct that completely or partially restricts a person's respiration and/or blood circulation, not just the amended non-fatal strangulation offence.

## Consent as a defence

- 3.64 Only a small number of stakeholders considered whether consent should be an element of the offence or a defence, if retained.<sup>53</sup> Those stakeholders expressed different views and generally did not provide reasons.
- 3.65 Legal Aid Queensland (CLS) submitted that lack of consent should be retained as an element of the non-fatal strangulation offence and not be available as a defence.<sup>54</sup>
- CLS supports retaining 'without consent' as an element, rather than providing for consent to be a defence. That is consistent with the approach in New South Wales, South Australia and the Northern Territory. It is CLS's experience that consent is not often in issue in cases of unlawful strangulation that proceed to trial. Evidence of consent is not difficult for the prosecution to briefly adduce; as part of a police statement, and briefly during examination-in-chief at trial.
- 3.66 Legal Aid Queensland (CLS) thought this approach was preferable because:
- the QPS is already experienced and trained in gathering evidence about consent
  - the approach is more consistent with the approach taken for sexual offences and offences with assault as an element
  - including consent as a defence would make trials unnecessarily complex as Judges would need to determine if sufficient evidence was adduced to raise the defence.
- 3.67 Similarly, the Bar Association of Queensland submitted that reversing the onus of proof on questions of consent may have unintended consequences as 'the complexity and length of trials is likely to increase with mistake of fact in respect of consent, regularly, becoming an issue for determination'.<sup>55</sup>
- 3.68 We consider that it is appropriate for consent to be a defence where:
- the evidential burden is on the defence to point to evidence which suggests the victim-survivor consented
  - the persuasive burden is on the prosecution to negate this beyond reasonable doubt.

This approach is consistent with how most other defences in the Criminal Code (Qld), such as self-defence, operate.<sup>56</sup> Consent is a lawful excuse to non-fatal strangulation offences in Victoria, England and Wales.<sup>57</sup>

- 3.69 Such an approach would mean that lack of consent would not be a requirement to lay a non-fatal strangulation charge and would not need to be proved by the prosecution in all non-fatal strangulation cases, only when it is raised by the defence. This may reduce some of the barriers to charging and prosecuting non-fatal strangulation in sexual contexts.<sup>58</sup>
- 3.70 For example, research participants told us of instances where a suggestion of consent to strangulation during sex resulted in non-fatal strangulation charges not being laid or being withdrawn, a hung jury or an acquittal by the jury.<sup>59</sup> We were also told of examples where the victim-survivor was required to give evidence about lack of consent, even when there was independent evidence of the act itself. Further, previous research has found that police may not believe or act on claims that strangulation was non-consensual during sex if the victim-survivor had a history of rough sex preferences.<sup>60</sup>
- 3.71 Including consent as a defence, in combination with the rebuttable presumption in recommendation 2(d), sends a stronger message to the community about the dangers of non-fatal strangulation.
- 3.72 Some stakeholders were concerned about application of the defence of mistake of fact to the non-fatal strangulation offence, particularly if consent was included. For example, Women's Legal Service submitted:<sup>61</sup>

With respect to consent as a defence, we note that the existing defence of mistake of fact already poses a substantial barrier to justice in sexual violence cases. Our concern is that introducing consent into the legal framework of these offences would introduce similar challenges, compounding trauma and contributing to delays for victim-survivors.

- 3.73 The GCCASV and the Red Rose Foundation considered that the defence of mistake of fact should not apply to the non-fatal strangulation offence.
- 3.74 To address these concerns, we recommend that s 348A of the Criminal Code (Qld) apply to the amended non-fatal strangulation offence. This provision ensures that if a defence of honest and reasonable, but mistaken, belief in consent is raised in relation to any sexual offence (including non-fatal strangulation in sexual contexts), additional requirements apply.

## Alternatives not recommended

- 3.75 Stakeholders proposed a number of alternative approaches to consent, including:<sup>62</sup>
- not including without consent as an element of or consent as a defence to the non-fatal strangulation offence because of the inherent dangers associated with non-fatal strangulation
  - adopting a different model of consent, such as informed consent, to ensure people have an adequate understanding of the dangers of strangulation
  - retaining without consent as an element, not a defence (discussed above from [3.64]).

## Removing consent altogether

- 3.76 We consider that, given the limited relationships to which we recommend the amended non-fatal strangulation should apply, removing consent altogether would unjustifiably limit the right to recognition and equality before the law and the right to privacy and reputation. This is because people who fall within the scope of the amended non-fatal strangulation offence

would be unable to consent to such conduct in sexual contexts, but people beyond the scope of the amended offence would be able to consent.

- 3.77 However, we recognise the growing the body of research on the risks and dangers of strangulation and consider that public education, including for children and young people, will be paramount to ensure the public is appropriately informed about the risks and understands that they can choose not to consent (recommendation 1). A few stakeholders considered that because non-fatal strangulation during sex has become normalised, young people do not know they can say no.
- 3.78 As explained in [Chapter 1](#), there is not much research on the long-term risks and dangers of non-fatal strangulation, even though we know such conduct is inherently dangerous. Future research in this space may show that non-fatal strangulation is more akin to other offences that criminalise serious harms, such as grievous bodily harm. This may justify removing the ability to consent to non-fatal strangulation.

## Different model of consent

- 3.79 Some stakeholders thought that a model of informed consent or another model involving ‘free, voluntary and informed agreement’ should apply to the non-fatal strangulation offence.<sup>63</sup> However, others noted the challenges of applying an informed consent model in practice. Stakeholders thought that many people, especially young people, do not understand the risks of non-fatal strangulation and that this would impact their ability to give informed consent. The Victims’ Commissioner submitted that ‘[o]btaining informed consent may be challenging — and the information relied upon about non-fatal strangulation may be false.’<sup>64</sup>
- 3.80 Further, an informed consent model may present difficulties for perpetrators from certain cohorts, including Aboriginal peoples and Torres Strait Islander peoples, people from culturally and linguistically diverse communities, and people with disability, including brain injury. The Bar Association of Queensland submitted that introducing an informed consent model may result in<sup>65</sup>

increased numbers of disadvantaged or less educated people who don’t have access to the resources which would allow them to prove an understanding of the particular dangers of strangulation being charged and potentially convicted of serious criminal offences which, in turn, is likely to contribute further to the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system.

- 3.81 Similarly, Legal Aid Queensland (CLS) submitted that an informed consent model would<sup>66</sup>

place a significant onus on a defendant: if they and the complainant agree to engage in an act restricting breath, the defendant would have to be knowledgeable about the risks of strangulation, and then quiz and verify the complainant’s understanding of the risk and dangers of choking. Defendants charged with strangulation or offences of violence are far more typically from, or living in, situations of great disadvantage compared to the average population. They will have experienced worse education outcomes. A not insignificant number have an intellectual impairment, or some other neurological condition. An informed consent model would expect such disadvantaged persons to research and learn about the effects of choking. That is unfair, if not incredibly difficult for those with intellectual limitations. It will also often be the case that the other person engaged in a consensual act of choking will come from a similarly disadvantaged background. ...

In any event, there is no evidence such an approach would in fact encourage people to research the effects of choking or permit further understanding. It is

more likely to penalise defendants because they and/or the complainant are disadvantaged and have little education and/or understanding about choking. It will thereby exacerbate the over-incarceration of certain minority groups, such as Aboriginal and/or Torres Strait Islander peoples.

3.82 The Red Rose Foundation emphasised the problems obtaining fully informed consent:<sup>67</sup>

[I]t is our position that fully informed consent to strangulation is never possible. 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. For example, a minor injury to the carotid artery from an earlier incident can weaken the vessel, making a subsequent, seemingly less forceful act potentially fatal. Additionally, sensitivity to brain oxygen deprivation varies widely: some may suffer brain damage within seconds, while others may lose consciousness without warning.

Given these risks and the impossibility of foreseeing individual outcomes, informed consent cannot be considered valid in the context of strangulation.

Research further shows that repeated strangulation increases the risk of severe injury or death, even if previous incidents seemed to have no serious consequences.

3.83 Further, introducing a different model of consent for the non-fatal strangulation offence in sexual contexts would create inconsistencies in the Criminal Code (Qld) with respect to how consent is defined in those contexts.

## Human rights considerations

3.84 Recommendation 2(d) seeks to ensure that people have autonomy to participate in certain sexual practices while appropriately addressing:

- the risks and dangers of strangulation, including the difficulties withdrawing consent
- concerns that people experiencing DFV or coercive control may not be able to give genuine consent.

3.85 Our recommendations about consent to the non-fatal strangulation offence aim to address barriers to charging and prosecuting the offence that have resulted from the current requirement to prove lack of consent, which is not legislatively defined.

3.86 We consider this recommendation is compatible with human rights.

## Rights promoted

3.87 Recommendation 2(d), in combination with recommendation 6 (see [Chapter 4](#)), promotes the right to recognition and equality before the law and the right to privacy and reputation by ensuring that all people can choose to consent to non-fatal strangulation in sexual contexts, regardless of the nature of the relationship. While the approach to consent differs slightly as recommendation 2(d) would introduce consent as a defence to the amended non-fatal strangulation offence while consent is an element of sexual offences, we consider this difference will have minimal impacts in practice.

3.88 Recommendation 2(d) also promotes the right to life and arguably the right to be protected from torture and cruel, inhuman or degrading treatment by introducing a presumption that there is no consent if a person's respiration and/or blood circulation are completely or partially restricted. These circumstances could arguably be said to be 'inhuman or degrading treatment

as it denies the most basic needs of a human being<sup>68</sup> and can result in serious injuries or death.

## Rights not limited

- 3.89 The defence of consent in recommendation 2(d) relies on the affirmative model of consent. An affirmative model of consent requires steps to be taken to obtain and maintain consent during sex. It acknowledges that this is the responsibility of both parties. This may be said to limit the right to recognition and equality before the law because affirmative consent requires a level of understanding and style of communication that may present barriers for certain groups of people, including people experiencing mental illness, people with disability (including brain injury), older people, people experiencing cognitive decline and people from culturally and linguistically diverse communities.
- 3.90 The Women's Safety and Justice Taskforce raised concerns about potential unfairness for particular people when it recommended a model of affirmative consent be introduced in Queensland.<sup>69</sup> The Taskforce said that to avoid disadvantaging those people, legislation would need to ensure that<sup>70</sup>
- the requirement to show that something was done to ascertain consent does not apply to people in those vulnerable categories if their impairment was a substantial cause of the accused person not saying or doing anything.
- 3.91 These safeguards were implemented<sup>71</sup> and will apply to affirmative consent as a defence to the non-fatal strangulation offence. As such, the right to recognition and equality before the law is not limited in this way.

## Potential limitations that are reasonable and demonstrably justifiable

- 3.92 Shifting consent from an element to a defence, along with the rebuttable presumption that complete or partial restriction of a person's respiration and/or blood circulation is evidence of lack of consent, could potentially limit the right to liberty and security of the perpetrator as such amendments could cause delay in resolving cases.
- 3.93 This recommendation could also potentially limit the right to a fair trial and rights in criminal proceedings, including the right to presumption of innocence and the right against self-incrimination, which are associated with the right to silence. A change that impacts a perpetrator's decision about how to defend a charge, including about whether to give evidence, limits the rights against self-incrimination and the right to the presumption of innocence.<sup>72</sup>
- 3.94 A perpetrator charged with non-fatal strangulation who raises consent as a defence would need to point to evidence of affirmative consent or evidence that supports their honest and reasonable belief in affirmative consent. The prosecutor must then prove beyond reasonable doubt that the perpetrator did not have an honest and reasonable belief that the victim-survivor consented. This may be easier to do without the perpetrator's evidence. Although the recommendation will not require the perpetrator to give evidence, the practical effect may be that they need to lead evidence as part of their defence because not doing so may result in adverse inferences being drawn. This could be said to limit the right to a fair trial and rights in criminal proceedings.
- 3.95 Recommendation 2(d) could also potentially limit the right to privacy and reputation by regulating a person's private sexual behaviour with a presumption that consent is not given if the person's respiration and/or blood circulation are completely or partially restricted. This potentially limits a person's autonomy to participate in certain private and consensual sexual practices.

- 3.96 The purposes of the limitations on these rights are to allow people autonomy to engage in this conduct while addressing the dangers of non-fatal strangulation and its increasing use, particularly in sexual contexts. Introducing the affirmative consent model as a defence to non-fatal strangulation in sexual contexts also aims to counter the high levels of victim-survivor attrition in such matters. Further, presuming a lack of consent in these circumstances addresses barriers victim-survivors' face when trying to evidence lack of consent, including victim-survivors experiencing coercive control. If recommendation 2(d) is implemented, any decision to raise consent as a defence will lie with the perpetrator, who may be best placed to provide evidence of affirmative consent. The defence may not always need to be relied upon.
- 3.97 These amendments will make it easier for people who commit non-fatal strangulation in sexual contexts to be held accountable. This is vital in a free and democratic society that seeks to preserve human life and dignity, including in private settings. Requiring a perpetrator to demonstrate they have obtained consent also supports messaging around safe and healthy relationships and is consistent with contemporary community attitudes.
- 3.98 There are no less restrictive and reasonably available alternative ways to achieve these purposes. Even if consent was retained as an element of the offence, introduction of the rebuttable presumption means the perpetrator may still be required to provide evidence that they obtained affirmative consent. Other alternatives could include a defence of another model of consent. However, this would not be appropriate for sexual contexts and would not align with recent reforms to Queensland's consent laws.
- 3.99 The limitations on the rights described above are not arbitrary as the presumption of lack of consent will be able to be rebutted with evidence to the contrary. This means that people will still be able to choose to engage in conduct that completely or partially restricts another person's respiration and/or blood flow in sexual contexts, so long as there is evidence the other person freely and voluntarily agreed to do so. In these circumstances, the right to privacy is still protected.
- 3.100 On balance, we consider that the limitations on rights are reasonable and demonstrably justifiable, having regard to the purposes of the limitations and the rights promoted, particularly when the interests of victim-survivors, the perpetrator and the community are considered.

## Impact of reform

- 3.101 Our recommended approach to consent may impact charging decisions made by police and prosecutors in non-fatal strangulation matters, particularly when there may be some evidence the victim-survivor might have consented.
- 3.102 A few stakeholders considered that consent more broadly is not properly understood. For example, Women's Legal Service submitted:<sup>73</sup>
- Please note that we do not believe consent to more conventional sexual practices is widely understood and freely given.
- This is particularly so in First Nations communities where sexual activity often commences at very young ages with vulnerable young girls. Consent remains an academic concept in these communities (and in the broader community), regardless of the model of consent employed at law. The reality is often widely different to what is imagined by the drafters of legislation.
- 3.103 This underscores the need for effective public education on consent, especially for children and young people, including in relation to strangulation that occurs in sexual contexts (recommendation 1).


### 3. Lawfulness, defences and excuses

- 3.104 Although including affirmative consent as a defence to the amended non-fatal strangulation offence in sexual contexts would promote consistency by ensuring the affirmative consent model applies to all types of sexual offending, the recommended approach would create two inconsistencies in how non-fatal strangulation conduct is criminalised.
- 3.105 First, for the purposes of the amended non-fatal strangulation offence, affirmative consent would be a defence while for other sexual offences affirmative consent is an element. In practice, however, this distinction would not result in any significant difference in how such matters are prosecuted, particularly if the rebuttable presumption (recommendation 2(d)) is implemented. For the non-fatal strangulation offence and sexual offences, evidence of complete or partial restriction of a person's respiration and/or blood circulation would automatically raise a presumption that there was no consent. It would be for the defence to prove the contrary.
- 3.106 Where there is no evidence of restriction of respiration and/or blood circulation:
- for the amended non-fatal strangulation offence, the prosecution would be required to prove beyond reasonable doubt that the victim-survivor did not consent under the affirmative consent model, but only if this is raised by the defence
  - for circumstances beyond the scope of the amended non-fatal strangulation offence:
    - such conduct could not be charged separately as sexual assault (see [Chapter 4](#)) but, if charged as part of the facts of a sexual offence, the prosecution would be required to prove beyond reasonable doubt that the victim-survivor did not consent under the affirmative consent model in all cases
    - if charged separately as common assault (see [Chapter 4](#)), the prosecution would be required to prove beyond reasonable doubt that the victim-survivor did not consent, as defined at common law, in all cases.
- 3.107 Second, outside sexual contexts, people would not be able to consent if they experienced non-fatal strangulation in the context of one of the relationships captured by the amended non-fatal strangulation offence. If they fell outside these types of relationships, they would be able to consent so long as the conduct was charged as an offence of which assault is an element, as lack of consent is an element of assault. In such contexts, consent is not legislatively defined so would take the meaning at common law.
- 3.108 We consider this distinction is justified for three reasons. First, police and lawyers who participated in our research said that sometimes the requirement for lack of consent undermined their ability to charge, even outside sexual contexts.<sup>74</sup> This was explained to be because the requirement for lack of consent relies on the victim-survivor to be able to articulate what happened. In the context of ongoing relationships, there are many reasons why it may be difficult to obtain the victim-survivor's version of events, including potential power imbalances, coercive control or practical implications for the victim-survivor when it comes to providing evidence.
- 3.109 Second, we heard from stakeholders that sometimes consent can be used as an 'out' in the context of DFV, both in and beyond sexual contexts. QIFVLS submitted:<sup>75</sup>
- There is also a risk that persons using violence will falsely claim the victim consented. Such claims can and often retraumatise victim-survivors. ... Balancing these factors, QIFVLS leans towards supporting removing the consent requirement for these offences or at least drafting legislation to presume a lack of consent in domestic contexts. We would like to see this prevent abusive partners from misusing 'consent' as a loophole or legal technicality to excuse or minimise their violent behaviours.

- 3.110 In a District Court case, the perpetrator argued that the victim-survivor consented to being strangled with a ligature in circumstances outside a sexual context. The perpetrator was found guilty and, during sentencing, the Judge noted that the perpetrator had given ‘farcical instructions to attempt to avoid conviction and the inevitable sentence by saying this was all done with some sort of agreement and consent.’<sup>76</sup>
- 3.111 Other than sexual contexts, stakeholders were primarily concerned that removing consent would criminalise strangulation that occurs in sporting contexts.<sup>77</sup> To address this issue, we recommend the amended non-fatal strangulation offence include a carve-out for sporting contexts (see below from [3.112]). For people in relationships that fall beyond the scope of the amended non-fatal strangulation offence, consent would be available to ensure such conduct is not criminalised (see [Chapter 4](#)).

## Sporting carve-out

### Our reforms explained

	<p><b>R4</b> The Criminal Code should be amended to make it a defence to a section 315A offence where the conduct:</p> <ul style="list-style-type: none"><li>• is done as part of a socially acceptable function or activity (with function or activity defined to include a sporting event), and</li><li>• is reasonable in the circumstances.</li></ul>
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- 3.112 Recommendation 4 is that the Criminal Code (Qld) should be amended to make it a defence specific to the amended non-fatal strangulation offence (both simpliciter and aggravated forms) where the conduct is done as part of a socially acceptable function or activity and is reasonable in the circumstances. Function or activity should be defined to include a sporting event.
- 3.113 Our recommended defence is equivalent to that in s 314A(4) of the Criminal Code (Qld) which applies to unlawful striking causing death. That section was included to ensure that the offence of unlawful striking causing death did not unintentionally criminalise conduct occurring in legitimate and accepted contexts, particularly contact sports where striking or physical force is often inherent and governed by established rules.<sup>78</sup>
- 3.114 There are no published Queensland decisions where s 314A(4) has been raised in defence of unlawful striking. As such, it appears the bounds of ‘socially acceptable function or activity’ are yet to be tested and there is no guide as to what factors may impact on reasonableness in those contexts.
- 3.115 An assessment of reasonableness provides flexibility to consider a range of different factors and allows for shifting perspectives in the community and in sports over time, which may be impacted by public education on the dangers of strangulation (recommendation 1). We intend for the requirement of reasonableness to allow for consideration of, for example:
- the sport’s rules or regulations, including safety protocols
  - the context of the sporting event, including whether it is closely supervised or monitored.

- 3.116 Recommendation 4 only applies to the amended non-fatal strangulation offence. In circumstances beyond the scope of the offence, non-fatal strangulation conduct will be captured as part of the existing framework of assault offences (see [Chapter 4](#)). Given those offences require the assault to be without consent, we consider it unnecessary to introduce a carve-out for sport in those circumstances.
- 3.117 Where strangulation in a sporting context results in grievous bodily harm or death, perpetrators should be charged with relevant injury-based offences. The sporting carve-out would not apply in those circumstances.

## Case for reform

### Avoiding over-criminalisation

- 3.118 When the non-fatal strangulation offence was initially introduced, the requirement for the offence to be without consent was included specifically to account for situations in which people engage in this conduct consensually, including in some sports.<sup>79</sup> Subsequently, in other jurisdictions, like Victoria, a defence of consent was permitted so as ‘not to inadvertently punish legitimate conduct between family members, such as occurs during contact sport’.<sup>80</sup>
- 3.119 Because we recommend that the without consent element should not be included in the non-fatal strangulation offence and that a defence of consent should only apply in sexual contexts, the amended non-fatal strangulation offence could result in the criminalisation of people engaging in genuine sporting conduct. The sporting carve-out is intended to address this issue. People who do not fall within the scope of the amended non-fatal strangulation offence would be able to legally engage in non-fatal strangulation conduct during sports where they consent, so long as the conduct does not result in grievous bodily harm or death (see [Chapter 4](#)).
- 3.120 Several sports, largely martial arts, involve intentional use of certain chokeholds or other methods of restricting a person’s respiration and/or blood circulation to subdue opponents. These include Brazilian Jiu Jitsu, Judo, Krav Maga and Mixed Martial Arts. Our review of the literature showed that in some sports, such as Judo and Jiu-jitsu, non-fatal strangulation conduct — sometimes to the point of unconsciousness — is prevalent in competitive tournaments<sup>81</sup> and training.<sup>82</sup> Other sports also involve incidental conduct that could be capable of restricting a person’s respiration and/or blood circulation, particularly combat or contact sports. It is possible that people who would fall within the scope of the amended non-fatal strangulation offence train and compete with or against each other in these sports.
- 3.121 Stakeholders from the sporting community, academia and the DFV and sexual violence support sector, as well as in law enforcement and the legal profession, thought non-fatal strangulation in the context of regulated sports should not always be criminalised.<sup>83</sup> They provided several reasons.
- 3.122 First, stakeholders considered non-fatal strangulation in sporting contexts has a different underlying purpose compared to non-fatal strangulation used in other contexts. In sporting contexts, the purpose relates to recreation and competition, while in other contexts, the purpose is often control.
- 3.123 Second, stakeholders thought it was important to allow people autonomy to participate in sports that might involve non-fatal strangulation conduct. For example, Legal Aid Queensland (CLS) considered that ‘non-fatal strangulation conduct should be lawful in a sporting context when within the rules of the game’.<sup>84</sup>

### 3. Lawfulness, defences and excuses

- 3.124 Third, stakeholders pointed to the benefits of sport, which include physical and mental health benefits and improvements in social wellbeing.<sup>85</sup> One stakeholder mentioned that the nature of sports includes discipline and respect for the rules, which can provide great benefits to individuals, particularly young people.
- 3.125 These benefits were thought to outweigh concerns about the perceived dangerousness of strangulation conduct, especially in sporting contexts. However, some stakeholders thought non-fatal strangulation should always be unlawful in sport because of its inherent dangers (these dangers are explained in [Chapter 1](#)) and the lack of understanding in the community generally about those risks.
- 3.126 Stakeholders were concerned that permitting non-fatal strangulation in some contexts would impact society's perceptions of the risks associated with non-fatal strangulation and what is considered socially acceptable. DVAC recognised that it was not in a position to comment on the risks of non-fatal strangulation in sporting contexts but expressed<sup>86</sup>
- concerns that permitting this behaviour in any context may normalise or validate it, creating a belief that it is safe in some contexts.
- 3.127 Case studies and reports exist of stroke and traumatic carotid artery injury in healthy men who have been subjected to a 'sportive choke'.<sup>87</sup> However, as noted in [Chapter 1](#), there is a lack of research on the impacts of sportive chokes, particularly in the long-term.<sup>88</sup>

### Safeguards in sporting contexts

- 3.128 Stakeholders who thought that non-fatal strangulation in sporting contexts should not be criminalised also relied on the safeguards that exist in some sports which can minimise potential harm, including:
- the oversight provided by spectators, accredited coaches, referees and, sometimes, designated medical personnel
  - the training involved
  - internal regulations or codes that may, for example, state that particular conduct is only permitted for certain age groups/experience levels and outline when non-fatal strangulation must be stopped.
- 3.129 As an example of internal regulations, in Brazilian Jiu Jitsu it is considered a severe foul<sup>89</sup>
- when an athlete strangles his or her opponent, without using the gi [uniform], with one or both hands around the opponent's neck or applies pressure to the opponent's windpipe using the thumb.
- 3.130 However, the rules do permit athletes aged 16 years or older to use certain chokeholds, such as the frontal guillotine choke or the forearm choke.<sup>90</sup> Those legal moves can be used to win, including by getting the opponent to indicate submission by tapping out, verbally withdrawing, screaming or emitting noises of pain, or where the opponent loses consciousness.<sup>91</sup>
- 3.131 Further, stakeholders noted that people who go beyond the rules of the sport will be penalised or held accountable in the game/match or even beyond. This is consistent with the approach in the English Court of Appeal (Criminal Division) where the court said:<sup>92</sup>
- In determining what the approach of the courts should be, the starting point is the fact that most organised sports have their own disciplinary procedures for enforcing their particular rules and standards of conduct.
- 3.132 Some stakeholders who thought that non-fatal strangulation in sport should sometimes be lawful stressed that the circumstances in which it should be lawful should be restricted.<sup>93</sup> The Red Rose Foundation submitted:<sup>94</sup>

### 3. Lawfulness, defences and excuses

Non-fatal strangulation should only be lawful in highly regulated contexts where strict safeguards prevent serious harm and ensure informed consent. For example, in martial arts such as judo or Brazilian jiu-jitsu, chokeholds are permitted under the rules and regulations set by Australian governing bodies like the Australian Mixed Martial Arts Sports Association (AMMASA). These rules prohibit excessive force, require referee oversight, and mandate technical compliance to minimise injury risk. These activities occur within a framework of mutual consent, professional supervision, and adherence to established safety protocols.

- 3.133 North Queensland WLS provided an example of the use of non-fatal strangulation in a situation outside a regulated context:<sup>95</sup>

We have the permission to share the story of one of our own lawyers: Her 15-year-old son was fooling around with other boys waiting for their martial art lesson to commence. The latest game was to choke each other to see who could last the longest before tapping out. Our colleague's son was regarded as the best in the game as he could hold out the longest. In a life-changing few moments, his and his family's life changed forever. Our colleague's son suffered a catastrophic injury that has left him severely disabled, requiring full-time care to lift and turn him in his bed, toilet him and feed him through a peg in his stomach. This incident occurred 22 years ago and lasted but a few moments however, this young boy's [life] was irrevocably changed.

- 3.134 Because of those very serious consequences, North Queensland WLS thought that no-one should ever be able to consent to this conduct. Under our recommended approach, the extent of regulation and oversight could be a factor to consider when determining if the conduct was reasonable.
- 3.135 On balance, despite the potential dangers of non-fatal strangulation, we consider that it is not in the public interest to criminalise all such conduct in sporting contexts. However, we consider that there must be constraints on its use. To achieve this, we recommend a carve-out for sport. Such a carve-out was supported by stakeholders.<sup>96</sup>
- 3.136 However, given the inherent dangers of non-fatal strangulation, we urge sporting bodies to consider their position on the continued use of conduct capable of restricting or that does restrict participants' respiration and/or blood circulation. If such conduct continues to be used, sporting bodies should ensure that it is appropriately regulated.

## Alternatives not recommended

- 3.137 An alternative approach to that recommended is to allow non-fatal strangulation conduct in sporting contexts to be regulated internally by the sport rather than by the criminal law. We note that other potentially criminal conduct, such as assaults, arising in sporting contexts rarely comes before the criminal courts.<sup>97</sup> Although that may be appropriate in many instances, in others it may be necessary to protect the community from potential dangers. This is particularly so for vulnerable members of the community, such as those in relationships involving coercive control.
- 3.138 Stakeholders raised concerns about relying solely on sporting bodies to self-regulate. We agree that this may be particularly problematic in Queensland because, unlike other Australian states and territories,<sup>98</sup> Queensland does not have legislation to regulate the conduct of combat sports (including to promote safety), nor an oversight body such as a Combat Sports Authority or Commission.<sup>99</sup> Allowing the criminal law to provide oversight for victim-survivors in these circumstances is aligned with our fifth guiding principle (trauma-informed) by supporting victim-survivors and ensuring they are provided with a transparent process.

- 3.139 Some may consider it is unnecessary to include a sporting carve-out because there may be a lower risk of criminalisation in situations where people in domestic-type relationships consent to engage in this type of sporting conduct and are unlikely to make a complaint to police. Any risk of criminalisation could potentially be avoided by instead bolstering police and prosecutors' approaches to exercising their discretion in these situations. We agree that educating police and prosecutors in the exercise of their discretion will be necessary (recommendation 11), however, we consider that the sporting carve-out is necessary to ensure equal protection before the law.

## Human rights considerations

- 3.140 Recommendation 4 seeks to avoid criminalisation of certain sporting conduct between those who fall within the scope of the amended non-fatal strangulation offence. We consider this recommendation is compatible with human rights as it does not limit human rights. Rather, in seeking to achieve its objective, this recommendation promotes the right to recognition and equality before the law and the right to privacy and reputation.
- 3.141 If recommendations 2 and 3 were implemented without this defence, people in the types of relationships captured by the amended non-fatal strangulation offence could suggest that they were discriminated against on the basis of their relationship status, potentially limiting their right to recognition and equality before the law. This would be because, assuming no other accepted defence applied, non-fatal strangulation conduct that they engaged in together in a sporting activity would be unlawful. However, people in relationships not captured by the amended non-fatal strangulation offence would still lawfully be able to use non-fatal strangulation conduct that did not amount to grievous bodily harm in a sporting context, as long as the prosecution could not disprove that there was consent. This issue is discussed further in [Chapter 4](#).
- 3.142 Recommendation 4 also promotes the right to privacy and reputation. While criminalising non-fatal strangulation conduct could be considered to limit bodily autonomy, this defence promotes that autonomy where it is reasonable in the circumstances of a socially acceptable function or activity.

## Impact of reform


- 3.143 Our recommendation to introduce a sporting carve-out for the amended non-fatal strangulation offence becomes necessary because of our recommendation to remove the element of 'without the other person's consent'. Practically, we consider it unlikely that this change will substantially affect the numbers of people charged with or convicted of non-fatal strangulation.
- 3.144 If recommendation 4 is implemented, the carve-out may change the way that police investigate and police and prosecutors decide to charge non-fatal strangulation matters. However, we do not anticipate negative consequences of this change, such as increased time to finalisation. Rather than asking victim-survivors whether there was consent to non-fatal strangulation to satisfy an element of the offence, prosecutors and police would need to consider whether the conduct occurred in the context of sport and was reasonable so that they are able to disprove such a defence if raised. This type of investigation and decision-making will be familiar as it is already a requirement for s 314A of the Criminal Code (Qld).
- 3.145 An expected benefit of this recommendation, if implemented, is that investigations and decisions will likely be more readily determinable without resort to further questions and potential re-traumatisation of victim-survivors. Evidence to disprove the carve-out's

application is not something that should prevent a matter being charged and committed as it will only be relevant if it is raised by the defence.

- 3.146 We do not anticipate that inclusion of the carve-out will increase trial complexity overall. As there would no longer be a requirement for juries to determine that the victim-survivor did not consent in every non-fatal strangulation trial, it may only increase the complexity of jury directions in the trials where the defence is raised.

## Defences that should not apply

### Our reforms explained

	<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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- 3.147 Recommendation 5 seeks to clarify and exclude the application of certain defences from the amended non-fatal strangulation offence (both simpliciter and aggravated forms). These defences are provocation to assault, prevention of repetition of insult, and domestic discipline. Section 315A(2) of the Criminal Code (Qld) would be unnecessary.
- 3.148 This recommendation intends to retain the current position that the complete defence of provocation to assault does not apply to the amended non-fatal strangulation offence and make it clear that the defences of prevention of repetition of insult and domestic discipline also do not apply.
- 3.149 While we have recommended that these defences should not apply to the amended non-fatal strangulation offence, we do not recommend any change to those defences as they apply to non-fatal strangulation in circumstances beyond the scope of the amended offence. This is discussed further in [Chapter 5](#).
- 3.150 We are currently reviewing the defences of provocation to assault, prevention of repetition of insult and domestic discipline as part of our review of particular criminal defences. That review is considering these defences more generally, rather than as they apply specifically to the offence of non-fatal strangulation. The criminal defences review final report is due to be delivered to the Attorney-General by 1 December 2025.

## Case for reform

### Addressing the seriousness of strangulation

- 3.151 Most stakeholders supported excluding provocation to assault, prevention of repetition of insult and domestic discipline from applying to the non-fatal strangulation offence.<sup>100</sup> Stakeholders considered that it was appropriate that the defences did not apply given the:
- domestic setting scope of the current offence in which coercive control is common<sup>101</sup> (consistent with our fourth guiding principle)

- seriousness of non-fatal strangulation.

3.152 The Red Rose Foundation submitted:<sup>102</sup>

These defences are incompatible with the gravity of strangulation as a high risk, coercive act in domestic violence (DFV) contexts. For instance, s 270 (prevention of insult) and s 269 (provocation) have historically been misused to minimise accountability in DFV cases, despite evidence that strangulation is a deliberate act of control rather than reactive conduct. ...

Moreover, these defences directly conflict with modern understandings of DFV as a pattern of coercive control, not isolated incidents. Removing these defences helps ensure that the law prioritises victim-survivor safety over outdated and archaic non-justifications for violence.

3.153 Legal Aid Queensland (FLS) explained that ‘the act of strangulation is, in FLS’s view, too high risk and carries consequences too serious to justify the use of any of these defences’.<sup>103</sup> Women’s Legal Service agreed, but cautioned that its position was dependent upon the conduct criminalised by the offence:<sup>104</sup>

We note that there may be complexity associated with s 269 depending on the nature of the conduct criminalised by the new offence. Our submission that the defences ought not to apply largely rests on our position that non-fatal strangulation is analogous to grievous bodily harm.

## Clarity in the law

3.154 Other stakeholders raised concerns about the need to exclude the three defences. For example, Professor Hemming submitted:<sup>105</sup>

It is not immediately apparent why these three defences should not apply to the three new proposed offences. Under s 315A(2), an assault is not an element of an offence against subsection (1). Section 315, which does not state an assault is not an element of the offence, is to be retained under the QLRC proposals, but the proposed offence 3 is to contain the same language as s 315A(2). In seeking to extend the number of precluded defences, the QLRC appears to be identifying a pejorative hierarchy of offences to justify singling out non-fatal strangulation as of sufficient dangerousness to warrant its exclusion from these three defences.

3.155 Some stakeholders thought that removing any defence could potentially result in unintended consequences, especially for vulnerable perpetrators. Legal Aid Queensland (CLS) submitted that<sup>106</sup>

the defences should remain open for consideration if raised on the evidence in the circumstances of each case; this ensures the greatest flexibility to reflect the individual circumstances of a case and ensures avoidance of unintended consequences.

3.156 However, feedback from stakeholders and findings from our research indicate that there is a lack of clarity about which defences do — and do not — apply to the non-fatal strangulation offence. As explained above, the defence of provocation does not currently apply to the non-fatal strangulation offence because s 315A(2) specifies that assault is not an element of the offence. We found that the way that provocation has been excluded from the offence causes confusion.

3.157 We also heard from police and lawyers who were not aware that the defence of provocation to assault did not apply to the non-fatal strangulation offence or incorrectly thought that defences such as self-defence or domestic discipline did not apply.

3.158 There is also uncertainty about whether the defence of prevention of repetition of insult can apply to the non-fatal strangulation offence. The Supreme and District Courts Criminal Directions Benchbook states:<sup>107</sup>

It was held in *R v TM* [2018] QDCPR 56 that s 270 of the Criminal Code (prevention of repetition of insult) is not available on the basis that s 270 can only apply to an offence of which an assault is an element. This decision is contrary to the conclusion reached by the Court of Appeal in *R v Major* [2015] 2 Qd R 307, and that of Hart J in *R v Sleep* [1966] Qd R 47, and should be approached with caution.

- 3.159 Further, there also appears to be uncertainty about application of the defence of domestic discipline to the non-fatal strangulation offence. In one case transcript we reviewed, a parent was charged with non-fatal strangulation against their child. Before deciding to leave both self-defence and domestic discipline to the jury, a District Court Judge queried whether the defence of domestic discipline could apply given 'assault was not an element of the offence'.<sup>108</sup>
- 3.160 Explicitly excluding these three defences from application to the amended non-fatal strangulation offence would promote clarity. This is consistent with our first guiding principle (clarity).

## Provocation

### 269 Defence of provocation

- (1) A person is not criminally responsible for an assault committed upon a person who gives the person provocation for the assault, if the person is in fact deprived by the provocation of the power of self-control, and acts upon it on the sudden and before there is time for the person's passion to cool, and if the force used is not disproportionate and is not intended, and is not such as is likely to cause death or grievous bodily harm.

## Alignment with community attitudes

- 3.161 In addition to providing clarity that the defence of provocation to assault (s 269 of the Criminal Code (Qld)) does not apply to the non-fatal strangulation offence, our recommendation to exclude the defence of provocation sends a message to the community that the conduct involved is not a socially acceptable response to being provoked.
- 3.162 Removing the ability to rely on provocation as a defence to non-fatal strangulation is consistent with the community's views, as found in research we conducted for our criminal defences review.<sup>109</sup> That research found that the community does not support provocation as a complete defence where there is a risk of significant injury or where the conduct is motivated by a desire for control.<sup>110</sup> It also found that support for the defence was particularly low when the conduct involved intimate partner violence.<sup>111</sup> Any conduct capable of restricting a person's respiration and/or blood circulation involves a risk of significant injury (see [Chapter 1](#)). Further, the non-fatal strangulation offence may involve violence between intimate partners, with non-fatal strangulation known to be used to exert control.
- 3.163 We heard from stakeholders who thought that excluding application of these defences from the non-fatal strangulation offence, in particular provocation, would have:
- an unintended impact on victim-survivors of DFV who may be responding to acts of violence
  - a disproportionate impact on Aboriginal peoples and Torres Strait Islander peoples.
- 3.164 While we acknowledge these concerns, other defences, such as self-defence, may be appropriate in these circumstances and would still be available. Further, our court data research showed that Aboriginal peoples and Torres Strait Islander peoples were less likely to

be charged with non-fatal strangulation than they were to be charged with assault occasioning bodily harm (DVO) to which the provocation defence continues to apply. Our recommendations regarding public education should go some way to lessen any unintended impacts (recommendation 1).

- 3.165 We consider that it is particularly important to remove provocation as a defence in situations captured by the amended non-fatal strangulation offence as such a defence rewards victim-blaming behaviour and has an inherent gender bias, predominantly excusing violent behaviour of males. As QIFVLS submitted:<sup>112</sup>

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

- 3.166 Continuing to exclude provocation as a defence to the amended non-fatal strangulation offence is consistent with other jurisdictions and with the Model Criminal Code. Western Australia is the only other Australian jurisdiction that has a complete defence of provocation at all.<sup>113</sup> The Law Reform Commission of Western Australia has recommended a review of the complete defence of provocation in that State.<sup>114</sup>

## Prevention of repetition of insult

### 270 Prevention of repetition of insult

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

- 3.167 The defence of prevention of repetition of insult (s 270 of the Criminal Code (Qld)) has a similar rationale to provocation to assault,<sup>115</sup> yet stakeholders raised concerns that this defence was being used in place of provocation. Excluding its application to the non-fatal strangulation offence similarly provides clarity, avoids victim-blaming behaviour and sends a message that non-fatal strangulation conduct is not a socially acceptable response in such circumstances.
- 3.168 Legal Aid Queensland (CLS) stressed that the defence of prevention of repetition of insult would not often be available in circumstances of non-fatal strangulation<sup>116</sup>
- given the grave circumstances associated with choking (grabbing a complainant around the neck, such as to prevent or restrict breathing). A trial Judge would have to be satisfied that the defence should be left to a jury. A jury would need to consider whether such force was reasonable.
- 3.169 In *R v TM*, the Judge denied a request to leave prevention of repetition of insult to the jury.<sup>117</sup> Defence counsel argued that the perpetrator's response of grabbing the complainant by the throat and applying pressure to her windpipe after 'alleged threats, assaults, the grabbing of car keys and her repeated attempts to stop him leaving the garage in his car' supported leaving the defence to the jury. The decision in this case was not particular to the facts but rather the Judge did not think prevention of repetition of insult was a legally available option. As mentioned above, this reasoning has been questioned. We do not know whether the Judge would have left the defence to the jury on the facts and, if it was left to the jury, whether the jury would have considered the strangulation was reasonably necessary and not intended or likely to cause death or grievous bodily harm.

3.170 However, Legal Aid Queensland (CLS) considered:<sup>118</sup>

In many circumstances [of non-fatal strangulation] these defences would not be raised or alternatively would not be considered reasonable.

3.171 Our discussions with Judges and legal practitioners suggested otherwise, revealing that prevention of repetition insult has been used in non-fatal strangulation trials.<sup>119</sup>

3.172 However, in the cases we reviewed where someone was acquitted after the defence of prevention of repetition of insult was raised, there was at least one other defence also left to the jury. As such, it is unclear which defence may have been accepted. We note that exclusion of prevention of repetition of insult does not prevent the defence from raising self-defence or defence of others in circumstances that may be similar.

3.173 Legal Aid Queensland (CLS) thought that there was a public interest in preserving the availability of the defence of prevention of repetition of insult, including for those who offend as DFV victim-survivors and to avoid further criminalising Aboriginal peoples and Torres Strait Islander peoples.

3.174 For the reasons discussed above in relation to provocation, we recommend that this defence should not apply to the amended non-fatal strangulation offence. This approach is consistent with the approach in most other Australian jurisdictions. Western Australia is the only other jurisdiction that has a defence of prevention of repetition of insult.<sup>120</sup>

## Domestic discipline

### 280 Domestic discipline

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

## Alignment with community attitudes

3.175 The recommendation to exclude the defence of domestic discipline (s 280 of the Criminal Code (Qld)) from applying to the amended non-fatal strangulation offence is consistent with community attitudes. Research conducted as part of our criminal defences review suggests that the community supports removal of the defence for more significant offences, such as non-fatal strangulation.<sup>121</sup> Excluding application of the defence would send a strong message about the dangers of this type of conduct for a particularly vulnerable group, children.

## Protecting children as a vulnerable cohort

3.176 Most stakeholders agreed that the defence of domestic discipline should not apply to non-fatal strangulation.<sup>122</sup> Our research found that children were victim-survivors of non-fatal strangulation in domestic settings (see [Chapter 8](#)). In such circumstances, perpetrators were usually parents (both mothers and fathers), step-parents or romantic partners of a biological parent, with non-fatal strangulation occurring as part of coercive control or alleged discipline.

3.177 Stakeholders expressed that it was difficult to imagine circumstances where the use of non-fatal strangulation against a child would be considered 'reasonable' because:

- of the inherent dangerousness of non-fatal strangulation, which is even greater for children<sup>123</sup>

### 3. Lawfulness, defences and excuses

- there would be other options available, for example, putting a disruptive child in a bear hug.

- 3.178 Stakeholders were generally surprised at the findings from the research conducted for the criminal defences review which showed that police were recording domestic discipline as the reason for a bar to prosecution, including in non-fatal strangulation matters.<sup>124</sup> However, other stakeholders provided examples consistent with these findings. For example, health stakeholders in one area told us about a case where a 13-year-old child was strangled by their father and, although police were involved, charges were not laid despite it allegedly having happened several times. Those stakeholders thought that some police were turning a blind eye because they were glad that the parent was taking action with a difficult child.
- 3.179 Stakeholders were also surprised to learn that domestic discipline was sometimes being left to the jury, along with self-defence, resulting in acquittal.<sup>125</sup>
- 3.180 However, Legal Aid Queensland (CLS) provided the following case study to explain that the defence should be retained, even for the non-fatal strangulation offence, to avoid unintended consequences. They considered this was particularly important if the non-fatal strangulation offence was expanded to include an offence that does not require proof of restriction of a person's respiration and/or blood circulation.

#### **Case study of domestic discipline raised in a non-fatal strangulation trial**

Legal Aid Queensland represented a father at trial in relation to a non-fatal strangulation offence where the victim-survivor was his 15-year-old son. Evidence at trial included that over the preceding years the son had displayed increasingly difficult behaviours. He was difficult to manage at school, had behaved aggressively towards other children and his own, much younger, siblings (including partaking in physical abuse), and had been self-harming. His parents had sought the assistance of their general practitioner, and a mental health care plan involving a psychologist was put in place.

One day, after intervening in rough play between the son and his siblings, the father told the son to go to his room. The manner in which the son did so caused concern for the father, who shortly after attended the son's room and tried to comfort him by placing his arms around the son. The son attempted to punch the father and began pushing and shoving the father, who then held the son down on the bed. In doing so, he placed his hand on the neck/shoulder area of the son for between 3 and 5 seconds before desisting when the son told him he could not breathe.

The initial complaint was made by the mother of the son, with whom the father was separated but living in the same residence. She gave varied versions of events at trial.

Directions regarding both domestic discipline and self-defence were given to the jury, although self-defence had not been specifically relied upon. The jury returned a verdict of not guilty within 22 minutes of commencing their deliberations.

- 3.181 Other stakeholders raised the same concern about the need for safeguards in outlier cases. For example, DFV and sexual violence stakeholders suggested a situation where a victim-survivor of DFV might use particular conduct against their child to discipline them but also as a way of protecting them from more significant violence at the hands of a more violent parent.
- 3.182 Our recommendation regarding public education (recommendation 1) may mitigate some of the risks of unintended consequences from excluding domestic discipline from applying to the amended non-fatal strangulation offence. We heard from some stakeholders that parents already thought they were not permitted to apply any corporal punishment above the

shoulders and certainly not around the head and neck. However, other stakeholders mentioned that some people who used non-fatal strangulation conduct thought it would be a less dangerous option.

- 3.183 While other Australian jurisdictions do not exclude application of the defence of domestic discipline from their non-fatal strangulation offences, our recommended approach is consistent with the approach taken in England and Wales.<sup>126</sup> Further, New South Wales does not permit the use of its defence for any force applied to the head or the neck, unless it is trivial.<sup>127</sup>
- 3.184 We consider our recommended approach is necessary to protect children as vulnerable victim-survivors. This aligns with our third guiding principle (justice), which includes protecting human rights. Parents or persons in their place would continue to have access to other defences to non-fatal strangulation, such as emergency, accident, self-defence and defence of others, in appropriate circumstances.

## Human rights considerations

- 3.185 Recommendation 5 seeks to exclude the application of certain defences to the amended non-fatal strangulation offence. The purposes of this recommendation are to promote clarity in the law, align the law with current community attitudes and protect children as a vulnerable cohort. We consider this recommendation is compatible with human rights.

### Rights promoted

- 3.186 Recommendation 5 promotes several rights for victim-survivors. A purpose of the amended non-fatal strangulation offence is to protect victim-survivors from unwanted interferences with their physical and mental integrity. Removing the availability of these defences, which justify or excuse the use of non-fatal strangulation against another person, will support victim-survivors' right to privacy and reputation, right to life, right to liberty and security of person, and right to protection from torture and cruel, inhuman or degrading treatment.
- 3.187 Various human rights bodies have recognised that DFV can amount to torture or ill-treatment (see [Chapter 2](#)). Exclusion of these defences in the context of domestic relationships, associated domestic violence or relationships involving coercion, control or domination supports the positive obligation on states to criminalise this conduct, conduct which should only be able to be justified in very limited situations.<sup>128</sup>
- 3.188 Removing the availability of these defences for the amended non-fatal strangulation offence also promotes the right to recognition and equality before the law, particularly as non-fatal strangulation is an act of gender-based violence and one in which Aboriginal women and Torres Strait Islander women are disproportionately represented as victim-survivors.
- 3.189 In addition, removing the ability to rely on the defence of domestic discipline to justify non-fatal strangulation will promote the right to protection of children and families and the right to children's equality before the law. The Committee on the Rights of the Child has determined that no violence against children is ever justifiable.<sup>129</sup>

### Rights not limited

- 3.190 Recommendation 5 does not limit the right to liberty and security of the perpetrator. Removing the availability of certain defences may make it more likely that a person will be convicted of an offence. However, if accepted, this recommendation will be implemented into law and any deprivation of liberty arising from conviction will not be unlawful. Further, as this

recommendation seeks to clarify the law around the application of defences, it will improve predictability and so will not be arbitrary.

## Potential limitations that are reasonable and demonstrably justifiable

- 3.191 Recommendation 5 could potentially limit:<sup>130</sup>
- the perpetrator's right to recognition and equality before the law
  - the rights of children and families if a parent or carer is subjected to criminal prosecution and punishment.
- 3.192 In particular, removing provocation to assault, prevention of repetition of insult and domestic discipline from applying to the amended non-fatal strangulation offence could impact Aboriginal peoples and Torres Strait Islander peoples. We understand that, due to experiences of historical and contemporary racism, Aboriginal peoples and Torres Strait Islander peoples are more likely to rely on defences like provocation and prevention of repetition of insult.<sup>131</sup>
- 3.193 These defences will remain available for non-fatal strangulation conduct charged as assault occasioning bodily harm or common assault. However, as discussed in [Chapter 7](#), reliance on the Domestic and Family Violence Protection Act 2012 to define 'domestic relationships' may mean that Aboriginal peoples and Torres Strait Islander peoples are more likely to be charged with the amended non-fatal strangulation offence than assault offences, where they may otherwise have access to these defences.<sup>132</sup>
- 3.194 This may have a discriminatory impact on the rates of conviction for Aboriginal peoples and Torres Strait Islander peoples in a context where Aboriginal peoples and Torres Strait Islander peoples are over-represented in Queensland's criminal justice system and as perpetrators of non-fatal strangulation.<sup>133</sup>
- 3.195 However, other defences, such as self-defence, will remain available to people where it is appropriate in the circumstances. Further, protections will also be afforded in that we recommend removal of the defences be preceded by a public education campaign that is specifically targeted, culturally appropriate and easily accessible (recommendation 1).
- 3.196 The recommendation to remove the defence of domestic discipline could also potentially limit:
- the right to freedom of thought, conscience, religion and belief
  - the ability to enjoy and practice culture protected by cultural rights
- by removing the ability to use certain force to discipline children. However, cultural and religious rights cannot provide justification for permitting harmful practices.<sup>134</sup>
- 3.197 The purposes of the potential limitations of the above rights are consistent with a free and democratic society in that they seek to clarify application of defences to the amended non-fatal strangulation offence and adjust the defences that apply to meet the community's general expectations of how the law should operate, particularly in DFV contexts. The limitations on these rights are required to achieve these purposes and there are no less restrictive options available to achieve these goals.
- 3.198 Having regard to the purposes of the limitations, we consider that the potential limitations on the above rights are reasonable and demonstrably justifiable.

## Impact of reform

- 3.199 Provocation is currently not a defence to the non-fatal strangulation offence, and we recommend retaining this approach. As such, impacts of this aspect of the recommendation are limited to the impacts arising from expanding the scope of the offence, namely, more

people may be charged (and so would not have access to this defence). These impacts are discussed in [Chapter 2](#).

- 3.200 Excluding prevention of repetition of insult and domestic discipline from application to the amended non-fatal strangulation offence may also have an impact on the numbers of people who could be charged with and convicted of this offence. This is because defences can impact decisions that police and prosecutors make to lay and withdraw charges. Before laying a charge, police must consider whether any relevant defences can be negated.<sup>135</sup> Before prosecuting and when deciding whether to continue prosecutions, consideration must be given as to whether there is a reasonable prospect of success in proving the charges, which should include consideration of whether there are any lines of defence plainly open.<sup>136</sup>
- 3.201 Defences might also support acquittal of charges following trial. Fewer defences available might mean fewer acquittals. However, we note that the current non-fatal strangulation offence does not often result in findings of not guilty. Our court data research showed that 5.9% of non-fatal strangulation indictments presented in Queensland superior courts resulted in an acquittal (see [Chapter 8](#)).
- 3.202 Excluding these two defences from application to the amended non-fatal strangulation offence will not necessarily mean that there will be an increase in the numbers of people prosecuted or convicted. Other defences, such as self-defence, defence of others, defence of property, emergency, lack of will or accident could apply. We note, for example, that in cases of non-fatal strangulation that we reviewed or were told about where prevention of repetition of insult or domestic discipline were left to the jury and acquittals resulted, these defences were not the only ones relied upon.<sup>137</sup>
- 3.203 If the number of convictions for the non-fatal strangulation offence do increase because these defences are not available, this may have impacts for Queensland Corrective Services. However, those impacts may be partially eased given that the factual basis leading to the offence could be considered as mitigation of sentence.<sup>138</sup> Although the defences would no longer be available to completely excuse any criminal responsibility, they could be argued to reduce the culpability of the perpetrator. For example, factual provocation can be considered a mitigating factor on sentence.<sup>139</sup>
- 3.204 Given the significant reforms arising out of recommendation 5, education and training on the nature of these reforms for the public as well as relevant cohorts (such as the QPS, ODPP and judicial officers, including Magistrates) will be necessary (see recommendations 1 and 11).

## Implementation

- 3.205 Recommendations 4 and 5 will have resourcing implications for the QPS, ODPP and Judges, and may have resourcing implications for Queensland Corrective Services, Legal Aid Queensland, community legal centres (including the Aboriginal and Torres Strait Islander Legal Service) and Queensland Health.
- 3.206 Reforms arising from these recommendations should not come into effect until after recommendations 1 and 11–13 have been implemented (see Figure 1.2 in [Chapter 1](#)) to ensure the community understands the changes to the law as well as the risks and dangers associated with strangulation.
- 3.207 We note that we are due to report on our review of particular criminal defences at the beginning of December 2025. While recommendation 5 relates to defences that are being reviewed by the criminal defences review, it relates only to defences as they apply to the amended non-fatal strangulation offence. Implementation of reforms arising from

### 3. Lawfulness, defences and excuses

recommendation 5 should not be delayed to occur concurrently with any reforms arising from the criminal defences review.

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# CHAPTER 4

## Beyond domestic settings

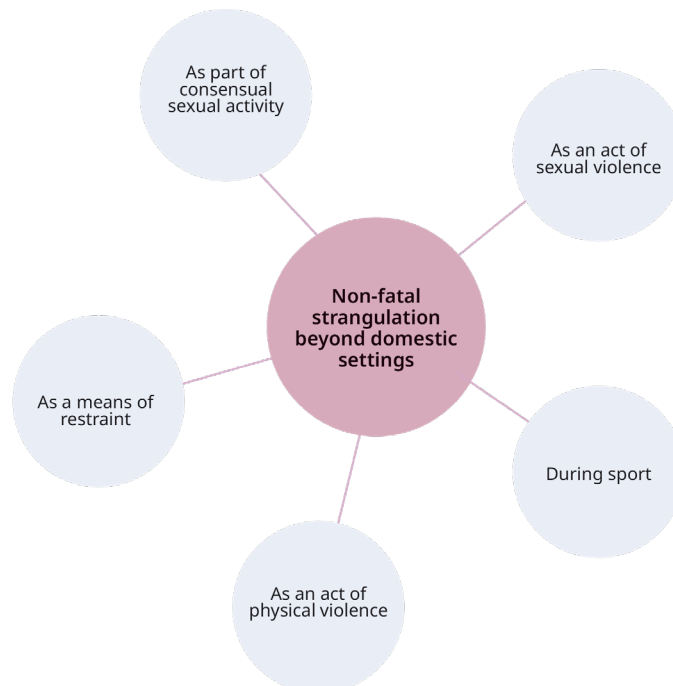
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# Introduction

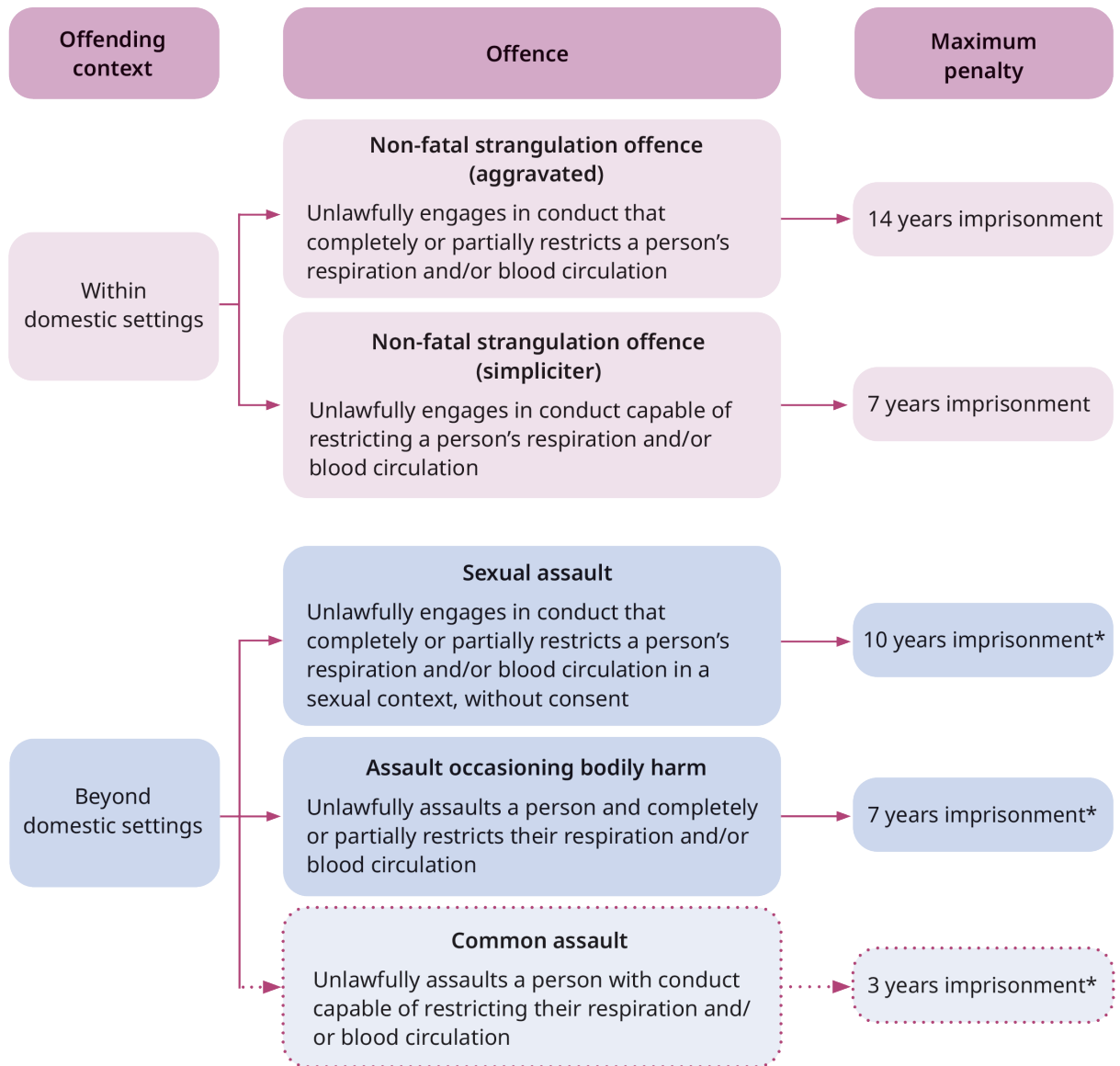
- 4.1 This chapter outlines reforms necessary to ensure the criminal law appropriately responds to non-fatal strangulation beyond the scope of the amended non-fatal strangulation offence and holds those perpetrators to account.
- 4.2 Our terms of reference asked us to make recommendations about whether the non-fatal strangulation offence should apply to conduct that is not committed in circumstances where the perpetrator is in a domestic relationship with the victim-survivor or the conduct is not associated domestic violence.<sup>1</sup> Our terms of reference also asked us to make recommendations on ‘any other matters the Commission considers relevant having regard to the issues relating to the referral’.<sup>2</sup>
- 4.3 To ensure the law appropriately responds to the inherent dangers of strangulation, in our consultation paper we proposed a standalone non-fatal strangulation offence to apply beyond domestic settings. Many stakeholders agreed that strangulation is inherently dangerous regardless of the circumstances in which it occurs. They thought the non-fatal strangulation offence should be expanded beyond domestic settings as currently defined.<sup>3</sup> For example, the GCCASV submitted that it was appropriate to broaden the offence’s scope ‘to apply to all members of the community, not solely those in domestic or family relationships’.<sup>4</sup>
- 4.4 However, a few stakeholders were not in favour of a standalone non-fatal strangulation offence beyond domestic settings.<sup>5</sup> For example, the Bar Association of Queensland submitted that ‘a standalone offence that extends beyond domestic settings is not necessary or desirable’.<sup>6</sup>
- 4.5 While we recommend the non-fatal strangulation offence be expanded to apply to people in relationships involving coercion, control or domination (recommendation 2), we do not recommend the offence be expanded beyond this. Nor do we recommend a separate offence of non-fatal strangulation beyond domestic settings be introduced. This means the amended non-fatal strangulation offence will not capture all situations involving non-fatal strangulation conduct, including conduct that occurs in sexual and violent contexts.



4.6 However, we acknowledge the inherent dangers of strangulation, regardless of the circumstances in which it occurs, and consider that such conduct must be appropriately criminalised. To address this, we make three recommendations for reform (recommendations 6–8) to ensure the criminal law better reflects and responds 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.

4.7 Figure 4.1 shows how the recommendations made in this chapter and [Chapter 2](#) fit together.

**Figure 4.1: How recommendations 2, 3, 6–8 fit together**



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

4.8 Recommendations 6–8 ensure that beyond the scope of the amended non-fatal strangulation offence:

- in sexual contexts, completely or partially restricting a person's respiration and/or blood circulation without consent can more clearly be prosecuted as sexual assault (recommendation 6)

#### 4. Beyond the scope of section 315A

- outside sexual contexts, completely or partially restricting a person's respiration and/or blood circulation without consent can be prosecuted as assault occasioning bodily harm, even without injuries (recommendation 7)
- conduct capable of restricting or that does restrict a person's respiration and/or blood circulation is treated as an aggravating factor on sentencing of certain offences (recommendation 8(a))
- a person 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 (recommendation 8(b)).

4.9 In this chapter we first discuss reforms relevant to non-fatal strangulation in sexual contexts. Then we discuss reforms relevant to non-fatal strangulation in violent contexts. We conclude with a discussion of our recommendations about sentencing of offences involving non-fatal strangulation conduct.

## Sexual contexts

### Our reforms explained



**R6** 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.

- 4.10 Recommendation 6 aims to ensure those who engage in unlawful non-fatal strangulation conduct in sexual contexts beyond the scope of the amended non-fatal strangulation offence are appropriately held to account.
- 4.11 It recommends that s 352(1) of the Criminal Code (Qld) (sexual assault) be amended to clarify that unlawful conduct that completely or partially restricts another person's respiration and/or blood circulation and occurs in a sexual context without the other person's consent is an offence. This recommendation is consistent with our first guiding principle (clarity). The recommendation does not extend to conduct capable of restricting a person's respiration and/or blood circulation in a sexual context.
- 4.12 We intend for 'sexual context' to mean non-fatal strangulation that occurs during a sexual act or where the non-fatal strangulation is a sexual act itself. Unlike the amended non-fatal strangulation offence, sexual assault is not restricted to offending in certain types of relationships.

### 352 Sexual assaults

- (1) Any person who—
- (a) unlawfully and indecently assaults another person; or
  - (b) procures another person, without the person's consent—
    - (i) to commit an act of gross indecency; or
    - (ii) to witness an act of gross indecency by the person or any other person;
- is guilty of a crime.

Maximum penalty—10 years imprisonment.

- 4.13 To establish an offence of sexual assault, the prosecution must prove that there was no consent to the conduct. This is because:
- in the offence in s 352(1)(a), the element of assault imports that any application of force must be without the other person's consent (see below at [4.68])
  - in the offence in s 352(1)(b), the requirement of 'without the person's consent' is stated.
- 4.14 For both offences, consent is defined according to s 348 of the Criminal Code (Qld) and associated provisions (ss 348AA–348C). That is, the affirmative consent model applies.
- 4.15 We do not intend for assault to be an element of the offending conduct in recommendation 6. However, we do intend that the element of lack of affirmative consent applies.
- 4.16 As discussed in [Chapter 3](#), we recommend that s 348AA of the Criminal Code (Qld) be amended to include a rebuttable presumption of lack of consent where there is evidence of complete or partial restriction of a person's respiration and/or blood circulation (recommendation 2(d)). If implemented, that presumption would apply to all sexual offences, including sexual assault.
- 4.17 We recommend that the offence in recommendation 6 have an unlawfulness element. This would mean that most of the defences that currently apply to an offence of sexual assault will also apply to that offence. For example, if mistake of fact about consent is argued in defence, s 348A of the Criminal Code (Qld) would apply. Further, prevention of repetition of insult would remain available as a defence.<sup>7</sup> We do not comment on the appropriateness of these defences being available for sexual assault more broadly as this may have impacts beyond the scope of our terms of reference.
- 4.18 However, as we do not intend assault to be an element of the offence in recommendation 6, provocation would not be available as a defence.<sup>8</sup> This is the same approach taken for the offence in s 352(1)(b). This clarification would not impact other sexual offences and would promote some consistency with the recommended approach to the amended non-fatal strangulation offence (recommendation 5).
- 4.19 We note that we are currently reviewing the application of both the defences of provocation to assault and prevention of repetition of insult as part of our criminal defences review. That review is due to report to the Attorney-General by 1 December 2025.
- 4.20 The current maximum penalty for an offence of sexual assault is 10 years imprisonment. We do not recommend that a different penalty apply to the offence in recommendation 6. Ten years imprisonment is the same maximum penalty we proposed in our consultation paper for

the standalone offence of non-fatal strangulation beyond domestic settings. Many stakeholders supported this proposed penalty.<sup>9</sup> As with the existing offence of sexual assault, higher penalties would be available for the offence in recommendation 6 if there is a circumstance of aggravation.<sup>10</sup>

- 4.21 Where a person is charged with sexual assault without a circumstance of aggravation, the victim-survivor was 14 years old or older, and the perpetrator pleads guilty, the charge must be sentenced in the Magistrates Court,<sup>11</sup> unless the Magistrate deems otherwise.<sup>12</sup> Trials must proceed to superior courts. We intend for this process to apply to the offence in recommendation 6. This approach to finalisation is largely consistent with our recommendation in relation to finalisation of the amended non-fatal strangulation offence (recommendation 9).

## Case for reform

### The increase of strangulation in sexual contexts

- 4.22 Non-fatal strangulation during sex is a rapidly growing trend.<sup>13</sup> This is especially the case among young people.<sup>14</sup> A survey of 4,702 Australians aged 18 to 35 years found that more than half of respondents had either been strangled or strangled someone during sex.<sup>15</sup>
- 4.23 Non-fatal strangulation is increasingly used in sexual contexts both consensually and non-consensually, that is, as part of sexual violence. QIFVLS submitted:<sup>16</sup>
- [W]e acknowledge that there are contexts, such as consensual sexual activities, where consensual choking may occur with no intent to harm. However, ... we have observed that more often than not, our clients disclose [non-fatal strangulation] in the lead up to non-consensual sexual assaults.
- 4.24 QSAN submitted:<sup>17</sup>
- Our services are responding to increasing presentations of strangulation of young people in the context of sexual violence. In young people, victim-survivors are presenting in circumstances where they may have been subject to strangulation multiple times a week and where losing consciousness is perceived as normal.
- 4.25 Research shows that strangulation is a common feature of sexual assault.<sup>18</sup> An Australian review recently heard that<sup>19</sup>
- forensic examiners have seen an increase in young women presenting with non-fatal strangulation injuries from sex that began consensually, and then escalated unexpectedly to violence.
- 4.26 Although the prevalence of non-fatal strangulation during sexual assault is less for children and young people, research from the United Kingdom found an upward trend in such conduct from 2017 to 2023.<sup>20</sup>
- 4.27 Both consensual and non-consensual non-fatal strangulation are being used in a range of relationships beyond intimate partners. Our review of sentencing remarks for common assault and assault occasioning bodily harm convictions involving non-fatal strangulation conduct revealed that such conduct was used between:
- people who were dating
  - those who had more casual sexual relationships
  - those who met with an expectation of sexual intimacy, such as people who met over apps, at bars and through sex work.

#### 4. Beyond the scope of section 315A

- 4.28 Some of the victim-survivors who participated in our research told us they were in a current or former dating relationship with the perpetrator or had engaged in casual sex with them. Health stakeholders also told us of examples of victim-survivors who had experienced strangulation in casual sexual contexts.
- 4.29 A Western Australia study examined non-fatal strangulation used during sexual assault. In 42% of the matters that involved non-fatal strangulation, the victim-survivor and perpetrator were acquaintances or friends, strangers or in other types of relationships not amounting to intimate partners.<sup>21</sup> In a study from the United Kingdom, approximately 58% of sexual assault matters which included non-fatal strangulation involved people who were not intimate partners or family members, but rather were acquaintances, sex workers/clients, family friends or strangers. In that study, the highest proportion of strangulation victim-survivors in sexual assault matters were sex workers.<sup>22</sup> Where strangulation victim-survivors were children or young people, the victim-survivor and perpetrator were most often acquaintances, friends or school peers.<sup>23</sup>
- 4.30 Some of the types of relationships in which non-consensual strangulation occurs may fall within the scope of the amended non-fatal strangulation offence, as domestic relationships, associated domestic violence or relationships involving coercion, control or domination. However, other types of relationship will not.
- 4.31 The offence in recommendation 6 is intended to apply to people in these other types of relationships, where the non-fatal strangulation was not consensual and occurred either in consensual or non-consensual sexual contexts. In this way, the recommendation aims to clarify that non-consensual non-fatal strangulation that occurs in a sexual context is an offence of sexual assault, even if there was consent to other aspects of the sexual activity.

### The need for clarity

- 4.32 We consider there needs to be clarity that conduct that completely or partially restricts a person's respiration and/or blood circulation and occurs in a sexual context without consent is an offence of sexual assault.
- 4.33 Currently, to prove sexual assault there must be an unlawful and indecent assault, or a perpetrator must have procured another person, without their consent, to commit or witness an act of gross indecency.<sup>24</sup> Indecency is a question for the jury and is judged in light of time, place and circumstance.<sup>25</sup>
- 4.34 To be indecent, the conduct must offend against currently accepted standards of decency and morality.<sup>26</sup> The indecency may be derived objectively from the area of the bodies involved, such as the genitals and anus, or, where there is doubt about the sexual quality of the assault, the perpetrator's motive may be relevant.<sup>27</sup>
- 4.35 While arguably non-fatal strangulation in a sexual context could be considered indecent, we found that it:
- 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.
- 4.36 For example, QSAC conducted an analysis of sentencing remarks of non-aggravated sexual assaults sentenced between 1 July 2020 and 30 June 2023.<sup>28</sup> In those cases, conduct constituting the offence was described as involving kissing victim-survivors, groping or grabbing their breasts, buttocks or genitals, masturbating in front of them, or throwing ejaculate on them. Non-fatal strangulation in sexual contexts was not listed among that conduct.

#### 4. Beyond the scope of section 315A

- 4.37 We reviewed cases where non-fatal strangulation was expressed as part of the facts of a sexual assault or rape based on other conduct. In one case, the perpetrator was charged with one count of sexual assault where he applied pressure to the victim-survivor's throat with his hand and then began touching her breasts and anus.<sup>29</sup>
- 4.38 In another case, the perpetrator was charged with raping two girls.<sup>30</sup> In the first of those rapes the perpetrator placed his hand across the victim-survivor's neck to choke her. Although the victim-survivor had a physical response from his hands across her neck, the prosecution decided not to charge a separate offence for this conduct. The Judge described the second rape as follows:
- You kissed her. She continued to move her head away. She said no to you. You then choked her with one hand, pressing down upon her. Again, the statement of facts reads that she could barely breathe or talk. In the circumstances, I have identified where the Crown have not particularised any charge of choking. I do not take into account in part of sentencing the effect of that action having upon her other than to overcome her resistance to the activity that you were engaging in — again, raping her.
- 4.39 Current approaches to responding to restriction of a person's respiration and/or blood circulation in sexual contexts (see above at [4.35]) have some limitations. First, 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.
- 4.40 Second, by not charging such conduct as a separate offence, the inherent dangerousness of strangulation, regardless of the context in which it occurs, is not recognised. Raising non-fatal strangulation as a fact on sentence rather than an offence itself may breach the De Simoni principle. In *R v De Simoni*, Gibbs CJ said:<sup>31</sup>
- [T]he general principle that the sentence imposed on an offender should take account of all the circumstances of the offence is subject to a more fundamental and important principle, that no one should be punished for an offence of which he has not been convicted ... [A] Judge, in imposing sentence, is entitled to consider all the conduct of the accused, including that which would aggravate the offence, but cannot take into account circumstances of aggravation which would have warranted a conviction for a more serious offence.
- 4.41 This means that, as indicated in the sentencing remarks outlined at [4.38], any sentence for an offence of sexual assault or rape involving non-fatal strangulation would not recognise the dangers of non-fatal strangulation as a specific type of conduct.

## Alternatives not recommended

- 4.42 We considered whether non-fatal strangulation in sexual contexts would be adequately criminalised by the offences of assault occasioning bodily harm or common assault. This approach would not be appropriate. Clarifying that sexual assault applies to non-fatal strangulation conduct in sexual contexts imports the affirmative consent provisions in the Criminal Code (Qld). Other assault offences would import a common law test of consent. In sexual contexts, stakeholders widely thought the affirmative consent model should apply to non-fatal strangulation (see [Chapter 3](#)).
- 4.43 A few stakeholders thought non-fatal strangulation that does not restrict a person's respiration and/or blood circulation should be criminalised beyond domestic settings. For example, Legal Aid Queensland (FLS) submitted:<sup>32</sup>
- [M]any of the same circumstances that make it difficult to evidence restriction of respiration and circulation (the offence taking place in a private setting, the likely

absence of witnesses, the impact of trauma on the victim-survivor's memory) apply equally to cases of non-fatal strangulation outside of the domestic sphere.

These arguments may be especially applicable to non-fatal strangulation in sexual contexts.

- 4.44 While we acknowledge these concerns, we do not recommend that the offence in recommendation 6 apply to conduct capable of restricting a person's respiration and/or blood circulation. Such an approach may inappropriately broaden the offence.
- 4.45 The purpose of our recommendation to amend the non-fatal strangulation offence so that it applies to conduct capable of restricting a person's respiration and/or blood circulation (recommendation 2(b)) was so that the offence adequately responds to the added risk of future violence and death for strangulation victim-survivors in certain types of relationships, even when restriction of respiration and/or blood circulation cannot be proved. Currently, evidence of added risk of future violence or death for strangulation victim-survivors in relationships beyond those captured by the amended non-fatal strangulation offence is lacking.
- 4.46 Where restriction of a person's respiration and/or blood circulation cannot be proved in sexual contexts, the perpetrator can still be charged with:
- a separate offence, such as common assault, for conduct capable of restricting the person's respiration and/or blood circulation. In such circumstances, the conduct involved would amount to an aggravating factor on sentencing, if recommendation 8 is implemented (see below from [4.116]).
  - a sexual offence, with conduct capable of restricting the person's respiration and/or blood circulation alleged as part of the facts of the offence, rather than as the basis for the offence.

## Human rights considerations

- 4.47 Recommendation 6 aims to clarify that the offence of sexual assault applies to conduct that completely or partially restricts a person's respiration and/or blood circulation in a sexual context where the person did not consent. It is intended to complement the amended non-fatal strangulation offence by ensuring that the criminal law appropriately responds to non-consensual non-fatal strangulation used in sexual contexts beyond the scope of that offence. It also aims to ensure consistent tests of consent are used for non-fatal strangulation in any sexual context.
- 4.48 We consider recommendation 6 is compatible with human rights. In explaining our analysis below, we do not discuss human rights considerations where we do not suggest a change to the law (for example, how consent would apply to the offence in recommendation 6).

## Rights promoted

- 4.49 Recommendation 6 along with recommendation 2(d) promotes several rights, including the right to life, the right to be protected from torture and cruel, inhuman or degrading treatment, the right to liberty and security of the person, the right to privacy and reputation, and the right to recognition and equality before the law. These recommendations ensure that perpetrators of non-fatal strangulation in sexual contexts are held accountable and victim-survivors are protected, regardless of the nature of their relationship.

## Rights not limited

- 4.50 Recommendation 6 does not limit the right to liberty and security of the perpetrator. Ensuring sexual assault applies to restriction of a person's respiration and/or blood circulation may make it more likely that a person will be convicted of an offence. However, if accepted by government, this recommendation will be implemented into law and any deprivation of liberty will not be unlawful. Further, as this recommendation seeks to clarify the law around the application of the offence of sexual assault, it will improve predictability and so will not be arbitrary.

## Potential limitations that are reasonable and demonstrably justifiable

- 4.51 Implementation of recommendation 6, along with recommendation 2(d), could potentially limit the right to recognition and equality before the law. The aim of recommendation 6 is to ensure non-fatal strangulation perpetrators are held accountable for such conduct in sexual contexts regardless of the type of relationship in which the conduct occurs. However, there are some differences in how the amended non-fatal strangulation offence and the offence in recommendation 6 would operate. These differences are outlined in Table 4.1.

**Table 4.1: A comparison of how the amended non-fatal strangulation offence and the offence in recommendation 6 (sexual assault) would criminalise non-fatal strangulation in sexual contexts**

	<b>The amended non-fatal strangulation offence</b> (Applies to domestic relationships, associated domestic violence, or relationships involving coercion, control or domination)	<b>Sexual assault, as amended by recommendation 6</b> (Not limited by type of relationship)
<b>Conduct criminalised</b>	<ul style="list-style-type: none"> <li>Conduct capable of restricting a person's respiration and/or blood circulation (simpliciter)</li> <li>Conduct that completely or partially restricts a person's respiration and/or blood circulation (aggravated)</li> </ul>	<ul style="list-style-type: none"> <li>Conduct that completely or partially restricts a person's respiration and/or blood circulation</li> </ul>
<b>Consent requirement</b>	Defence of affirmative consent available and, if raised by the defence, the prosecution must disprove	Prosecution must always prove absence of affirmative consent as an element of the offence
<b>Relevant available defences</b>	Provocation to assault and prevention of repetition of insult expressly excluded	Prevention of repetition of insult may apply but provocation excluded (as assault would not be an element)
<b>Maximum penalties of imprisonment</b>	<ul style="list-style-type: none"> <li>Simpliciter form — 7 years</li> <li>Aggravated form — 14 years</li> </ul>	10 years
<b>Jurisdiction</b>	Must finalise in Magistrates Court on plea of guilty by adult perpetrator, unless Magistrate deems otherwise. Must proceed to superior courts for trial.	Must finalise in Magistrates Court on plea of guilty by adult perpetrator where victim-survivor was 14-years-old or more, unless Magistrate deems otherwise. Must proceed to superior courts for trial.

- 4.52 A notable difference between the two offences is the approach to consent. For the amended non-fatal strangulation offence, affirmative consent would be a defence. The prosecution would only need to disprove affirmative consent where it is raised by the defence. This means victim-survivors would not be required to give evidence about their lack of consent in all cases. For offending beyond the scope of the amended non-fatal strangulation offence, the prosecution would need to prove lack of consent as an element of sexual assault. This may require victim-survivors in sexual assault cases to give evidence that they did not consent.
- 4.53 However, as discussed in [Chapter 3](#), if the rebuttable presumption in recommendation 2(d) is implemented, there would be little practical difference in application of the law. Further, we consider there is a legitimate interest in retaining consistency of approach to all sexual assault offences.
- 4.54 Other differences between the amended non-fatal strangulation offence and the offence in recommendation 6 mean that those prosecuted under the amended non-fatal strangulation offence may be more likely to be held accountable than those prosecuted under the amended offence of sexual assault. This is because for the amended non-fatal strangulation offence:
- the simpler form of the offence would not require proof of complete or partial restriction of the person's respiration and/or blood circulation
  - certain defences would be excluded
  - the maximum penalty available would be higher for the same conduct, that of completely or partially restricting a person's respiration and/or blood circulation.
- 4.55 Although there would be differences in approach between the two offences, we consider these differences are justified given the increased risk of future violence and lethality associated with non-fatal strangulation within the relationships captured by the amended non-fatal strangulation offence. This is particularly so given international law considers DFV to be a form of torture and, as such, states are required to protect against torture in the context of DFV (see [Chapter 2](#)).

## Impact of reform

- 4.56 Recommendation 6 may result in more matters charged as sexual assault. This may have resourcing implications for areas such as risk assessment of matters and support for victim-survivors. Support for victim-survivors is something victim advocates could assist with (see recommendation 16).
- 4.57 Our recommended approach to dealing with non-fatal strangulation in sexual contexts beyond the scope of the amended non-fatal strangulation offence means the current legal framework for sexual assaults would continue to apply. As described above from [4.14], this includes some elements of the offence (unlawfulness and consent), most applicable defences and the process for finalising such charges in magistrates-level courts.
- 4.58 Further, it means that Part 6B of the Evidence Act 1977 would apply which provides for:<sup>33</sup>
- prohibitions and restrictions about questions that can be asked and evidence that can be raised about the victim-survivor's sexual reputation and sexual activities
  - specific jury directions to be given where appropriate, including about circumstances in which non-consensual sexual activity occurs, responses to non-consensual sexual activity, absence of injury, and the impact of trauma on giving evidence
  - the ability to engage a sexual offence expert to give relevant evidence about the perpetrator.

These provisions aim to ensure a more trauma-informed criminal justice response in sexual offence matters.

- 4.59 As affirmative consent would apply to non-fatal strangulation in sexual contexts, it will be imperative that the public understands the affirmative consent model, including as it applies to non-fatal strangulation in sexual contexts.
- 4.60 Training and education will also be necessary for criminal justice personnel, particularly police who will be investigating non-fatal strangulation as sexual assault, police prosecutors, defence lawyers and Magistrates who will see sexual assault matters involving non-fatal strangulation finalised in magistrates-level courts. Further, health professionals will need to receive training and education about the need to screen sexual assault victim-survivors for non-fatal strangulation and how best to capture evidence required for potential prosecution.
- 4.61 Victim impact statements are important for victim-survivors, particularly of sexual offending. It will be important to ensure that victim-survivors of an offence in recommendation 6 are made aware of their right to provide a Victim Impact Statement (see [Chapter 7](#)).

## Implementation

- 4.62 Given the prevalence of non-fatal strangulation during sexual activity and the normalisation of such conduct, it is critical that any reforms arising from recommendation 6 come into effect after implementation of recommendations 1 and 11–13 (see Figure 1.2 in [Chapter 1](#)). This will limit potential overcriminalisation and ensure relevant cohorts are aware of changes to the law and risks and dangers associated with strangulation. Reforms arising from recommendation 6 should come into effect at the same time as reforms arising from recommendations 2–5 and 7–8.
- 4.63 We note that the Women’s Safety and Justice Taskforce recommended that the Attorney-General review and amend Chapters 22 (offences against morality) and Chapter 32 (rape and sexual assaults) of the Criminal Code (Qld) ‘so that the applicable maximum penalties reflect a justifiable scale of moral capability’.<sup>34</sup> As part of that commitment, QSAC was asked to review the sentencing practices for sexual assault and rape.<sup>35</sup> QSAC ultimately recommended that the review of Chapters 22 and 32 should include consideration of whether<sup>36</sup>
- the structure of conduct captured within s 352(1) is too broad and should instead be structured in a way that better distinguishes different forms of non-aggravated sexual assault with the potential for graduated penalties to be applied.
- 4.64 The implementation of recommendation 6 could accompany work being done in relation to sexual assault more generally, however, should not be delayed to occur concurrently with those reforms.

# Violent contexts

## Our reforms explained



**R7** 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.

- 4.65 Recommendation 7 is to amend the definition of bodily harm in s 1 of the Criminal Code (Qld) to include complete or partial restriction of a person’s respiration and/or blood circulation. This would not require proof of any bodily injury.
- 4.66 As explained in [Chapter 1](#), it is common for there not to be evidence of bodily injury following strangulation. Amending the definition of bodily harm would allow some non-fatal strangulation conduct that does not fall within the scope of the amended non-fatal strangulation offence and that is not in a sexual context to be charged as the offence of assault occasioning bodily harm (s 339 of the Criminal Code (Qld)). Assault occasioning bodily harm is not restricted to offending in particular types of relationships.
- 4.67 Recommendation 7 does not extend to conduct capable of restricting a person’s respiration and/or blood circulation. In such circumstances, the perpetrator could still be charged with common assault. If recommendation 8 is implemented (see below from [4.116]), the nature of the conduct would be an aggravating factor on sentencing for common assault.
- 4.68 Recommendation 7 would not change other aspects of the offence of assault occasioning bodily harm. The offence relies on the definition of assault in s 245 of the Criminal Code (Qld). Section 245 requires that, to amount to an assault, the application of force or threatened application of force must be without the other person’s consent. It can also be an assault if the application of force resulted from consent obtained by fraud.<sup>37</sup> Consent in these circumstances has the meaning given at common law and this would continue to apply if recommendation 7 was implemented.<sup>38</sup>
- 4.69 To amount to assault occasioning bodily harm, the assault must be unlawful.<sup>39</sup> As explained in [Chapter 3](#), this allows certain defences to apply to the offence. This would include, for example, self-defence, provocation to assault, prevention of repetition of insult and domestic discipline. As noted above, we are currently reviewing the application of these defences as part of our criminal defences review. If recommendation 7 is implemented, the defences that currently apply to assault occasioning bodily harm would continue to apply where a person’s respiration and/or blood circulation were completely or partially restricted.
- 4.70 Assault occasioning bodily harm without a circumstance of aggravation has a maximum penalty of 7 years imprisonment. This penalty would also continue to apply under our recommended approach. Any applicable circumstances of aggravation would increase the maximum penalty available.<sup>40</sup> Combined with recommendation 8 (aggravating factor on sentence), we consider that the penalty for assault occasioning bodily harm involving complete or partial restriction of a person’s respiration and/or blood circulation would adequately reflect the seriousness of this conduct.

**Bodily harm** means any bodily injury which interferes with health or comfort.

- 4.71 Recommendation 7 would not impact how charges of assault occasioning bodily harm without a circumstance of aggravation are finalised. Such charges would continue to be heard and decided in the Magistrates Court on trial or sentence unless either:
- the perpetrator elects to proceed to a superior court for a jury trial<sup>41</sup>
  - the Magistrate deems otherwise.<sup>42</sup>

## Case for reform

### Strangulation in violent contexts beyond domestic settings

- 4.72 Stakeholders queried the types of situations in which non-fatal strangulation occurs beyond domestic settings. In its submission, the Queensland Law Society said:<sup>43</sup>
- 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).
- 4.73 Findings from our research and feedback from stakeholders, including health stakeholders, shows that non-fatal strangulation occurs in a range of situations beyond domestic settings including:
- between strangers<sup>44</sup>
  - between associates<sup>45</sup>
  - between neighbours<sup>46</sup>
  - in street fights<sup>47</sup>
  - in criminal relationships, such as people involved in selling and purchasing drugs.
- 4.74 In our research with police and lawyers, one officer described non-fatal strangulation conduct beyond domestic settings as common.<sup>48</sup> Further, a review of Tasmanian sentencing cases found that, between 2010 and 2020, approximately 70% of cases involving acts of non-fatal strangulation involved DFV.<sup>49</sup> The remainder were beyond that relationship category.
- 4.75 Our criminal defences review conducted research with murder or manslaughter cases lodged after 1 July 2010 in the Queensland Supreme Court and finalised before 30 April 2024. As part of that research, we identified 19 cases where the most serious offence convicted was murder or manslaughter and the mechanism of death involved 'choking, suffocation or strangulation'. Of those cases:
- 4 involved current or former partners<sup>50</sup>
  - 2 involved family members<sup>51</sup>
  - 1 involved a carer<sup>52</sup>
  - 4 involved people meeting for or with the expectation of sex<sup>53</sup>
  - 1 involved housemates<sup>54</sup>
  - 7 were in relationships beyond domestic settings, involving associates (a fellow prison inmate and criminal associates)<sup>55</sup> or strangers.<sup>56</sup>
- 4.76 Research from the United Kingdom has also found that strangulation was present in homicides where men killed women beyond domestic settings, including where they were acquaintances, strangers, housemates, sex workers or were not known to each other.<sup>57</sup>

- 4.77 We are satisfied that strangulation is a form of violence happening in circumstances beyond what would be captured by the amended non-fatal strangulation offence or the amendment to sexual assault in recommendation 6. Recommendation 7 intends to fill this gap.

## Enhancing accountability

- 4.78 Stakeholders noted that violent strangulation conduct beyond domestic settings can currently be charged as other offences in the Criminal Code (Qld).<sup>58</sup> The offence charged may depend on:
- proof of the level of harm caused, with relevant offences including:
    - assault occasioning bodily harm (simpliciter) (s 339(1) — maximum penalty of 7 years imprisonment)
    - grievous bodily harm (s 320 — maximum penalty of 14 years imprisonment)
  - whether there was specific intent for a particular result, such as:
    - to commit an indictable offence (s 315 — maximum penalty of life imprisonment)
    - to cause grievous bodily harm and other malicious acts (s 317 — maximum penalty of life imprisonment)
    - to unlawfully kill (s 306 — maximum penalty of life imprisonment).
- 4.79 However, it may be difficult for strangulation beyond domestic settings to be charged and successfully prosecuted where specific intent is required. This is because<sup>59</sup>
- [w]here proof of the intention to produce a particular result is made an element of liability for an offence under the Code, the prosecution is required to establish that the accused meant to produce that result by his or her conduct. ... [K]nowledge or foresight of result, whether possible, probable or certain, is not a substitute in law for proof of a specific intent under the Code.
- 4.80 Further, lack of injuries from non-fatal strangulation (see [Chapter 1](#)) can make proving such conduct difficult, especially where offences require proof of harm. The difficulty proving non-fatal strangulation as opposed to other forms of violence was clearly outlined in *R v Allen*:<sup>60</sup>
- [A]n 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.
- 4.81 We heard that where no injury is observable following non-fatal strangulation, common assault is sometimes charged.
- 4.82 Our sentencing remarks research found 27 convictions for common assault involving non-fatal strangulation conduct. Eleven of those common assaults involved evidence that may have indicated complete or partial restriction of the victim-survivor's respiration and/or blood flow, but the conduct did not amount to either assault occasioning bodily harm or the current non-fatal strangulation offence. Sentencing remarks noted, for example, that the victim-survivor felt lightheaded<sup>61</sup> or dizzy,<sup>62</sup> had their breathing restricted,<sup>63</sup> could not breathe,<sup>64</sup> lost breath,<sup>65</sup> could not speak,<sup>66</sup> was coughing,<sup>67</sup> or turned blue in the face.<sup>68</sup>
- 4.83 There may be various reasons these cases were finalised in this way. For example, the perpetrator may have been charged with common assault instead of the non-fatal strangulation offence because there were difficulties satisfying the domestic relationship or associated domestic violence element of the non-fatal strangulation offence, even though there was evidence of complete or partial restriction of respiration and/or blood circulation. This could have explained the charge of common assault in most of the 11 charges as:

#### 4. Beyond the scope of section 315A

- in 6 of the charges, it is clear there was no domestic relationship as the parties were strangers, neighbours or associates
- in 4 of the charges the domestic relationship element as currently defined may not have been satisfied — two charges involved a dating relationship where the parties had met on a dating app a month earlier, one charge involved a stranger that was taken back to the perpetrator's house with the expectation of potential sexual intimacy, and one charge involved children who had been in a 4-year relationship that had since ended but they remained friends.

4.84 On other occasions there may have been evidence of a domestic relationship but not evidence of complete or partial restriction of the person's respiration and/or blood circulation, resulting in a non-fatal strangulation charge not being laid or being downgraded to common assault.

4.85 In other cases, the perpetrator may have been charged with common assault instead of assault occasioning bodily harm as, although there was a suggestion of complete or partial restriction of respiration and/or blood circulation, there were difficulties proving the element of bodily harm on the evidence. For example, in one case there was definitively a domestic relationship and the non-fatal strangulation offence had originally been charged, but the matter resolved by way of common assault. This was despite the sentencing remarks noting that the perpetrator put their 'hands across her throat and pushed her down [and] ... squeezed for about 10 seconds. She felt pain, she was coughing'.<sup>69</sup>

4.86 We heard from stakeholders, including legal practitioners, police and DFV stakeholders,<sup>70</sup> as well as police and lawyers who participated in our research,<sup>71</sup> that a charge of common assault does not adequately reflect the gravity of non-fatal strangulation conduct. Common assault has a maximum penalty of 3 years imprisonment.<sup>72</sup>

4.87 The research mentioned above at [4.82] involved adults convicted of 10 common assault charges for strangulation conduct where there was evidence of restriction of the victim-survivors' respiration and/or blood circulation. That research showed that of those 10 charges:

- 3 received penalties other than imprisonment
- 1 received a suspended sentence
- 6 received imprisonment.

The average imprisonment length ordered was 386 days (between 12 to 13 months imprisonment). These outcomes do not adequately reflect the gravity of non-fatal strangulation conduct.

4.88 Recommendation 7 aims to ensure that where conduct restricts a person's respiration and/or blood circulation, lack of evidence of bodily injury does not prevent a charge of assault occasioning bodily harm being laid. The maximum penalty for assault occasioning bodily harm — 7 years imprisonment for the simpliciter form of the offence or 10 years with a circumstance of aggravation — better reflects the seriousness of this kind of conduct.

4.89 The Bar Association of Queensland suggested that if the Commission formed the view that there was evidence to establish difficulties proving assault occasioning bodily harm if injuries are not visible, are too minor to amount to bodily harm or develop later that<sup>73</sup>

such issues could be adequately addressed by including the restriction of respiration and/or blood circulation in the statutory definition of bodily harm.

This is the approach we have taken.

4.90 The Canadian Criminal Code criminalises non-fatal strangulation as part of its assault framework, which is not limited to offending in any particular types of relationships.<sup>74</sup> In Canada, such offending attracts a maximum penalty of 10 years imprisonment. This is the

same penalty as for its offence of assault that causes bodily harm, and is greater than the 5-year maximum penalty imposed for assault generally.<sup>75</sup>

- 4.91 Non-fatal strangulation offences in some other Australian jurisdictions are not limited to domestic settings.<sup>76</sup> For example, in the New South Wales case of *R v Cranston*,<sup>77</sup> the perpetrator was charged with non-fatal strangulation under s 37(1) of the Crimes Act 1900 (NSW) for choking a police officer with the cord of her police radio handset.

## Alternatives not recommended

- 4.92 As discussed above at [4.43], a few stakeholders thought non-fatal strangulation that does not result in complete or partial restriction of a person's respiration and/or blood circulation should also be criminalised beyond domestic settings. For the reasons explained above, we do not recommend amending the definition of 'bodily harm' to include conduct capable of restricting a person's respiration and/or blood circulation. In such circumstances, we consider that a charge of common assault would remain appropriate. This is particularly so if recommendation 8 is implemented, which would allow such conduct to be an aggravating factor on sentence.
- 4.93 In its submission, Legal Aid Queensland (CLS) presented an alternative option for recognising restriction of a person's respiration and/or blood circulation in situations not related to domestic or sexual relationships, namely, introducing a circumstance of aggravation for common assault:<sup>78</sup>
- The circumstances of aggravation would apply when the application of force causes a restriction in breath or blood circulation and would increase the maximum penalty from 3 years imprisonment to 5 years imprisonment. This would sit comfortably, and consistently, with the 7-year maximum penalty for restrictions of breath in domestic settings under s 315A, as that domestic setting is aggravating.
- 4.94 We do not make a recommendation to this effect because we consider that restricting a person's respiration and/or blood circulation may have very serious consequences even without visible injury and, in this way, such conduct is itself the harm. This is more appropriately reflected in law by incorporating such conduct into the definition of bodily harm. This approach allows some discretion in charging at the appropriate level of seriousness.
- 4.95 By dealing with restriction of a person's respiration and/or blood circulation beyond the scope of the amended non-fatal strangulation offence as part of the assault framework, consent will have the meaning given at common law. Although stakeholders preferred an affirmative consent model for non-fatal strangulation, most discussed this model in the context of sexual non-fatal strangulation. We do not consider such a model to be necessary outside sexual contexts and instead consider consent as defined at common law to be sufficient. This approach will ensure a consistent model of consent is used across different types of non-sexual assault.

## Human rights considerations

- 4.96 Recommendation 7 aims to ensure the criminal law appropriately responds to non-fatal strangulation beyond the scope of the amended non-fatal strangulation offence and outside sexual contexts, holding perpetrators to account for such serious conduct. We consider that recommendation 7 is compatible with human rights.
- 4.97 Recommendation 7 promotes several rights, including the right to life, the right to be protected from torture and cruel, inhuman or degrading treatment, the right to privacy and

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reputation, the right to liberty and security of the person and the right to recognition and equality before the law. The recommendation ensures that perpetrators of non-fatal strangulation are held accountable and victim-survivors are protected, regardless of the nature of their relationship.

- 4.98 Similar to the human rights considerations for recommendation 6, implementation of recommendation 7 in conjunction with recommendation 2 could potentially limit the right to recognition and equality before the law. This is because there would be some differences in how non-fatal strangulation conduct is criminalised depending on the nature of the parties' relationship. These differences are outlined in Table 4.2.

**Table 4.2: A comparison of how the amended non-fatal strangulation offence and assault occasioning bodily harm as amended by recommendation 7 would criminalise non-fatal strangulation in violent contexts**

	<b>The amended non-fatal strangulation offence</b> (Applies to domestic relationships, associated domestic violence, or relationships involving coercion, control or domination)	<b>Assault occasioning bodily harm, as amended by recommendation 7</b> (Not limited by type of relationship)
<b>Conduct criminalised</b>	<ul style="list-style-type: none"> <li>Conduct capable of restricting a person's respiration and/or blood circulation (simpliciter)</li> <li>Conduct that completely or partially restricts a person's respiration and/or blood circulation (aggravated)</li> </ul>	<ul style="list-style-type: none"> <li>Conduct that completely or partially restricts a person's respiration and/or blood circulation</li> </ul>
<b>Consent requirement</b>	No element of lack of consent. Consent not available as a defence.	Requires lack of consent as element of assault, as defined at common law.
<b>Relevant available defences</b>	Carve-out for sporting contexts. Provocation to assault, prevention of repetition of insult and domestic discipline expressly excluded.	Provocation to assault, prevention of repetition of insult and domestic discipline could apply.
<b>Maximum penalties of imprisonment</b>	<ul style="list-style-type: none"> <li>Simpliciter form — 7 years</li> <li>Aggravated form — 14 years</li> </ul>	7 years, or up to 10 years with a circumstance of aggravation
<b>Jurisdiction</b>	Must finalise in Magistrates Court on plea of guilty by adult perpetrator, unless Magistrate deems otherwise. Must proceed to superior courts for trial.	Without a circumstance of aggravation, must be heard and decided in Magistrates Court for trial or sentence unless the perpetrator elects the superior court for jury trial or the Magistrate deems otherwise.

- 4.99 Those prosecuted under the amended non-fatal strangulation offence may be more likely to be held accountable than those charged with assault occasioning bodily harm, as amended by recommendation 7, given the amended non-fatal strangulation offence:
- would include a simpliciter form that would not require proof of complete or partial restriction of a person's respiration and/or blood circulation

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- would not include scope to argue consent to non-fatal strangulation outside sexual contexts, although the offence would include a carve-out for sporting contexts
- certain defences would be excluded
- the maximum penalty would be higher for the same conduct, that of completely or partially restricting a person's respiration and/or blood circulation.

4.100 Again, we consider these differences are justified by the increased risk of future violence and lethality associated with strangulation of victim-survivors who fall within the scope of the amended non-fatal strangulation offence.

## Impact of reform

4.101 Our recommended approach to non-fatal strangulation in violent contexts beyond the scope of the amended non-fatal strangulation offence means the current legal framework for assault occasioning bodily harm would continue to apply. As discussed above, this would include the elements of that offence (unlawfulness and consent), applicable defences and the process for finalising such charges in magistrates-level courts.

4.102 Recommendation 7 may have particular impacts for certain people who engage in non-fatal strangulation conduct beyond the scope of the amended non-fatal strangulation offence, including people who:

- engage in this conduct as part of sport
- restrain others using this conduct in the course of their employment
- are required to do so for medical purposes.

## For sport

4.103 As discussed in [Chapter 3](#), some sports use chokeholds or otherwise involve restriction of a person's respiration and/or blood circulation to subdue opponents. In that chapter, we discussed the reasons supporting our view that non-fatal strangulation should not always be unlawful during sport.

4.104 Those who engage in non-fatal strangulation conduct in sporting contexts and who go beyond the rules of the sport can potentially be prosecuted already, with the offence charged depending on whether there is an injury and, if so, its extent. Potential charges include assault occasioning bodily harm or grievous bodily harm.

4.105 However, if recommendation 7 is implemented, those charged with assault occasioning bodily harm for non-fatal strangulation conduct in sporting contexts would continue to be able to rely on common law notions of consent to protect them against unintended criminalisation. As Cooper J explained:<sup>79</sup>

By including assault as an element in certain offences the legislature, as a policy matter, has determined that some conduct which involves the application of force to the person can be consented to.

## For restraint

4.106 A few stakeholders expressed concern about their staff being exposed to liability for non-fatal strangulation that occurs in the context of lawful restraint.

4.107 For example, Clinical Excellence Queensland noted that extending the offence beyond domestic settings may 'capture restraints in the context of application in an authorised mental health service under the Mental Health Act 2016'. However, it clarified that 'the Chief

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Psychiatrist Policy on Physical Restraint currently requires that wherever possible restriction of breathing or venous return be avoided'. Despite this, Clinical Excellence Queensland also recognised the protection of a defence in s 266 of the Criminal Code (Qld) 'so long as the force used on an involuntary patient under the Mental Health Act 2016 ... was reasonably necessary to prevent harm to persons or property'.<sup>80</sup>

4.108 Queensland Corrective Services submitted:<sup>81</sup>

Legislative provisions contained in the Corrective Services Act 2006 authorise corrective services officers to use force in particular circumstances, which include physical restraint and the use of accoutrements. Use of force in corrective services facilities may also be lawful under other legal frameworks.

4.109 We heard from stakeholders that the inherent dangers of non-fatal strangulation were too great to permit it to be used in circumstances involving restraint, such as use of the lateral vascular neck restraints ('LVNR'). Stakeholders considered:

- this was necessary because non-fatal strangulation can have even greater impacts on certain vulnerable cohorts, such as Aboriginal peoples and Torres Strait Islander peoples who may be at higher risk of heart disease
- there were other less dangerous means available that would not necessitate resort to non-fatal strangulation.

4.110 Stakeholders were particularly concerned about use of this type of conduct by those who were not adequately trained. Although the use of LVNR has been banned in QPS policy and recruits are no longer trained in its use, in our consultations we heard some confusion about whether it was permitted. To address this concern, we recommend training for those who are required to restrain others, including about safe mechanisms of restraint and the risks associated with other methods (recommendation 1). Training should include the risk that LVNR poses for vulnerable members of the community.

4.111 Security services also raised concerns about removing the requirement for non-fatal strangulation to be unlawful due to impacts this may have on security staff, their safety and the ability to protect others:<sup>82</sup>

Best practice within the industry encourages security personnel to disengage, isolate the threat, and request police attendance wherever possible. However, the reality is that police response times are often delayed, and in many cases, officers are not available within the short timeframe (often minutes or less) in which a violent situation can endanger lives.

This crossover in frontline responsibility between police and security officers is particularly pronounced in Queensland, where licensed venues and public spaces rely heavily on private security personnel to ensure safety and order. These workers must be empowered — legally and operationally — to respond proportionately and decisively when required.

4.112 By dealing with non-fatal strangulation beyond the scope of the amended non-fatal strangulation offence as part of the assault framework, the defences that are currently available would continue to afford protection for the situations described above. We specifically note the protection afforded by the concepts of reasonableness in self-defence, defence of others, defence of property and other defences relied on for restraint. However, a potential impact of the education and training in recommendation 1 may be increased understanding that it is usually not reasonable to resort to non-fatal strangulation conduct.

## For medical necessity

- 4.113 The requirement for assaults to be unlawful would continue to provide protection for and avoid the unintended consequence of criminalising people who engage in complete or partial restriction of a person’s respiration and/or blood circulation for the purpose of medical assistance, by virtue of the defence in s 282 of the Criminal Code (Qld).

### 282 Surgical operations and medical treatment

- (1) A person is not criminally responsible for performing or providing, in good faith and with reasonable care and skill, a surgical operation on or medical treatment of a person or unborn child if performing the operation or providing the treatment is reasonable, having regard to all the circumstances of the case.
- (1A) A person is not criminally responsible for performing or providing, in good faith and with reasonable care and skill, a surgical operation on or medical treatment of a person or unborn child in an emergency if it is necessary to perform the operation or provide the treatment to save the mother’s life or the life of another unborn child.


- 4.114 There was widespread support for this position. For example, Legal Aid Queensland (FLS) agreed that ‘non-fatal strangulation should be lawful when performing a surgical operation or medical treatment’.<sup>83</sup>

## Implementation

- 4.115 To limit the potential for overcriminalisation, any reforms arising from recommendation 7 should come into effect after implementation of recommendations 1 and 11–13 (training and education) and at the same time as reforms arising from recommendations 2–6 and 8 (see Figure 1.2 in [Chapter 1](#)).

# Sentencing

## Our reforms explained

	<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>
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- 4.116 Recommendation 8(a) is to amend the Penalties and Sentences Act 1992 to treat 'conduct capable of restricting or that does restrict a person's respiration and/or blood circulation' as an aggravating factor on sentence. The aim of this recommendation is to ensure the inherent dangerousness of strangulation is reflected in the sentence ordered where non-fatal strangulation conduct is alleged as part of the facts of offences.
- 4.117 This aggravating factor would apply to all offences, except:
- the amended non-fatal strangulation offence
  - disabling in order to commit an indictable offence, which criminalises conduct 'calculated to choke, suffocate or strangle' (s 315 of the Criminal Code (Qld))
  - other offences resulting in death or grievous bodily harm, including acts intended to cause grievous bodily harm (s 317 of the Criminal Code (Qld)), grievous bodily harm (s 320 of the Criminal Code (Qld)), manslaughter (s 303 of the Criminal Code (Qld)) and murder (s 302 of the Criminal Code (Qld)).
- 4.118 The aggravating factor could apply to sentencing for various offences, such as:
- contravention offences, for example, contravention of a domestic violence order
  - offences of violence, for example, common assault and assault occasioning bodily harm
  - sexual offences, for example, rape and sexual assault
  - offences against liberty, for example, deprivation of liberty
  - offences against morality.
- 4.119 We do not intend that conduct capable of restricting or that does restrict a person's respiration and/or blood circulation be a circumstance of aggravation. A circumstance of aggravation increases the maximum penalty available for a particular offence. For example, assault occasioning bodily harm has a maximum penalty of 7 years imprisonment. However, if the perpetrator is or pretends to be armed with a dangerous or offensive weapon, or is in company with others, they face up to 10 years imprisonment.
- 4.120 In contrast, an aggravating factor on sentence allows the court to take relevant conduct into account when sentencing and potentially treat that conduct more seriously within the range of penalties already available for the offence, such as the 7-year maximum penalty for assault occasioning bodily harm. Section 9 of the Penalties and Sentences Act 1992 outlines several statutory aggravating factors which the courts treat as more serious on sentence.<sup>84</sup> Those factors are considered as part of judicial discretion in sentencing and may increase the sentence given.
- 4.121 Recommendation 8(b) is to amend the Penalties and Sentences Act 1992 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 part of their conviction as non-fatal strangulation. The purpose of this amendment is to make it easier to identify perpetrators of strangulation who are not charged with the amended non-fatal strangulation offence.
- 4.122 We intend this reform to operate in a similar way to the domestic violence notations in the Penalties and Sentences Act 1992. Section 12A of that Act provides that where a person is convicted on complaint or indictment for a relevant domestic violence offence:<sup>85</sup>
- (2) If a conviction is recorded in relation to the offence, it must also be recorded as a conviction for a relevant domestic violence offence.

- (3) If no conviction is recorded in relation to the offence, the offence must be entered in the offender's criminal history as a relevant domestic violence offence.

- 4.123 We do not intend for the notation in recommendation 8(b) to be able to be applied retrospectively in the way possible upon application for the domestic violence offence notation.<sup>86</sup> We also do not propose that this notation interfere with the court's discretion as to whether to record a conviction.
- 4.124 We intend for recommendation 8(b) to operate in conjunction with recommendation 18(b) to improve criminal justice data collection on non-fatal strangulation. Without an offence flag of non-fatal strangulation that can be easily identified for data collection it will be difficult to analyse and evaluate the use of non-fatal strangulation conduct other than for the amended non-fatal strangulation offence.

## Case for reform

### Aggravating factor on sentence

#### The inherent dangers of non-fatal strangulation

- 4.125 QSAC has explained that aggravating factors can 'simultaneously achieve symbolic recognition, limit complexity, and maximise judicial discretion and legislative consistency'.<sup>87</sup> They can influence sentencing practices as they can signal that earlier decisions may no longer be useful for comparison.<sup>88</sup> However, legislative aggravating factors may not always have significant impact if the circumstances were previously considered aggravating in the case law.<sup>89</sup> Despite this, research from QSAC indicates that the inclusion of aggravating factors does result in an increase in sentences.<sup>90</sup>
- 4.126 Aggravating factors can be based on harm or blameworthiness.<sup>91</sup> Harm can include 'the degree of injury done or risked by the act'.<sup>92</sup>
- 4.127 In [Chapter 1](#), we discussed the inherent dangers of strangulation that arise regardless of context, noting the serious health consequences that can result. A District Court Judge discussed this dangerousness in a case in the Childrens Court of Queensland involving a fight between two children:<sup>93</sup>
- You assaulted ... someone who had agreed to engage in a fight with you. That was your first mistake for both of you, really, but you took it well beyond what anyone sensibly agreed to. Grabbing someone around the throat, holding them in the way that you did was extraordinarily dangerous. If you had pressed his throat for too long his throat might have just shut down as a consequence of the pressure, which means he just simply could not get breath even when you let go. You might have found yourself here in Court facing a charge of murder or manslaughter, because that person could easily have died. It has happened in the past in those circumstances to people.
- 4.128 Introducing the aggravating factor in recommendation 8(a) will ensure sentences adequately reflect the inherent dangers of non-fatal strangulation conduct.
- 4.129 If recommendation 8(a) is implemented, assault occasioning bodily harm and common assault would likely be two of the most common offences to which the aggravating factor would apply.
- 4.130 Our sentencing remarks research found 28 assault occasioning bodily harm charges laid against adults that involved non-fatal strangulation conduct. Of those, the most common penalty ordered was imprisonment, followed by a suspended sentence. The average length of

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imprisonment/suspended sentence ordered was 440 days (approximately 14.5 months), with sentences ranging from 3 months to 4 years.

- 4.131 The QSAC data hub showed that between 2019–20 and 2023–24, the most common type of order imposed on adult perpetrators for assault occasioning bodily harm more generally was also imprisonment,<sup>94</sup> with an average sentence ordered of 14.1 months. This is consistent with our sentencing remarks research findings for assault occasioning bodily harm involving non-fatal strangulation conduct.
- 4.132 Noting that assault occasioning bodily harm offences can vary significantly in seriousness, we consider conduct that restricts a person’s respiration and/or blood circulation should be treated more seriously than most offences of assault occasioning bodily harm and, as such, should attract a sentence in the higher range for that offence. This could be achieved through introduction of the aggravating factor in recommendation 8(a).
- 4.133 Our sentencing remarks research also found 23 common assault charges laid against adults that involved non-fatal strangulation conduct, both with and without evidence of restriction of respiration or blood circulation. Of those cases, the most common penalty ordered was imprisonment (n = 10 imprisonment, n = 1 suspended sentence), followed by probation (n = 6). Other penalties included monetary orders (n = 4) and community service orders (n = 2). The average sentence of imprisonment/suspended sentence ordered was 348 days (approximately 11.5 months), with sentences ranging from 60 days to 2 years.
- 4.134 These findings differ from common assaults more generally. The QSAC data hub showed that between 2019–20 and 2023–24, the most common types of order imposed on adult perpetrators of common assault more generally were monetary orders.<sup>95</sup> For common assault convictions resulting in a sentence of imprisonment, the average imprisonment length ordered was 7.5 months.
- 4.135 This difference in average imprisonment lengths for common assaults generally compared to common assaults involving conduct capable of restricting or that did restrict a person’s respiration and/or blood circulation could reflect that courts do consider non-fatal strangulation conduct as making the common assault more serious. Introducing an aggravating factor on sentence would make such recognition explicit, providing guidance for police, lawyers and judicial officers.
- 4.136 Assault occasioning bodily harm and common assault are not the only offences where non-fatal strangulation conduct may be alleged as part of the facts of offending. We were told, for example, about the offence of contravention of a domestic violence order, sometimes with a circumstance of aggravation, being charged or accepted instead of the offence of non-fatal strangulation.<sup>96</sup> Our research with police and lawyers found that when there is no cooperation from victim-survivors to charge non-fatal strangulation, charges of contravention of a domestic violence order are sometimes preferred.<sup>97</sup> Legal Aid Queensland (CLS) submitted:<sup>98</sup>
- In the experience of CLS practitioners, perpetrators, in domestic settings, will often be able to be charged with CDVO [contravention of a domestic violence order] instead of or in addition to common assault, and in many cases the maximum penalty will be 5 years, as the CDVO will be charged with the circumstance of aggravation of having been convicted of a domestic violence offence in the past five years. So, often, the maximum penalty they currently face, particularly in the domestic setting, is higher than 3 years. CLS refers to the recent Court of Appeal decision in *CDL v Commissioner of Police* [2024] QCA 245 as an example of the penalties imposed in [relation] to CDVO offences with a circumstance of aggravation, even where there is no physical violence involved.
- 4.137 We reviewed sentencing remarks for contravention of a domestic violence order matters where the factual situation involved conduct capable of restricting or that did restrict the

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person's respiration and/or blood circulation. This research was limited as it was restricted to remarks in superior courts and most contravention of a domestic violence order charges proceed in magistrates-level courts. However, we are concerned that the outcomes of these matters do not often adequately reflect the serious conduct involved.

- 4.138 For example, we reviewed one case of contravention of a domestic violence order, without a circumstance of aggravation, that was sentenced on indictment.<sup>99</sup> In that case, the perpetrator contravened the order by putting a phone charging cord around the neck of her partner and pulling it tight. The cord was pulled so tightly that pieces of the cable had to be removed by the paramedic. Despite this, the perpetrator was sentenced to 9 months probation with no conviction recorded.
- 4.139 We also reviewed 4 cases where contravention of a domestic violence order with a circumstance of aggravation was sentenced on indictment.<sup>100</sup> The conduct included in contravention of the orders ranged from grabbing the throat area, including with both hands, to headlocks or putting the perpetrator's arm around the neck. The penalties ordered were 3 months, 4 months, 9 months and 2 years imprisonment.
- 4.140 Prior to introduction of its non-fatal strangulation offence, the Tasmanian Sentencing Advisory Council was asked to review the sentencing of non-fatal strangulation and the offences in which it was considered a factor. In its report, the Council proposed amending the Sentencing Act 1997 (Tas) to 'provide that strangulation and suffocation are aggravating circumstances in relation to an offence'.<sup>101</sup> It did so noting this was appropriate to<sup>102</sup>
- reflect the inherent seriousness of strangulation and may assist in raising public awareness of strangulation and its seriousness. Legislative recognition of the aggravating nature of strangulation, in this way, has an important communicative and educative role for victims and perpetrators, the broader community as well as those involved in the criminal justice system.
- 4.141 The New Zealand Law Commission made a similar recommendation that strangulation should be included as an aggravating factor in sentencing given non-fatal strangulation 'offending could be understood to increase culpability because of the unique terror associated with it'.<sup>103</sup> The Commission particularly noted<sup>104</sup>
- the terror or other harm of strangulation in non-family violence circumstances is also significant enough to justify an increase in the sentence imposed and is likely to be under-recognised by the sentencing Judge.
- 4.142 Introducing an aggravating factor that can apply across a broad range of offences where the conduct is capable of restricting or does restrict a person's respiration and/or blood circulation would strongly denounce this conduct.
- 4.143 We recommend that the aggravating factor should not apply to the amended non-fatal strangulation offence, the offence of disabling in order to commit an indictable offence and offences resulting in death or grievous bodily harm. This is because the inherent dangerousness of strangulation is already factored into the maximum penalties for these offences so cannot provide justification for any further aggravating factor. In this regard, the New Zealand Law Reform Commission noted concerns about double-counting and said that any aggravating factor should only be relevant in sentencing for generic violence offences.<sup>105</sup>
- 4.144 Further, as explained above, s 9 of the Penalties and Sentences Act 1992 outlines several statutory aggravating factors. The aggravating factor in s 9(10A) provides that DFV offences are to be treated as aggravating unless it is not reasonable because of the exceptional circumstances of the case. This aggravating factor would also apply in many cases charged under the amended non-fatal strangulation offence.

## Harms from viewing sexual strangulation

- 4.145 Research from the United Kingdom found that sexual violence in pornography is mainstream and that pornographic content with ‘choking’ in the title was prevalent.<sup>106</sup> That research found<sup>107</sup>
- that far from being represented as aberrant, sexual practices involving coercion, deception, non-consent and criminal activity are described in mainstream online pornography in ways that position them as permissible.
- 4.146 An Australian review noted the impact of pornography on sexual practices:<sup>108</sup>
- Children’s unfettered access to free online pornography has normalised painful and dangerous sexual practices, including non-fatal strangulation.
- 4.147 Our research found that children were sometimes forced to watch pornography that depicted strangulation of an adult (see [Chapter 8](#)).
- 4.148 Research has also found an association between heterosexual men with exposure to pornographic depictions of sexual strangulation and a higher likelihood of strangling sexual partners because they believed strangulation was pleasurable and safe.<sup>109</sup>
- 4.149 Due to the prevalence of sexual strangulation and evidence of its dangers, Baroness Bertin determined that the United Kingdom Government should take ‘robust action against “choking” content in pornography’.<sup>110</sup> The United Kingdom Government since announced its commitment to criminalise pornography depicting any act of strangulation to ‘send a clear signal’ that this behaviour is not tolerated.<sup>111</sup>
- 4.150 In light of the above, we consider the aggravating factor should apply to offences against morality, such as where children are exposed to indecent acts or indecent films that depict non-fatal strangulation.

## Notation of non-fatal strangulation on conviction

### Identifying perpetrators and holding them to account

- 4.151 Where a perpetrator is convicted of an offence involving conduct capable of restricting or that does restrict the victim-survivor’s respiration and/or blood circulation, recommendation 8(b) aims to have non-fatal strangulation recorded as a notation on the perpetrator’s criminal history. Such a notation would send a strong message to the community about the seriousness of this conduct and further assist to identify matters involving non-fatal strangulation to better protect victim-survivors.
- 4.152 One of the reasons for introducing the non-fatal strangulation offence was to identify persons who used this conduct so that victim-survivors were better protected. The Special Taskforce on Domestic and Family Violence in Queensland said:<sup>112</sup>
- The introduction of a separate offence for strangulation, which is not limited by association with a further crime, would allow for better recording of domestic and family violence incidents leading to better risk assessment and increased protection of victims.
- 4.153 However, as we found in this review, non-fatal strangulation occurs in various contexts, including beyond DFV settings. As explained in [Chapter 2](#), we do not recommend introducing a standalone offence of non-fatal strangulation beyond domestic settings. Instead, we recommend that non-fatal strangulation conduct in circumstances beyond the scope of the amended non-fatal strangulation offence be dealt with under existing offences, such as sexual assault or assault occasioning bodily harm. A disadvantage of this approach is that, much like

the situation now, judicial officers or investigating police will not be able to easily identify that those offences involved non-fatal strangulation conduct. It will only become evident if further investigation is made into the facts of those matters, behind their offence names.

- 4.154 Introducing a 'non-fatal strangulation' notation will allow police, other supporting agencies and judicial officers to more easily identify perpetrators who use this 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 non-fatal strangulation offence.
- 4.155 When introducing the law allowing for a domestic violence offence notation, the Attorney-General explained:<sup>113</sup>
- This signposting will ensure that a perpetrator's criminal history clearly illustrates any pattern, or increased frequency or escalation, in domestic violence which can then be considered by the court and police when considering matters such as bail and in sentencing the offender. It also provides greater protection of victims against future violence and the timely identification of this type of conduct by relevant agencies.
- 4.156 Similarly, recommendation 8(b) would assist the court to consider the perpetrator's history and conduct in subsequent sentencing for similar matters and would send a strong message to perpetrators that such conduct is not acceptable and will not be tolerated. This aligns with the Tasmanian Sentencing Advisory Council's proposals that its Family Violence Act 2004 (Tas) and Sentencing Act (1997) (Tas) be amended to provide for recording of non-fatal strangulation as a particular of an offence on a perpetrator's criminal record.<sup>114</sup>
- 4.157 By introducing a non-fatal strangulation notation, perpetrators who are convicted of offending involving this type of conduct would be more easily identified so they can be offered tailored educational or rehabilitative programs to address the use of this behaviour.

## Human rights considerations

- 4.158 Recommendation 8(a) aims to ensure all offences involving non-fatal strangulation conduct that do not result in grievous bodily harm or death adequately recognise this type of conduct as inherently dangerous and harmful. Recommendation 8(b) aims to make it easier to identify when particular offending has involved non-fatal strangulation conduct to better protect victim-survivors.
- 4.159 We consider these recommendations are compatible with human rights.

## Rights promoted

- 4.160 Recommendation 8 promotes the right to life, the right to be protected from torture and cruel, inhuman or degrading treatment, the right to liberty and security of person, the right to privacy and reputation, and the right to recognition and equality before the law. The recommendation would ensure that perpetrators of non-fatal strangulation are held accountable and victim-survivors are protected, regardless of the nature of the relationship in which offending occurred.

## Rights not limited

- 4.161 Recommendation 8(a) does not limit the right to liberty and security of the perpetrator. Introducing an aggravating factor on sentence may result in imposition of a term of imprisonment, or a longer term of imprisonment, for these matters. However, this deprivation

of liberty would not be arbitrary. The recommendation does not alter the maximum term of imprisonment available and the sentence would still need to fall within that upper limit.

- 4.162 Similarly, implementation of recommendation 8(b) may mean, for example, that perpetrators with non-fatal strangulation noted on their criminal history are sentenced more harshly in the future or are not granted bail due to the risks associated with this conduct. However, these decisions would be made within the confines of sentencing and bail laws and require judicial oversight.

## Impact of reform

- 4.163 Recommendation 8 may have resourcing implications for Queensland courts, Legal Aid Queensland, Queensland Corrective Services and rehabilitation program providers. This is because more people may be subject to the aggravating factor of this conduct on sentence. This may mean there are more contests of these matters and perpetrators may be more likely to be subjected to harsher punishment, including increased orders for or lengths of imprisonment.

## Implementation

- 4.164 Like recommendations 2–7, reforms arising from recommendation 8 should come into effect after implementation of recommendations 1 and 11–13 (training and education) and at the same time as reforms arising from recommendations 2–7 (see Figure 1.2 in [Chapter 1](#)).
- 4.165 Recently, QSAC recommended review of s 9 of the Penalties and Sentences Act 1992 (Qld), given its increasing complexity.<sup>115</sup> As recommendation 8 is intended to work holistically with the other reforms we recommend, particularly recommendations 2–7, implementation should not be delayed while awaiting that review.
- 4.166 In implementing recommendation 8(b), it may be necessary to make corresponding amendments to the:
- Justices Act 1886, to allow a complaint to state that the offence is non-fatal strangulation
  - Criminal Code (Qld), to provide that an indictment for an offence may state that the offence is non-fatal strangulation.

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Part 2

**Part 3**

Part 4

Part 5



# CHAPTER 5

## Addressing delay

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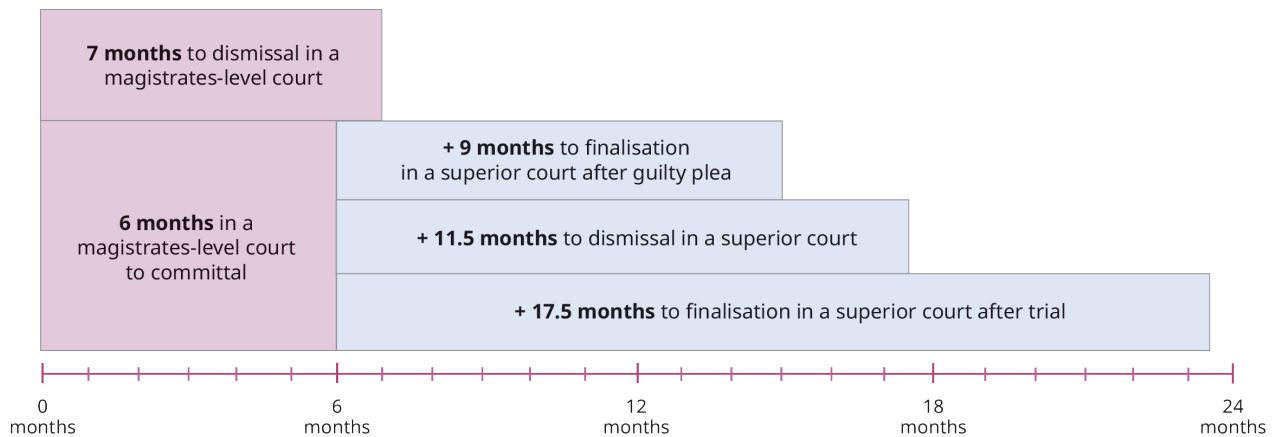
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# Introduction

- 5.1 This chapter addresses the issue of delay in non-fatal strangulation matters and discusses two recommendations aimed at reducing delay:
- finalisation in the Magistrates Court (recommendation 9)
  - fast-track processes (recommendation 10).
- 5.2 Our terms of reference noted that '[r]elevant research has also raised concern about delays and the overall length of prosecutions proceedings presenting a barrier to complainants remaining engaged in the process'.<sup>1</sup> The recommendations discussed in this chapter respond to our terms of reference which asked us to make recommendations on whether and, if so, in what circumstances, the non-fatal strangulation offence should be able to be finalised in the Magistrates Court.<sup>2</sup> We were also asked to examine 'any procedural rules and practices applicable to proceedings for the strangulation offence'.<sup>3</sup>
- 5.3 Our court data research, discussed in [Chapter 8](#), found that non-fatal strangulation charges take a long time to finalise. From July 2023 to June 2024, such charges took 14.5 months on average to be finalised, regardless of outcome. Further analyses showed that the average time to finalisation changed depending on charge outcome, with charges that proceeded to trial in a superior court taking almost 2 years to be finalised. Figure 5.1 shows the average times to finalisation for different outcomes arising from non-fatal strangulation charges.

**Figure 5.1: Average finalisation times by outcomes for non-fatal strangulation charges, July 2023 to June 2024**



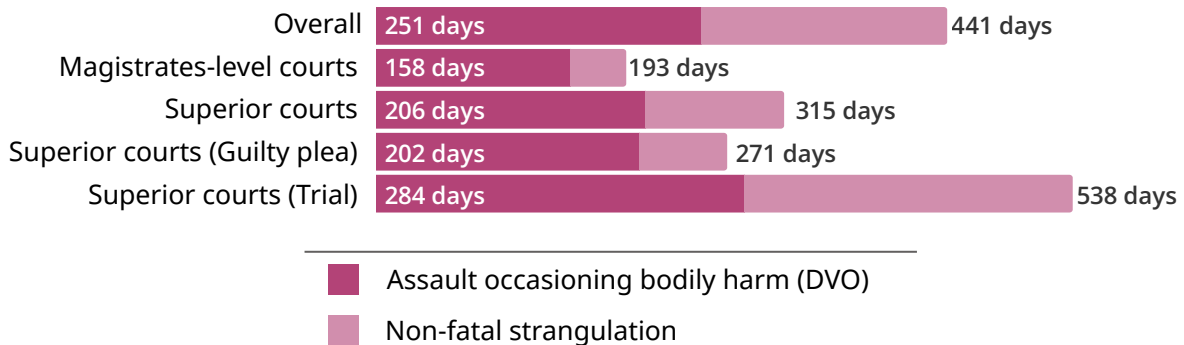
- 5.4 Our court data research also found that non-fatal strangulation charges took significantly longer to finalise than assault occasioning bodily harm (DVO) charges:
- overall
  - in magistrates-level courts (the Magistrates Court and Childrens Court (Magistrate))
  - in superior courts (the District Court, Supreme Court and Childrens Court of Queensland), for the simpliciter charge of assault occasioning bodily harm (DVO) (s 339(1) of the Criminal Code (Qld))
  - that resulted in a guilty plea in superior courts, for the simpliciter charge of assault occasioning bodily harm (DVO)
  - that went to trial in a superior court

## 5. Addressing delay

- against children, overall
- against children, in magistrates-level courts
- against children who pleaded guilty in magistrates-level courts.

5.5 Figure 5.2 shows the average finalisation times for non-fatal strangulation and assault occasioning bodily harm (DVO) charges during the study period.

**Figure 5.2: Average finalisation times for non-fatal strangulation and assault occasioning bodily harm (DVO) charges, July 2023 to June 2024**



5.6 Before discussing recommendations 9 and 10, this chapter briefly examines the benefits of addressing delay.

## The benefits of addressing delay

5.7 Stakeholders explained numerous benefits of reducing the time to finalisation for non-fatal strangulation charges, including benefits for victims-survivors, perpetrators and the community.

5.8 Stakeholders thought reducing the length of time victim-survivors are exposed to the criminal justice system and its associated re-traumatising features would be beneficial.<sup>4</sup> QSAN submitted that 'a long, drawn out process increases the risk that the victim-survivor will not proceed through the process and may not even report to the police in the first place'.<sup>5</sup> North Queensland WLS submitted:<sup>6</sup>

Proceedings for [the non-fatal strangulation offence] are far too long and too onerous on victims. It is a regular occurrence that the women we support in [non-fatal strangulation offence] prosecutions as complainants cannot make it through to the end of the process and withdraw their complaint. This happens even in the face of compelling evidence. To have proceedings hanging over them ... causes immeasurable distress and disruption to a victim. Any changes that shorten that time should be adopted.

5.9 QIFVLS referred to reducing delay as aligning with target 13 of the National Agreement on Closing the Gap. That target is to reduce the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children.<sup>7</sup> QIFVLS submitted:<sup>8</sup>

[I]mproving court response times contributes to access to justice, one of the measurable factors under the National Agreement's framework. Success is not only about the number of prosecutions, but whether Aboriginal and Torres Strait Islander victim-survivors can seek help without encountering additional harm from the system itself. In that regard, protracted and ongoing prosecutions when

## 5. Addressing delay

considering our clients' overall circumstances can be a form of systems-induced trauma.

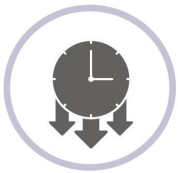
- 5.10 Other stakeholders mentioned the benefits of reducing delay for perpetrators.<sup>9</sup> One benefit was that perpetrators would spend less time on remand and more time serving their sentence which may mean better access to prison-based programs.<sup>10</sup> The Bar Association of Queensland submitted that '[e]fficient resolution of such offences is likely to ... allow punishment and rehabilitation to occur earlier'.<sup>11</sup> In her submission, Professor Heather Douglas referred to her research with Associate Professor Robin Fitzgerald,<sup>12</sup> stating:<sup>13</sup>

[T]here is also potential if more people are sentenced earlier and service most of their sentence in jail rather than on remand for proper sorting of prisoners so that first time offenders are not placed with long term recidivis[ts] and influenced by potentially much more serious/entrenched offender types. Of concern is that our research ... demonstrates that the prison environment is potentially operating to entrench dangerous misogynist attitudes that may underpin many incidents of [non-fatal strangulation].

- 5.11 Other stakeholders discussed the benefits of reducing delay more generally, including for the community. This included earlier resolution of related DFV proceedings<sup>14</sup> and because reducing delays would result in use of fewer resources, including in relation to police, courts, prosecutions, corrections and Legal Aid.<sup>15</sup>

# Finalisation in the Magistrates Court

## Our reforms explained



**R9** 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.

- 5.12 Currently, adults charged with the non-fatal strangulation offence must be tried or sentenced in the District Court or Supreme Court, not the Magistrates Court.<sup>16</sup> Recommendation 9 is that the Criminal Code (Qld) should be amended to state that an adult who pleads guilty to the amended non-fatal strangulation offence in the Magistrates Court should be sentenced in that court, unless the Magistrate deems otherwise (under s 552D of the Criminal Code (Qld)). We do not recommend trials for the amended non-fatal strangulation offence be heard in the Magistrates Court, but instead that such matters continue to be heard in superior courts.
- 5.13 Recommendation 9 does not extend to non-fatal strangulation conduct beyond the scope of the amended non-fatal strangulation offence, for example, when charged as sexual assault or assault occasioning bodily harm. Non-fatal strangulation conduct charged as another offence should continue to be finalised in the same way that those offences can already be finalised.
- 5.14 Currently, legally represented children charged with the non-fatal strangulation offence can elect to have their case tried or sentenced in the Childrens Courts (Magistrate).<sup>17</sup> We do not recommend any change to that process.

## Case for reform

- 5.15 In our consultation paper, we proposed that non-fatal strangulation charges laid against adult perpetrators should be able to be finalised in the Magistrates Court upon a guilty plea.<sup>18</sup> Most stakeholders, particularly Aboriginal and Torres Strait Islander community groups and victim-survivors, supported that proposal. Recommendation 9 is consistent with that proposal. It most closely aligns with the approach taken in South Australia, however all other Australian jurisdictions permit non-fatal strangulation charges to be tried and sentenced in magistrates-level courts.<sup>19</sup>
- 5.16 Stakeholders raised several reasons in support of the ability to finalise non-fatal strangulation charges in the Magistrates Court, including potential impacts on:
- finalisation times
  - pleas of guilty
  - victim-survivor attrition
  - access to tailored supports, including specialist DFV courts and the Murri Court
  - rural and regional communities.
- 5.17 Being able to finalise the amended non-fatal strangulation offence in the Magistrates Court on a plea of guilty will likely have several benefits. It also aligns with our fifth guiding principle to provide a trauma-informed, culturally-sensitive approach to the prosecution of non-fatal strangulation offences.
- 5.18 Before further exploring the reasons given in support of recommendation 9, we briefly explain the process for finalising indictable offences in the Magistrates Court more generally.

### **Process for finalising indictable offences in the Magistrates Court**

- 5.19 Indictable offences must generally be finalised in superior courts, unless otherwise indicated. Several indictable offences, if committed by adult perpetrators, must be finalised in the Magistrates Court where certain conditions are met.<sup>20</sup>
- 5.20 Some indictable offences that are before the Magistrates Court must be finalised in that court regardless of any defence or prosecution election.<sup>21</sup> This includes the offence of common assault, whether it proceeds to sentence or trial.<sup>22</sup>
- 5.21 For other offences that are before the Magistrates Court, the prosecution can choose to have the charge finalised in that court, whether it proceeds to sentence or trial.<sup>23</sup> For example, the prosecutor can choose to have a coercive control offence that is before the Magistrates Court sentenced in that court if the perpetrator pleads guilty.<sup>24</sup>
- 5.22 Other offences that are before the Magistrates Court must be finalised in that court unless the perpetrator chooses to proceed to a superior court for trial.<sup>25</sup> Some of those offences can be sentenced or proceed to trial in the Magistrates Court, such as the simpliciter form of assault occasioning bodily harm.<sup>26</sup> Others can only be sentenced in the Magistrates Court.<sup>27</sup>
- 5.23 Magistrates can usually only make an order of imprisonment up to 3 years.<sup>28</sup> If the Magistrates Court is constituted by a Magistrate imposing a drug and alcohol treatment order, the Magistrate can order up to 4 years imprisonment.<sup>29</sup>
- 5.24 A Magistrate will not finalise an indictable matter in the Magistrates Court if satisfied 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' (s 552D of

the Criminal Code (Qld)).<sup>30</sup> In those circumstances, the matter proceeds to a superior court for finalisation.

- 5.25 In [Chapter 8](#) and research report 2, we explain in detail how non-fatal strangulation charges proceed through the criminal justice process.

## Impacts on finalisation times

- 5.26 Stakeholders thought that a benefit of being able to finalise non-fatal strangulation charges in the Magistrates Court would be reduced time to finalisation.<sup>31</sup> For example, the Bar Association of Queensland submitted:<sup>32</sup>

[R]esolving matters in the Magistrates Court, where the matter is a plea of guilty, will provide benefits for all involved. The proceedings will be resolved more quickly than by waiting for resolution in the District Court, with a consequent reduction of costs for both the prosecution and defence and time-savings for both parties.

- 5.27 Police and lawyers who participated in our research thought that the requirement to proceed to a superior court was the biggest factor in the time to finalise non-fatal strangulation charges.<sup>33</sup> They thought this was because of the numerous steps required between charge and finalisation in a superior court.<sup>34</sup> However, findings from our court data analysis suggest otherwise.

- 5.28 Among other things, our court data research aimed to examine whether the significant length of time to finalise non-fatal strangulation charges was unique to such charges or was common to charges for DFV-related assaults more generally (see [Appendix C](#)). To do this, we compared average finalisation times for the non-fatal strangulation offence with the offence of assault occasioning bodily harm (DVO), from July 2023 to June 2024. We chose assault occasioning bodily harm (DVO) for comparison as its simpliciter form has the same maximum penalty as the current non-fatal strangulation offence — 7 years imprisonment. However, an important difference is that, unlike the non-fatal strangulation offence, the simpliciter form of assault occasioning bodily harm (DVO) must be tried or sentenced in the Magistrates Court, unless the perpetrator elects for a jury trial in a superior court.<sup>35</sup> The aggravated form of assault occasioning bodily harm (DVO) cannot be finalised in the Magistrates Court, like the current non-fatal strangulation offence.

- 5.29 As outlined above, we found that non-fatal strangulation charges took significantly longer to finalise on average overall compared to assault occasioning bodily harm (DVO) charges. However, further analyses revealed, amongst other things:

- in superior courts, non-fatal strangulation charges that went to trial took a significantly longer time to finalise on average compared to both simpliciter and aggravated forms of assault occasioning bodily harm (DVO)
- non-fatal strangulation charges laid against children took a significantly longer time to finalise on average compared to assault occasioning bodily harm (DVO) charges, even though both charges can be finalised in the same way.

- 5.30 These findings suggest that the requirement to proceed to a superior court may not be the biggest factor in the time to finalise non-fatal strangulation charges, but rather other factors specific to the non-fatal strangulation offence may be contributing to the delays experienced. These court data findings are discussed further in [Chapter 8](#).

## Impacts on pleas of guilty

- 5.31 Stakeholders thought the ability to finalise non-fatal strangulation charges in the Magistrates Court may incentivise pleas of guilty. For example, the Queensland Law Society submitted:<sup>36</sup>
- 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 defendants 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.
- 5.32 The Bar Association of Queensland acknowledged that ‘pleas of convenience’ may increase if earlier resolution in the Magistrates Court was available. However, the Association submitted that ‘it is more likely that external factors such as social disadvantage make a more substantial contribution to those decisions’.<sup>37</sup>
- 5.33 Our court data research compared outcomes for non-fatal strangulation charges with outcomes for assault occasioning bodily harm (DVO) charges (see [Chapter 8](#)). We found that, in magistrates-level courts, more than 50% of assault occasioning bodily harm (DVO) charges resulted in a plea of guilty. It is possible that similar outcomes could occur if perpetrators who plead guilty to the amended non-fatal strangulation offence could have their case finalised in the Magistrates Court.
- 5.34 However, our research also showed that, in superior courts where both charges can be finalised, a lower proportion of non-fatal strangulation charges resulted in a guilty plea (54.7%) compared to assault occasioning bodily harm (DVO) charges (67.5%). This may indicate that there is something about the non-fatal strangulation offence itself that is influencing the rate of guilty pleas, other than the court in which such charges can be finalised.

## Impacts on victim-survivor attrition

- 5.35 Findings from research and feedback from stakeholders indicates that strangulation victim-survivors can experience pressure from perpetrators to withdraw complaints or otherwise stop cooperating in the prosecution of non-fatal strangulation.<sup>38</sup> Professor Douglas submitted that finalisation in the Magistrates Court ‘may have benefits to complainants who are likely to receive less pressure from accused people to withdraw their support for the charge’.<sup>39</sup>
- 5.36 Our court data research found no significant difference in the proportion of non-fatal strangulation and assault occasioning bodily harm (DVO) charges dismissed or withdrawn in magistrates-level courts (see [Chapter 8](#)). However, in superior courts, we found that a significantly higher proportion of non-fatal strangulation charges were dismissed or withdrawn than assault occasioning bodily harm (DVO) charges. This may be because of victim-survivors’ reluctance to proceed in non-fatal strangulation matters and the impact of this on the way the ODPP perceives its ability to prove the case.

## Access to tailored supports

- 5.37 Tailored supports are available in magistrates-level courts, including specialist DFV courts and the Murri Court. Stakeholders suggested that finalising non-fatal strangulation matters in magistrates-level courts would be beneficial as these supports would be available.<sup>40</sup>

## Specialist DFV courts

- 5.38 Specialist DFV courts in Queensland aim to provide a coordinated, respectful and fair response to DFV while enhancing safety and wellbeing for victim-survivors and supporting increased accountability for perpetrators. They operate in Brisbane, Southport, Beenleigh, Mt Isa, Townsville, Cairns and Palm Island,<sup>41</sup> although they do not all operate in the same way.
- 5.39 Specialist DFV courts were first piloted in Southport. That court hears both civil domestic violence order applications and criminal DFV proceedings, including for contraventions of domestic violence orders and specific flagged DFV offences. The Southport specialist DFV court has been recognised as ‘a sector-leading response to domestic and family violence’:<sup>42</sup>
- [The court] is a hub for people experiencing domestic and family violence, providing seamless connection to a suite of specialist supports, including the domestic and family duty lawyer service ... the Court advocacy Program for aggrieved clients ... and court assistance (information and referral service) for respondents ... Unlike other Magistrates Courts, these services are all co-located.
- 5.40 Specifically, the Southport specialist DFV court has dedicated Magistrates, specialist police prosecutors and duty lawyers, a specialist DFV registry, and support services available each day of the week.<sup>43</sup>
- 5.41 In some other jurisdictions that have specialist DFV courts, we were told that the courts do not hear criminal matters. This means that the wraparound services available for the specialist court on allocated days are not always available. However, the ‘specialist DFV court justice response is working towards the coordination of civil and criminal matters in each location’.<sup>44</sup>
- 5.42 Linking civil and criminal DFV proceedings:<sup>45</sup>
- may reduce re-traumatisation that victim-survivors may experience in having to repeatedly attend court
  - allows Magistrates to see the full picture, within the bounds of appropriate legal process
  - supports perpetrators to address the underlying causes of their offending.
- 5.43 An evaluation of the Southport specialist DFV court found that while the quantitative evidence about the court’s effectiveness was emerging, there was strong qualitative evidence to indicate it had contributed ‘to improved processes and outcomes for victims and their children, particularly through maintaining safety at court and perpetrator accountability’.<sup>46</sup>
- 5.44 Implementation of recommendation 9 would mean the supports and specialised knowledge available in specialist DFV courts could be available to victim-survivors and perpetrators of the amended non-fatal strangulation offence. However, careful consideration would need to be given as to how to deal with non-fatal strangulation offending in relationships characterised by coercion, control or domination, as this is beyond the current scope of DFV matters heard by specialist DFV courts.

## Murri Court

- 5.45 Murri Court was established to reduce the over-representation of Aboriginal peoples and Torres Strait Islander peoples in the criminal justice system. It aims to do this by referring perpetrators to support services that address underlying contributors to offending and by providing sentencing that is ‘more culturally aware and sensitive to the overarching structural disadvantages that perpetuate criminality and deviance among Indigenous Australians’.<sup>47</sup> Murri Court operates in 15 Magistrates Courts across Queensland.<sup>48</sup>

## 5. Addressing delay

- 5.46 With their consent, perpetrators can be referred to a Murri Court by their legal representative, on recommendation of a Community Justice Group representative or at the Magistrate's instigation, or they can refer themselves.<sup>49</sup> To be eligible for referral, the perpetrator must be on bail for an offence that can be finalised in the Magistrates Court or Childrens Court (Magistrates) and they must have either pleaded guilty or indicated their intent to do so.<sup>50</sup> A Murri Court panel assesses the perpetrator's suitability to participate in Murri Court.
- 5.47 Once a Magistrate confirms that a perpetrator can enter a Murri Court pre-sentence referral process, the perpetrator is subject to the supervision and direction of a Community Justice Group.<sup>51</sup> The Murri Court then monitors the perpetrator's progress while participating in that process.<sup>52</sup> At the conclusion of the process, the Murri Court assessment panel prepares a Murri Court sentence report, which is considered on sentence in the Murri Court.<sup>53</sup>
- 5.48 In an evaluation of the Murri Court, the specialist court was found to have led to:<sup>54</sup>
- reunification of families
  - avoidance of deviant and criminal behaviour by provision of access to rehabilitative options
  - increased awareness by perpetrators of the impact of their offending on the victim-survivor and the community.
- 5.49 That evaluation showed<sup>55</sup>
- there is widespread respect for the Murri Court program and the people within it, the salaried and non-salaried personnel; Magistrates and lay people. Accounts have been shared of how Murri Court has facilitated change and restoration in the lives of dozens of Aboriginal and/or Torres Strait Islander people, assisting in rehabilitative efforts, enabling the securing of employment and stabilising families (both through addressing domestic abuse and in preventing incarceration). Murri Court has been identified as a vehicle in reducing Aboriginal and/or Torres Strait Islander incarceration in Queensland as well as curbing the 'revolving door of justice'.
- 5.50 Another unique benefit potentially available at Murri Court is the ability to use the Guddi Way screen, a culturally developed tool used to identify cognitive impairment from brain injury in Aboriginal peoples and Torres Strait Islander peoples.<sup>56</sup>
- 5.51 If recommendation 9 is implemented, Aboriginal perpetrators and Torres Strait Islander perpetrators of the amended non-fatal strangulation offence may be able to access the supports and specialist knowledge available in Murri Court.
- 5.52 Murri Court also has the potential to provide education for perpetrators about the dangers of non-fatal strangulation and alternative anger management strategies, without the need for a finding of guilt. This may improve the safety of victim-survivors.
- 5.53 While Murri Court only operates in magistrates-level courts, the Women's Safety and Justice Taskforce recommended that consideration be given to establishing a Murri Court in the District Court.<sup>57</sup> The Queensland Government has supported that recommendation in principle.<sup>58</sup>
- 5.54 In the New South Wales District Court, the Walama List is being piloted for the sentencing of Aboriginal perpetrators and Torres Strait Islander perpetrators.<sup>59</sup> The New South Wales Bureau of Crime Statistics and Research and the Aboriginal Services Unit at the New South Wales Department of Community and Justice are evaluating the impact of that pilot.<sup>60</sup>

## Benefits for rural and remote areas

- 5.55 Stakeholders told us that the ability to finalise non-fatal strangulation matters in the Magistrates Court rather than superior courts would be particularly beneficial for those from rural and remote areas. This is because it may result in:
- earlier resolution of matters, given superior courts circuit less frequently than Magistrates Courts in rural and remote areas
  - stronger denunciation to the community, as Magistrates Courts sit more often in the community where the offence happens and the community may feel that superior courts are somewhat removed from the community.

## Alternatives not recommended

5.56 A few stakeholders considered that non-fatal strangulation charges should continue to be finalised in superior courts.<sup>61</sup> They thought that problems of delay should instead be dealt with by increasing resourcing and trauma-informed infrastructure, including funding specialist courts, victims' advocacy and support, and trauma-informed training.

5.57 For example, the Red Rose Foundation submitted:<sup>62</sup>

While some professionals and victim-survivors express frustration with systemic delays and attrition rates in the criminal justice process, we maintain that this underscores the urgent need for increased resourcing and trauma-informed infrastructure, not relegating non-fatal strangulation cases to Magistrates Courts.

5.58 Stakeholders who opposed finalising non-fatal strangulation charges in the Magistrates Court on a plea of guilty suggested that such an approach:

- would risk sending a message that non-fatal strangulation is not as serious as other offences of comparable severity that must proceed to a superior court, for example, rape, grievous bodily harm and assault occasioning bodily harm whilst armed.<sup>63</sup> However, North Queensland WLS submitted:<sup>64</sup>

We believe that whether a [non-fatal strangulation] matter is finalised in the Magistrates Court or District Court will be of little importance to most victims. The benefits in real-life practical terms of having matters dealt with closer to the actual offending and in a much timelier manner, far outweigh any argument that such a serious indictable offence must be finalised in a [superior] court.

- may promote lesser sentences for non-fatal strangulation, given the 3-year imprisonment upper limit in the Magistrates Court.<sup>65</sup>
- risks perpetuating inconsistent sentencing as Magistrates are less equipped to impose penalties that reflect the risk of future violence and death, keep victim-survivors safe and deter recidivism.<sup>66</sup>
- would be problematic for victim-survivor safety as they thought that superior courts had enhanced access to resources to address and consider coercive control patterns and medical evidence requirements that demand expert testimony.<sup>67</sup>
- may be perceived to limit victim-survivor involvement due to the perception that Victim Impact Statements are not provided as routinely in magistrates-level courts.<sup>68</sup>
- raises concerns about police prosecutors' reluctance to negotiate offences, such as from non-fatal strangulation to other offences.

## 5. Addressing delay

- raises concerns about the ability to deal with matters in Murri Court where sometimes family members are involved as Elders.

5.59 To address some of these concerns, we make other recommendations intended to operate alongside recommendation 9, including recommendation 1 (public education), recommendation 10 (a fast-track initiative in superior courts), recommendation 11 (training for criminal justice personnel) and recommendation 16 (the victim advocate service).

5.60 A few stakeholders supported finalising non-fatal strangulation matters in the Magistrates Court on a guilty plea, but thought whether this occurs should be at the prosecution's election.<sup>69</sup> The Victims' Commissioner submitted:<sup>70</sup>

[T]he approach taken for non-fatal strangulation mirror that of coercive control ... 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 increase to maximum penalties.

5.61 Consistent with the views expressed by most stakeholders, our recommended approach retains the requirement for trials to occur in a superior court. One of the reasons we considered this to be important is the Queensland Law Society's experience of<sup>71</sup>

inconsistency in the approach of individual police prosecutors and police prosecution offices regarding the exercise of their jurisdictional election.

5.62 Some stakeholders expressed support for non-fatal strangulation charges to be finalised in the Magistrates Court for trials as well as sentence.<sup>72</sup> We do not recommend this approach because of the seriousness of this offending and the significant resourcing implications associated with trials in magistrates-level courts.

## Human rights considerations

5.63 Recommendation 9 seeks to reduce the time to finalise non-fatal strangulation charges to encourage guilty pleas, reduce victim-survivor attrition and provide greater support through, for example, specialist DFV courts and the Murri Court. We consider that recommendation 9 is compatible with human rights.

### Rights promoted

5.64 Recommendation 9 may promote the right of victim-survivors to protection from torture and cruel, inhuman or degrading treatment by finalising their matters at an earlier stage. Assisting perpetrators to change their behaviour at an earlier stage may also increase victim-survivor safety.

5.65 The ability to refer matters to and finalise matters in Murri Court in some locations may also promote the specific cultural rights of Aboriginal peoples and Torres Strait Islander peoples, and their right to recognition and equality before the law.

### Potential limitations that are reasonable and demonstrably justifiable

5.66 Recommendation 9 may have implications for the perpetrator's right to privacy and reputation. Currently, unless a perpetrator's criminal history is admissible in evidence, Magistrates Courts must not have regard to the criminal history 'before receiving plea of guilty or making any decision of guilt or for deciding whether the [perpetrator] may be adequately punished on summary conviction'.<sup>73</sup>

## 5. Addressing delay

- 5.67 As discussed below at [5.74], if recommendation 9 is implemented, consideration will need to be given to permitting Magistrates access to a perpetrator's criminal history to decide whether a non-fatal strangulation matter could be adequately punished in the Magistrates Court.<sup>74</sup> Although this may limit the perpetrator's right to privacy and reputation, we consider this limit would be reasonable and justifiable to ensure the matter is dealt with efficiently and without delay. We note that use of the perpetrator's criminal history would be restricted and would not be available to the wider community.
- 5.68 Recommendation 9 could also potentially limit the right to a fair hearing and rights in criminal proceedings. Although the non-fatal strangulation offence is a serious offence there may be:
- limited capacity in Magistrates Courts to provide sufficient time to make and consider sentencing submissions
  - less access to resources for perpetrators being sentenced.
- 5.69 However, we note that recommendation 9 would potentially benefit some perpetrators by reducing the time they are required to spend on remand. Further, concerns about limitations on these rights could be mitigated with the allocation of appropriate resourcing (discussed below from [5.84]). As such, we consider any limitations on these rights are proportionate to the purpose and there are no less restrictive and reasonable ways to achieve the purpose.
- 5.70 We consider that any potential limitations on human rights by recommendation 9 are reasonable and demonstrably justifiable.

## Impact of reform

- 5.71 Recommendation 9 may have impacts:
- for sentencing in the Magistrates Court, particularly for Magistrates deciding whether non-fatal strangulation matters can be adequately punished in the Magistrates Court
  - on resources
  - for victim-survivors
  - on how non-fatal strangulation conduct is finalised, depending on what offence is charged.

## Sentencing in the Magistrates Court

- 5.72 If recommendation 9 is implemented, Magistrates will be responsible for sentencing some non-fatal strangulation matters. Legal Aid Queensland (FLS) submitted that if such a proposal was adopted:<sup>75</sup>
- [N]on-specialised Magistrates Courts would benefit from training about their ability to exercise discretion in these matters. This would ensure that all Magistrates are aware of the range of penalties available for non-fatal strangulation.
- 5.73 We make a recommendation to this effect (recommendation 11).
- 5.74 To further assist Magistrates to make a decision about whether a non-fatal strangulation offence can be adequately punished in the Magistrates Court, consideration should be given as to whether Magistrates should be able to access perpetrators' criminal histories. In the Criminal Procedure Review — Magistrates Courts, Mr Michael Shanahan recommended, 'In considering whether the court should abstain from dealing with any indictable offence summarily, regard may be had to the defendant's criminal history when making the decision unless that is prohibited by another Act'.<sup>76</sup>

## 5. Addressing delay

- 5.75 From 2019–20 to 2023–24, the average sentence for the non-fatal strangulation offence was 2.7 years.<sup>77</sup> If recommendations 2 and 3 are implemented, the average sentence for the non-fatal strangulation offence is likely to increase.
- 5.76 Some stakeholders considered that if the maximum penalty for the aggravated form of the non-fatal strangulation offence is 14 years, Magistrates' ability to finalise non-fatal strangulation offences may not be realised often as the sentence of imprisonment would likely be beyond what Magistrates can order.<sup>78</sup>
- 5.77 We acknowledge these concerns and suggest that, to ensure sentences ordered for the non-fatal strangulation offence appropriately reflect the gravity of this kind of conduct while victim-survivors and perpetrators have access to the benefits arising from finalisation in magistrates-level courts, consideration be given to either:
- reviewing the maximum penalty of imprisonment that Magistrates can order
  - allowing DFV specialist Magistrates to sentence higher periods of imprisonment, similar to that which exists for Magistrates imposing drug and alcohol treatment orders.

### Impacts for victim-survivors

- 5.78 If recommendation 9 is implemented, measures would need to be put in place to ensure Victim Impacts Statements are available to Magistrates on sentence to avoid jeopardising victims' rights. The Victims' Commissioner stressed the importance of Victim Impact Statements for victim-survivors:<sup>79</sup>
- 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.
- 5.79 The Women's Safety and Justice Taskforce noted that Victim Impact Statements were often not being provided to Magistrates for sentencing.<sup>80</sup> QSAC has also noted that compressed timeframes have resulted in difficulties in obtaining Victims Impact Statements, and that 'in the Magistrates Courts a matter may proceed to sentence even if it is listed for a mention'.<sup>81</sup> QSAC observed that adjournments are not being sought in Magistrates Courts to obtain Victim Impact Statements.<sup>82</sup>
- 5.80 QSAC has recommended a comprehensive review of the Victim Impact Statement regime.<sup>83</sup> As part of that review, QSAC suggested that consideration be given to whether legislative change was necessary to:<sup>84</sup>
- ensure the prosecution has sufficient time to receive and disclose a Victim Impact Statement and any supporting material to the defence prior to sentence
  - create a presumption that courts must grant an adjournment at the prosecution's request for a reasonable period to ensure victim-survivors have the opportunity to provide a Victim Impact Statement.
- 5.81 In the interim, QSAC said that training and guidelines for prosecutors should ensure they are aware of the ability to request, and the importance of requesting, an adjournment to speak with victim-survivors and potentially obtain a Victim Impact Statement.<sup>85</sup> We support these suggestions and, as discussed below at [5.85], consider the sentencing of non-fatal strangulation matters should be listed to allow time for the preparation and receipt of a Victim Impact Statement.

## 5. Addressing delay

- 5.82 In [Chapter 7](#), we note the role that victim advocates may need to play to ensure victim-survivors' rights are protected in Magistrates Courts, including the right to provide a Victim Impact Statement.
- 5.83 Currently, strangulation victim-survivors who proceed through superior courts can obtain one copy of an existing transcription or audio recording of a proceeding.<sup>86</sup> However, sentencing remarks in the Magistrates Court are not routinely published, so if recommendation 9 is implemented, strangulation victim-survivors who proceed through the Magistrates Court would not have the same access to sentencing remarks. We suggest consideration be given to amending the Recording of Evidence Regulation so that this can occur. This amendment would likely need to be considered for all personal offences, rather than be limited to the non-fatal strangulation offence.

### Impacts on resources

- 5.84 Given recommendation 9 would change how non-fatal strangulation charges are finalised, training and education would be necessary for Magistrates, police prosecutors and police (see recommendation 11).
- 5.85 To ensure both the prosecution and defence have sufficient time to gather information necessary to appropriately inform the court during sentencing (such as Victim Impact Statements or expert reports), non-fatal strangulation matters should be listed for a sentencing hearing. Measures should be implemented to avoid such matters being dealt with in the first instance by a duty lawyer in a busy arrest court or otherwise on a date where they are listed for a mention only. This will likely increase the length of time it takes to finalise non-fatal strangulation matters in the Magistrates Court, which would have resourcing implications for those courts.
- 5.86 While training for prosecutors and Magistrates may go some way to achieve this outcome, consideration should be given to the need for a practice direction in the Magistrates Court to this effect.
- 5.87 Finalising non-fatal strangulation matters in the Magistrates Court may also have financial impacts. In its submission, Legal Aid Queensland (CLS) outlined the positive financial impacts that would flow to Legal Aid Queensland:<sup>87</sup>
- For example, in 2022/23 the average cost of a matter involving these charges, which resolved by way of a plea of guilty in the District Court, was \$2433. The cost of a grant of legal aid to represent someone on a summary plea of guilty in the Magistrates Court is \$750.
- 5.88 While we recognise there might be some cost savings associated with recommendation 9, we also emphasise that the amended non-fatal strangulation offence must be finalised in a way that reflects its seriousness. As such, consideration may need to be given to changes to funding to allow perpetrators of the offence to be adequately represented in Magistrates Courts.
- 5.89 In addition to resourcing implications for Magistrates Courts and financial impacts for Legal Aid Queensland, implementation of recommendation 9 would have resourcing implications for police prosecutors as they would be involved in the sentencing of non-fatal strangulation matters. On the other hand, there may be resource and financial savings to police as there may be more pleas of guilty, which would require less brief preparation and checking.

### Inconsistencies in how offences are finalised

- 5.90 If implemented, recommendation 9 would create inconsistencies in how non-fatal strangulation conduct can be finalised, depending on what offence is charged. While the

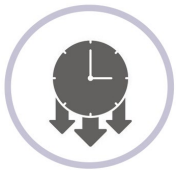
amended non-fatal strangulation offence could be dealt with in the Magistrates Courts on a plea of guilty, such charges would have to proceed to superior courts for trial. In contrast, charges for the simpliciter form of assault occasioning bodily harm could be finalised in the Magistrates Court by way of trial or sentence, while sexual assault charges would only be able to be finalised in the Magistrates Court on sentence if the victim-survivor was aged 14 years or over at the time of the offending. Tables 4.1 and 4.2 in [Chapter 4](#) explore these differences further.

## Implementation

- 5.91 Recommendation 9 should be implemented following implementation of recommendations 1 and 11 (see Figure 1.2 in [Chapter 1](#)). Given the concerns raised about support for victim-survivors in Magistrates Courts, implementation of our recommendation in relation to the victim advocate service (recommendation 16) will be particularly important.

## Fast-track process

### Our reforms explained



**R10** 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.

- 5.92 Recommendation 9 may impact the time to finalise non-fatal strangulation matters where the perpetrator pleads guilty in the Magistrates Court. Where the charge is contested, non-fatal strangulation matters would still need to proceed to superior courts for trial. To effectively address the issue of delay in non-fatal strangulation matters across all courts, we also make recommendation 10.
- 5.93 Recommendation 10 is that the Queensland Government investigate introducing a fast-track initiative in superior courts for the amended non-fatal strangulation offence. In doing so, the Government should have regard to evaluations of other fast-track initiatives in Queensland. Given the nature of the amended non-fatal strangulation offence as a DFV offence, in investigating whether to introduce a fast-track initiative for non-fatal strangulation matters the Government should consider introducing a fast-track initiative more broadly for DFV offences heard on indictment.
- 5.94 Recommendation 10 does not extend to non-fatal strangulation offending beyond the scope of the amended non-fatal strangulation offence. We consider this to be appropriate because there is a greater chance of pressure being exerted in the types of relationships captured by the amended non-fatal strangulation offence (and other DFV offences) and risk that victim-survivors will disengage from the process.

## Case for reform

- 5.95 Stakeholders were generally supportive of 'reforms ... to streamline and create efficiencies within the criminal justice system'.<sup>88</sup> Stakeholders, particularly from the DFV and sexual

## 5. Addressing delay

violence support services sector, supported introducing a fast-track process for non-fatal strangulation matters.<sup>89</sup>

- 5.96 Professor Douglas agreed with the benefits of a fast-track process but noted this was a resourcing question. She thought priority should be given to sexual offences, because of their very high attrition rate, and matters involving children, followed by gender-based violence offences — including non-fatal strangulation and other DFV offences.<sup>90</sup>
- 5.97 In investigating the introduction of a fast-track initiative in superior courts for non-fatal strangulation matters, the Queensland Government should consider different options for how the initiative could operate. Potential options include:
- specialist DFV courts
  - specialist DFV lists.
- 5.98 The aim of specialisation (either in courts or lists) is to lead to efficiencies in the administration of justice, greater consistency, and more skilled and trauma-informed approaches.<sup>91</sup> Improved case management practices may also lead to increased referrals and connections to appropriate support, such as Court Link. Research has found that, in some cases, specialist courts and lists improved processing times, while in others case processing times increased.<sup>92</sup>
- 5.99 There are several specialisation initiatives under way in Queensland that aim to address delays for particular types of offending or offenders. Some of these relate to improving proceedings in magistrates-level courts,<sup>93</sup> while others are specific to superior courts.

### Specialist courts

- 5.100 Specialist courts may be separate courts with specialist Judges who are experts in that field and may exclusively preside over that court.<sup>94</sup> As discussed above at [5.38], Queensland currently has specialist DFV courts in several Magistrates Court locations. However, some of these specialist DFV courts may be better described as generalist courts with specialist lists. Specialist lists are discussed further below from [5.103]. Queensland does not have specialist DFV courts of any form at the superior court level.
- 5.101 In response to our consultation paper, the Red Rose Foundation suggested piloting a dedicated DFV court ‘in a high-volume region to test accelerated timelines and specialised Judges’.<sup>95</sup> Specialist DFV courts may be particularly necessary given the area of criminal law that relates to the non-fatal strangulation offence, and DFV offences more broadly, is complex and there are unique issues of procedure and evidence. This may be particularly relevant in light of recommendation 14 (jury directions). These are similar to the reasons given for specialisation in relation to sexual offending.<sup>96</sup>
- 5.102 In submissions to the Women’s Safety and Justice Taskforce, the Queensland Law Society and the Bar Association of Queensland were opposed to specialist courts for sexual violence matters.<sup>97</sup> They raised concerns about:<sup>98</sup>
- postcode injustice or displacement of those from rural or regional areas
  - the risk of judicial burnout and challenges in recruitment
  - the difficulties and potential detriment to the perpetrator that may arise if eligible court charges are required to be severed from other charges.

### Specialist lists

- 5.103 An alternative method of specialisation involves a specialist list in a generalist court.<sup>99</sup> Some Queensland Magistrates Courts have summary DFV lists managed by dedicated Magistrates, with the aim of promoting faster resolution of DFV offences.<sup>100</sup>

## 5. Addressing delay

- 5.104 Victoria uses specialist sexual violence lists involving specialist judicial officers who undertake pre-trial case management of all matters committed from the Magistrates Court through to trial. In reviews in 2004 and 2021, the Victorian Law Reform Commission preferred the specialist list to the establishment of a specialist court but recommended strengthening specialisation through education and training.<sup>101</sup>
- 5.105 Following a Women’s Safety and Justice Taskforce recommendation,<sup>102</sup> the Queensland District Court issued a practice direction for managing sexual violence cases in Queensland. This practice direction aims to ‘minimise delay in the Court process, provide greater certainty to all Court users and reduce the potential for re-traumatisation of witnesses’.<sup>103</sup> It lists best practice principles that apply across all sexual violence offence proceedings in the District Court and outlines specific requirements for the Sexual Violence Case Management Pilot in the District Court in Brisbane and Ipswich. That pilot commenced in September 2024 and provides for a specific process for those pleading not guilty to sexual violence offences.<sup>104</sup>
- 5.106 This process was based largely on a similar model in New Zealand.<sup>105</sup> An evaluation of that model reported successes in timeliness and improved practices in trial management in that jurisdiction.<sup>106</sup> The Queensland process will be subject to an independent process and outcomes evaluation which is due in December 2026.<sup>107</sup>
- 5.107 Legal Aid Queensland (CLS) cautioned that<sup>108</sup>
- a review of the Sexual Violence Case Management Pilot ... ought to be undertaken prior to establishing any potential similar process for offences such as non-fatal strangulation.

## Human rights considerations

- 5.108 Recommendation 10 aims to reduce the time to finalise non-fatal strangulation matters that proceed to superior courts by encouraging the Queensland Government to investigate the introduction of a fast-track initiative. We consider this recommendation is compatible with human rights.
- 5.109 If the Government decides to implement a fast-track initiative, this may:
- promote the rights of victim-survivors to protection from torture and cruel, inhuman or degrading treatment by finalising their matters at an earlier stage
  - limit perpetrators’ right to recognition and equality before the law, right to a fair hearing and rights in criminal proceedings.
- 5.110 However, any potential limitations on rights would depend on the fast-track model chosen.

## Impact of reform

- 5.111 In investigating whether to introduce a fast-track initiative in superior courts for non-fatal strangulation matters, or DFV matters more broadly, the Queensland Government should consider resourcing implications of doing so, including impacts on court resources, legal practitioners and other support services.

## Implementation

- 5.112 Recommendation 10, if implemented, would require the Queensland Government to consider outcomes of the evaluation of other fast-track initiatives in Queensland. An evaluation of the Sexual Violence Case Management pilot is due at the end of 2026. Other evaluations have also been done of specialist courts in Queensland.<sup>109</sup>

## 5. Addressing delay

- 5.113 Recommendation 10 should be implemented immediately and can be implemented alongside other recommendations made in this review, including recommendations about legislative reforms and training and education (see Figure 1.2 in [Chapter 1](#)).

## References

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- 1 Terms of Reference, 1.
- 2 Terms of Reference, [3(e)].
- 3 Terms of Reference, [2].
- 4 See, eg, Heather Douglas, Submission 6; North Queensland Women’s Legal Service, Submission 7; Queensland Sexual Assault Network, Submission 11; Bar Association of Queensland, Submission 20; Queensland Indigenous Family Violence Legal Service, Submission 21.
- 5 Queensland Sexual Assault Network, Submission 11.
- 6 North Queensland Women’s Legal Service, Submission 7.
- 7 National Agreement on Closing the Gap (July 2020) 37.
- 8 Queensland Indigenous Family Violence Legal Service, Submission 21.
- 9 Queensland Law Reform Commission, Non-Fatal Strangulation: Section 315A - What We Heard (Background Paper No 2, September 2025) 'Forum'.
- 10 Heather Douglas, Submission 6; Bar Association of Queensland, Submission 20; Legal Aid Queensland (Criminal Law Services), Submission 24.
- 11 Bar Association of Queensland, Submission 20.
- 12 Robin Fitzgerald and Heather Douglas, 'Domestic Violence and the Role of Imprisonment as a Response: Men’s Post-Conviction Talk about Strangling Women' [2025] Current Issues in Criminal Justice 1.
- 13 Heather Douglas, Submission 6.
- 14 Bar Association of Queensland, Submission 20.
- 15 Heather Douglas, Submission 6; Andrew Hemming, Submission 8; Bar Association of Queensland, Submission 20; Legal Aid Queensland (Criminal Law Services), Submission 24..
- 16 Criminal Code 1899 (Qld) ch 58A; see also *EFN v Lehmann* (QSC, 9 May 2017) [10]-[11].
- 17 Youth Justice Act 1992 (Qld) ss 81-84.
- 18 Queensland Law Reform Commission, Non-Fatal Strangulation: Section 315A Review - A Holistic Review of the Non-Fatal Strangulation Offence (Consultation Paper, April 2025) 40 (Proposal 3).
- 19 Queensland Law Reform Commission, Non-Fatal Strangulation: Section 315A Review - Our Terms of Reference (Background Paper No 1, November 2024) 27.
- 20 Criminal Code Act 1899 (Qld) sch 1, ch 58A, ss 552A-552BA ('Criminal Code (Qld)').
- 21 Criminal Code (Qld) s 552BA.
- 22 As common assault is a relevant offence under Criminal Code (Qld) s 552B(4)(a).
- 23 Criminal Code (Qld) s 552A.
- 24 Criminal Code (Qld) s 552A(1)(a).
- 25 Criminal Code (Qld) s 552B.
- 26 Criminal Code (Qld) s 552B(1)(b).
- 27 Criminal Code (Qld) s 552B(1)(a).
- 28 Criminal Code (Qld) s 552H(1)(b).
- 29 Criminal Code (Qld) s 552H(1)(a).
- 30 Criminal Code (Qld) s 552D(1).
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# CHAPTER 6

## Improving evidence collection and informed decision-making

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# Introduction

- 6.1 Our terms of reference asked us to examine procedural rules and practices applicable to non-fatal strangulation offence proceedings and to make recommendations on any matters relevant to the issues in the review.
- 6.2 This chapter addresses two key issues that we identified following analysis of findings from our research projects and feedback obtained from stakeholders:
  - evidence collected by police and health professionals in non-fatal strangulation matters is not always adequate
  - there is a lack of awareness and understanding of non-fatal strangulation and its impacts among those in the community, criminal justice personnel and health professionals.
- 6.3 This chapter presents three recommendations that aim to address these issues, targeting:
  - criminal justice personnel
  - health professionals
  - jurors.
- 6.4 These recommendations may also improve victim-survivors' experiences of the criminal justice system following strangulation.

## Criminal justice personnel

### Our reforms explained

 	<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>

## 6. Improving evidence collection and informed decision-making

- 6.5 Recommendation 11 is directed at criminal justice personnel who are directly responsible for investigating, charging, prosecuting, hearing, sentencing and facilitating restorative justice conferencing of non-fatal strangulation matters. It aims to improve awareness and understanding of non-fatal strangulation and its impacts, as well as laws, practices and procedures relevant to non-fatal strangulation. Recommendation 11 does not extend to other criminal justice personnel who also deal with non-fatal strangulation matters, such as defence lawyers, counsel, Community Justice Groups and court staff. We do, however, recommend that the publicly available training module on non-fatal strangulation (see recommendation 1) be made available to these personnel as a priority and that relevant bodies consider developing and implementing non-fatal strangulation training, policies, guidelines and resources for these cohorts, drawing on the discussion in this chapter.
- 6.6 Recommendation 11 is that 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, both within and beyond domestic settings.
- 6.7 In conducting their reviews, relevant agencies should ensure that training, policies, guidelines and resources include:
- up-to-date, evidence-based information on non-fatal strangulation and its impacts, including the matters listed at [1.85] (see [Chapter 1](#))
  - information on relevant laws, practices and procedures concerning the investigation, prosecution, hearing, sentencing and restorative justice conferencing of non-fatal strangulation matters, both within and beyond domestic settings. These are explained below from [6.12] as they relate specifically to police, prosecutors, judicial officers or restorative justice/dispute resolution facilitators.
- 6.8 In conducting their reviews, relevant agencies should collaborate with victim-survivors and experts in the area, such as the Australian Institute for Strangulation Prevention and the Strangulation Trauma Centre. Training, policies, guidelines and resources should be evidence-based, trauma-informed and culturally-safe. They should take an intersectional approach that considers the impacts of non-fatal strangulation on people experiencing DFV and/or coercive control, Aboriginal peoples and Torres Strait Islander peoples, people from culturally and linguistically diverse communities, people from LGBTIQ+ communities, people with disability, and children and young people.
- 6.9 Agencies may wish to consider embedding into their training and education any publicly available training module developed as part of implementation of recommendation 1.
- 6.10 We also recommend that training and education on non-fatal strangulation should be mandatory for all police (including civilian front counter staff, general duties officers, detectives and other specialist officers), prosecutors, judicial officers and restorative justice/dispute resolution facilitators who deal with non-fatal strangulation matters, both within and beyond domestic settings (recommendation 11).
- 6.11 Recommendation 12 is specifically directed at police and aims to improve evidence collection in non-fatal strangulation matters. It recommends that the QPS develop a consistent non-fatal strangulation screening, documentation and response protocol for officers' use statewide. This protocol is discussed further below from [6.15].

## Police

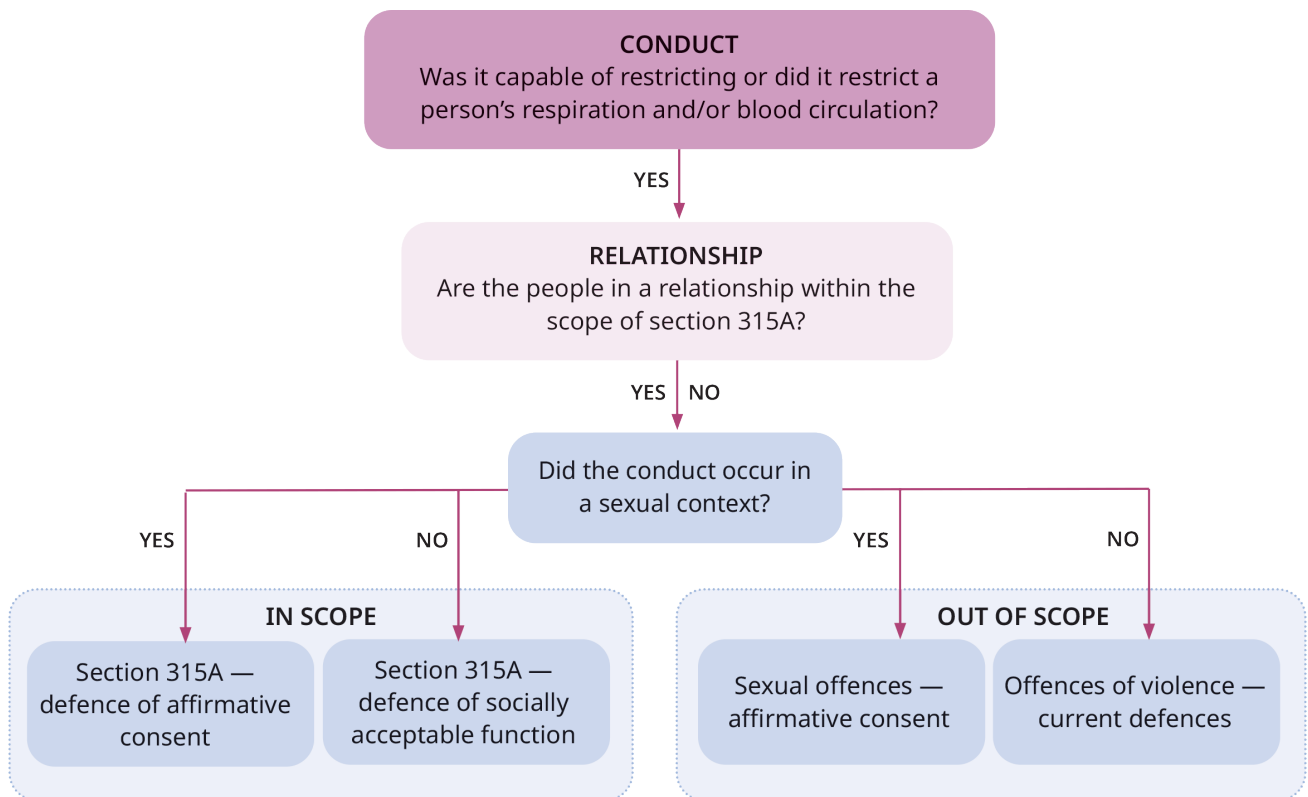
### Training, policies, guidelines and resources

6.12 In addition to information on non-fatal strangulation and its impacts, QPS training, policies, guidelines and resources should include information on relevant laws, practices and procedures on non-fatal strangulation. This should include information about the relevant reforms arising from this review, including but not limited to:

- the types of relationships that fall within the scope of the amended non-fatal strangulation offence and the types of relationships that the offence is not intended to capture
- the changes to consent
- the range of conduct that is intended to fall within ‘conduct capable of restricting or that does restrict a person’s respiration and/or blood circulation’
- when such conduct should be charged as a different offence, such as grievous bodily harm.

6.13 Figure 6.1 shows a decision tree for police investigating matters involving non-fatal strangulation. This could be incorporated into QPS training, guidelines, resources or the protocol discussed below from [6.15].

**Figure 6.1: Decision tree for police investigating matters involving non-fatal strangulation**



- 6.14 Further, QPS training, policies, guidelines and resources should include information for officers about how to:
- screen for non-fatal strangulation<sup>1</sup>
  - accurately and thoroughly document injuries, signs and symptoms, including by taking high-quality photographs (optimally over a series of days), even where the victim-survivor may be (mis)identified as the person using violence
  - in applicable cases, take video-recorded evidence-in-chief in a victim-centric and trauma-informed way and effectively question victim-survivors in a manner that reduces potential challenges to their evidence, such as questions about its relevance or whether it was given in response to a leading question
  - refer victim-survivors for medical treatment and assessment
  - appropriately respond to children as victim-survivors or witnesses. including by taking their statement in appropriate cases.

### **Screening, documentation and response protocol**

- 6.15 To ensure a consistent, effective response to strangulation victim-survivors across the State, QPS should develop an up-to-date non-fatal strangulation screening, documentation and response protocol for officers' use statewide.
- 6.16 The screening protocol should include questions aimed at determining whether:
- the perpetrator put their hands or anything else around or against the victim-survivor's neck or throat, or over their mouth or nose
  - the victim-survivor found it difficult to breathe, had other symptoms or passed out.
- 6.17 A screening protocol is necessary because victim-survivors may not disclose such conduct to police unless questioned in the right way.<sup>2</sup>
- 6.18 It will be important to design the protocol to ensure that the information obtained can be used both for the purposes of identifying the need for health intervention and as evidence in a criminal justice process. This may require consideration of whether the questions could be said to be leading. We note, however, that not all evidence obtained from a leading question will necessarily be excluded — this is a question of degree.<sup>3</sup> Legal Aid Queensland (CLS) was<sup>4</sup>
- concerned about the potential for leading questions being asked under the guise of 'screening questions' ... This significantly increases the risk of an inadmissible statement[] being made, resulting [in] challenges to the admissibility of those statements under the rules of evidence, and that evidence being excluded. CLS is also concerned, particularly in light of the overrepresentation of First Nations victim-survivors, that vulnerable witnesses are likely to easily acquiesce to suggestions, or gratuitous concurrence, affecting the quality of their evidence.
- 6.19 Use of the protocol should be electronically recorded where possible to ensure transparency in the way in which screening questions were asked. If not otherwise captured, police should make a written record that they used the protocol.
- 6.20 The documentation protocol should include sections for the following:<sup>5</sup>
- details about the incident and its context, using the victim-survivor's own words where possible
  - details of the non-fatal strangulation, including:

## 6. Improving evidence collection and informed decision-making

- the method used
- signs observed and symptoms experienced
- history of DFV, including details of previous non-fatal strangulation incidents
- details relevant to offence elements, such as whether and to what extent respiration and/or blood circulation were restricted, the nature of the relationship between the parties, and whether or not consent was given
- details of witnesses, including any children, and whether they also experienced non-fatal strangulation
- physical examination findings, including of the face and neck
- forensic photography.

6.21 The response protocol should require police officers to:

- give victim-survivors verbal and written information about:
  - the potential health consequences of non-fatal strangulation
  - the importance of seeking medical attention and where this can be obtained, for example, by the Queensland Ambulance Service, at an emergency department or by a general practitioner
  - contact details of support services and information about what each service does
  - the importance of providing a statement, the process of taking a statement and how their statement could be used
- request Queensland Ambulance Service attendance or arrange for victim-survivors to be transported to obtain medical treatment
- contact child protection and investigation unit ('CPIU') officers if a child was present during the strangulation of another person or was a strangulation victim-survivor.

## Prosecutors

6.22 In addition to information on non-fatal strangulation and its impacts, QPS and ODPP training, policies, guidelines and resources for prosecutors should also include information about relevant reforms arising from this review, including but not limited to:

- the matters listed above at [6.12]
- the potential to finalise non-fatal strangulation offences in the Magistrates Court in some circumstances (see recommendation 9)
- available jury directions (see recommendation 14).

6.23 Further, training, policies, guidelines and resources should explain:

- how documented signs, symptoms and injuries, medical reports and imaging or other test results can be used to establish elements of the non-fatal strangulation offence and other offences that include the element of restriction of a person's respiration and/or blood circulation
- why and when to call medical professionals as expert witnesses
- what questions prosecutors should ask medical experts
- how to engage with victim-survivors who may be impacted by trauma or be suffering from a brain injury, including those with impacts on their memory and recall.

## Judicial officers

- 6.24 In addition to information on non-fatal strangulation and its impacts, the training, policies, guidelines and resources (including bench books) for judicial officers, including Magistrates, should include:
- information about relevant reforms arising from this review, including the matters listed at [6.12] and [6.22]
  - guidance on managing, hearing and sentencing matters involving non-fatal strangulation, both within and beyond domestic settings.
- 6.25 As part of their training, judicial officers should specifically be educated on the seriousness of non-fatal strangulation so that they can make appropriate decisions about how such conduct should be sentenced and, particularly for Magistrates, whether such matters should be finalised in a magistrates-level court.

## Restorative justice/dispute resolution providers

- 6.26 In addition to information on non-fatal strangulation and its impacts, the training, policies, guidelines and resources for restorative justice/dispute resolution facilitators should include:
- information about any updates to QPS and ODPP policies regarding referrals to restorative justice for non-fatal strangulation matters
  - guidance on assessing suitability of non-fatal strangulation matters, both within and beyond domestic settings, for restorative justice
  - guidance about what information about non-fatal strangulation should be given to victim-survivors and perpetrators pre-conference and appropriate methods of delivery to account for different learning needs
  - information about appropriate service providers to further support victim-survivors
  - information about service providers and programs that may be appropriate to include in agreements that propose further education about non-fatal strangulation and rehabilitation for perpetrators.

## Case for reform

- 6.27 Stakeholders, including victim-survivors, agreed that further training on non-fatal strangulation for criminal justice personnel is needed.<sup>6</sup> Some thought such training should be mandatory. The Red Rose Foundation advocated for 'mandatory, trauma-informed training for all first responders (police, paramedics), medical professionals, service providers, and legal practitioners'.<sup>7</sup>
- 6.28 DVAC submitted:<sup>8</sup>
- Our staff report a significant knowledge and capability gap for professionals who are often the frontline of support for victims. At a minimum, stakeholders 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.
- 6.29 In its submission, the Queensland Law Society said it<sup>9</sup>
- is of the view that further education and training in relation to the investigation and prosecution of these offences will enhance the understanding of those tasked

## 6. Improving evidence collection and informed decision-making

with identifying, charging and prosecuting this type of offending, and thereby address any perceived inadequacy with the current criminal justice response.

6.30 Similarly, Legal Aid Queensland (CLS) submitted it<sup>10</sup>

supports training for criminal justice system personnel, including investment in continued training of police officers to embed an understanding of trauma-informed interview techniques that avoid the limitations of a traditional incident-focused approach. This would be particularly important in the context of DFV victim-survivors and accused persons from culturally diverse communities and from within an Aboriginal and/or Torres Strait Islander community. That training should include cultural competency modules, so that cultural norms and environments are properly considered in informing a best-practice approach. To ensure maximum efficacy, training would need to be developed and tailored regarding the specific role and function of each criminal justice system stakeholder.

6.31 CPIU officers who participated in our research also considered that further training is needed for criminal justice personnel about child development as there appears to be limited understanding of this area (see [Chapter 8](#)). They considered that this limited understanding can adversely impact perceptions of children's evidence, including in non-fatal strangulation matters, and that training may need to address changes in children's vocabulary over time (which occurs as part of normal child development and is not necessarily indicative of an 'inconsistent' statement) and child behaviour (such as typical mannerisms of children, providing limited eye contact and appearing distracted).

## Police

### Improving evidence collection

6.32 Stakeholders agreed that police need further training on how to screen for non-fatal strangulation, document signs, symptoms and injuries, and how best to take evidence from victim-survivors, including those who have issues with their memory or have or might have a brain injury.<sup>11</sup> For example, one stakeholder suggested that evidence should be captured in a way that can be used as a prompt for the victim-survivor later, such as via video-recording. Video-recorded evidence-in-chief is discussed further below from [6.38].

6.33 While the QPS has developed a DFV strangulation investigation booklet (a documentation protocol), we were told that this is no longer used by officers. However, we are aware that Queensland Health and the QPS are in the process of developing a fact sheet on documentation in non-fatal strangulation matters.

6.34 We are also aware that the QPS has developed trifold cards which provide guidance for police responding to non-fatal strangulation that includes information on non-fatal strangulation and its impacts, as well as what questions to ask victim-survivors. However, we were told that not everybody has or uses them.<sup>12</sup>

6.35 The Red Rose Foundation submitted:<sup>13</sup>

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.

6.36 It is crucial for police to document injuries, signs and symptoms accurately, thoroughly and consistently as victim-survivors may not seek medical attention or may choose not to give or withdraw their statement.<sup>14</sup> Improving evidence collection in non-fatal strangulation matters

may increase the likelihood of guilty pleas and reduce the need to rely on victim-survivors' testimony at trial.

- 6.37 Stakeholders, including victim-survivors, described situations where both mother and child/ren were strangled, but only the mother was taken to hospital and charges laid only related to the offending against her. Our research indicates that CPIU officers are appropriately trained to respond to children in non-fatal strangulation matters, including by recording the child's statement (if officers consider other evidence is not strong enough), taking photographs of injuries and referring child victim-survivors to health professionals and other services (see [Chapter 8](#)).

### ***Video-recorded evidence-in-chief***

- 6.38 Video-recorded evidence-in-chief ('VREC') allows video-recorded statements made by victim-survivors to police officers to be used wholly or partly as the victim-survivor's evidence-in-chief in criminal trials and committal proceedings for DFV offences in Magistrates Courts.<sup>15</sup> VREC was piloted in Magistrates Courts in Ipswich, Southport and Coolangatta,<sup>16</sup> but a new scheme has been introduced which applies statewide.<sup>17</sup> This scheme could allow victim-survivors of the amended non-fatal strangulation offence to give VREC for their committal proceeding. However, we note that there may be limitations to its current application for those falling within the expanded scope of the amended offence, namely, people in relationships characterised by coercion, control or domination that are not domestic relationships.
- 6.39 Under the new VREC scheme, there are some changes to the process of obtaining VREC, compared to the pilot. This includes removing the requirement for the VREC statement to be taken as soon as reasonably practicable to 'allow for a victim-centric approach to be taken in circumstances where a complainant is in a heightened emotional state and may require time before providing a detailed account to police'.<sup>18</sup>
- 6.40 The new scheme also:
- permits multiple VREC statements to be taken
  - clarifies that victim-survivors only need to give informed consent to giving the statement once
  - removes the requirement for a trained police officer who has successfully completed an approved DFV training course to take a VREC statement, so that QPS can flexibly expand workforce capabilities and allow police officers who have completed other relevant training to take a VREC statement.<sup>19</sup>
- 6.41 Stakeholders supported the use of VREC in non-fatal strangulation matters, considering that it could minimise re-traumatisation and give victim-survivors choice and agency.<sup>20</sup> Stakeholders also thought VREC could give context to the offending, provide strong support for the prosecution case and may result in more guilty pleas.<sup>21</sup> The Red Rose Foundation submitted:<sup>22</sup>
- Taken promptly by police and used as evidence-in-chief, VREC statements can significantly reduce trauma for victim-survivors by reducing the need to recount their experiences in court, supporting both their wellbeing and the integrity of their evidence. The VREC framework also improves police capacity to respond efficiently and helps critical evidence to be preserved close to the time of the alleged offence, addressing common barriers in cases of [non-fatal strangulation] such as memory loss, intimidation, and victim attrition in the justice process.
- 6.42 However, stakeholders thought that victim-survivors should be given the choice to use VREC after receiving information about the process and how their evidence can be used and retained.<sup>23</sup>

## 6. Improving evidence collection and informed decision-making

- 6.43 The Victims' Commissioner submitted informed consent should be required to be obtained before and at the start of the recording. Further, only police officers with specialist training in DFV should be able to take VREC. That training should focus on communication, consent and interviewing vulnerable witnesses. The Commissioner noted:<sup>24</sup>

[T]raining 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.

- 6.44 Other stakeholders also thought that officers must be appropriately trained in conducting VREC.<sup>25</sup> Legal Aid Queensland (CLS) submitted that, without a requirement for a trained police officer to take VREC the<sup>26</sup>

potential for re-traumatising a complainant is high. For the defendant, it is the experience of LAQ criminal lawyers in the pilot regions that the content and quality of the statements deteriorate in the absence of appropriate training. The conduct of the interview may result in challenges to its admissibility pursuant to the rules of evidence, negating the purpose of the VREC statement and increasing the likelihood of the complainant having to give that evidence at trial. In order to prevent inadmissible parts of a statement forming part of the evidence in a trial, there will be a significant imposition on prosecutors, who are already under significant work burdens, to review and excise those sections in preparation for trial. Where that is unable to occur, defence lawyers and the courts will be required to decipher what edits are required. This represents a significant resourcing issue for those practicing in the Magistrates Courts, and for the courts themselves.

- 6.45 Some stakeholders considered that VREC has challenges. These include the potential for recordings to contain inadmissible statements and/or to raise credibility issues for victim-survivors, who may appear distressed or, conversely, too composed.<sup>27</sup> The Bar Association of Queensland submitted:<sup>28</sup>

[G]iven the increased usage of video evidence collected by police from victim-survivors, an increase in training may reduce the likelihood that the evidence which is collected is disregarded as hearsay or becomes subject to an exclusion application which, in the experience of the Association's members, occurs particularly during early stages of an investigation.

- 6.46 Legal Aid Queensland (CLS) noted disadvantages of using VREC for both victim-survivors and perpetrators. For victim-survivors, it submitted:<sup>29</sup>

[T]he VREC framework does not reflect trauma-informed practice in several ways. It does not provide an opportunity to have a support person and interpreter present and does not give the aggrieved time to review their statement and make amendments or corrections. In CLS's experience, the impact of trauma on memory means that the complainant often benefits from time and space to review their statement and provide further detail or clarity. In terms of cross-examination, a VREC statement is more difficult for the complainant to respond to when compared to an affidavit with numbered paragraphs.

- 6.47 For perpetrators, Legal Aid Queensland (CLS) submitted that the 'use of VREC statements increases the complexity of giving advice to defendants', particularly those who are unrepresented, and the 'level of resourcing required by LAQ's duty lawyers and advice clinics

to properly advise the defendant is significantly higher in matters involving a VREC statement.<sup>30</sup>

6.48 Noting that there is no longer a requirement for a specifically trained police officer to take a VREC statement, we recommend that QPS ensure all frontline police are trained in how to take a VREC statement in a victim-centric and trauma-informed way. When the Queensland Parliament Education, Arts and Communities Committee considered the Bill introducing amendments to the VREC scheme, it recommended that:<sup>31</sup>

- any training material developed by the QPS related to DFV, including VREC training, ‘be co-designed in tandem with domestic and family violence specialist providers’
- these materials be reviewed regularly
- police be required to undertake regular refresher training.

6.49 We agree with those recommendations. We also consider that officers should be trained on how to effectively question victim-survivors in a manner that reduces potential challenges to their evidence. Such training is currently required, for example, for police officers taking s 93A statements.<sup>32</sup>

## Improving victim-survivor experiences

6.50 Stakeholders, including victim-survivors, also agreed that police need further training on strangulation and its impacts. They noted a range of consequences that can arise from a lack of police understanding about the nature and impacts of this kind of violence.<sup>33</sup> For example, police can misidentify strangulation victim-survivors (especially Aboriginal peoples and Torres Strait Islander peoples, and peoples from culturally and linguistically diverse communities) or treat victim-survivors poorly.

6.51 Many of the victim-survivors who we consulted and who participated in our research had negative experiences with police, including:<sup>34</sup>

- when reporting — some victim-survivors felt humiliated, discriminated against or were misidentified, others’ complaints were minimised or disbelieved, some had to make their complaint in front of the perpetrator, and some felt police did not understand the seriousness or impacts of non-fatal strangulation
- during the investigation — victim-survivors told us that statements or other evidence were not always collected or obtained by police
- when charging — sometimes charges were not laid because police thought it might be difficult to prove the offence.

6.52 DVAC submitted:<sup>35</sup>

Lack of evidence has been identified as a theme when victim-survivors attempt to report their experiences to police and have charges laid against the offender. Many women report feeling let down by the system due to the lack of response to their experience, feeling that health care professional[s], police and other responders did not believe them or care about them when they disclosed they were strangled, choked or suffocated. We know these forms of abuse may leave little physical evidence but still pose significant risks of death or injury, yet these dismissive responses continue.

6.53 Victim-survivors also told us they were not given sufficient information, including medical information about strangulation and information about the criminal justice process.<sup>36</sup> To remedy these issues, victim-survivors thought police needed to:<sup>37</sup>

## 6. Improving evidence collection and informed decision-making

- better understand the seriousness of non-fatal strangulation so that it is appropriately charged
- be better trained in trauma-informed practice
- give victim-survivors information about the importance of obtaining medical treatment
- inform victim-survivors about court processes from the beginning.

6.54 Stakeholders told us that it was important for police to encourage victim-survivors to seek medical care or to call the ambulance when responding to non-fatal strangulation matters.<sup>38</sup> However, requiring victim-survivors to see ambulance officers or to attend the hospital may undermine individual autonomy, exacerbate trauma and/or lead to mistrust of police and health professionals. Despite this, some victim-survivors said they had declined to go to hospital but in hindsight wished they had done so.<sup>39</sup>

6.55 Our recommended approach to the response protocol (requiring police to request Queensland Ambulance Service attendance or arrange for victim-survivors to be transported to obtain medical treatment) strikes an appropriate balance and is consistent with current QPS procedures. The QPS Operational Procedures Manual ('OPM') states:<sup>40</sup>

Officers should request Queensland Ambulance Service attendance at all incidents of suspected non-fatal strangulation or arrange for the victim to be transported to obtain medical treatment.

### Existing training and resources

- 6.56 Several existing QPS training and education programs address DFV and sexual violence, with some programs including information on non-fatal strangulation. Relevant programs include:
- a 3-day face-to-face DFV training course that focuses on taking a victim-centric, trauma-informed approach to investigations. This course addresses strangulation. It is mandatory for almost all police officers as well as selected unsworn officers. In 2023–24, almost 85% of QPS members had completed the course.<sup>41</sup>
  - a 5-day face-to-face specialist DFV course for selected officers. In 2023–24, almost 2% of QPS members had completed the course.<sup>42</sup>
  - 2-week specialist ISACURE training ('Investigating Sexual Assault — Corroborating and Understanding Relationship Evidence') for sexual assault investigators that provides training on advanced trauma-informed practices. Research shows that officers who received this training had a higher solve rate and a lower rate of victim-survivor withdrawal and unfounded cases compared to officers who had not received this training.<sup>43</sup> These impacts lasted up to 4 years following training.
  - 19 days of DFV-focused training as part of the Recruit training program.<sup>44</sup>
  - online learning products on DFV and coercive control that are available to officers and police prosecutors.<sup>45</sup> These products include a video on non-fatal strangulation.
- 6.57 Non-fatal strangulation is also addressed in other QPS training, including the Police Communications and Policelink DFV specialist course and coercive control training.
- 6.58 Although some QPS training on DFV does include material on non-fatal strangulation, some police officers who participated in our research thought it was not adequate.<sup>46</sup> Further, we found that police decisions about non-fatal strangulation vary across Queensland, indicating more needs to be done to ensure statewide consistency in conducting non-fatal strangulation investigations.<sup>47</sup>

- 6.59 In addition to existing training and education, the QPS OPM includes information on non-fatal strangulation matters.<sup>48</sup> It requires a specialist DFV officer to review DFV occurrences that involve an allegation of non-fatal strangulation.
- 6.60 However, CPIU officers who participated in our research said that there are no official procedures to guide officer's decisions about whether a child's statement should be taken, including in non-fatal strangulation matters (see [Chapter 8](#)). To decide whether to take a statement, we were told that officers consider the risk of re-traumatisation, the need to take the statement considering the strength of other available evidence, and external factors (such as family and cultural factors) that may impact the child's safety if a statement is taken.

## Prosecutors

### Improving prosecutions

- 6.61 Our research showed that prosecutors' decisions about non-fatal strangulation matters vary across the State, indicating further training may be needed to ensure statewide consistency.<sup>49</sup> Previous research has also found that prosecutors may not adequately understand the risks and dangers of non-fatal strangulation.<sup>50</sup>
- 6.62 Our research also found that sometimes lack of information about respiration being restricted was used to negotiate withdrawal of a non-fatal strangulation charge completely and/or replacement with a different charge.<sup>51</sup> This occurred in circumstances where blood circulation may still have been restricted. For example, non-fatal strangulation charges were withdrawn because the victim-survivor could still talk.<sup>52</sup>
- 6.63 Previous research has found that prosecutors only sometimes call medical experts in non-fatal strangulation cases.<sup>53</sup> Stakeholders said that, if medical experts do testify, sometimes prosecutors do not ask the right questions and so do not extract all the relevant evidence.<sup>54</sup>
- 6.64 Yumba-Meta considered that, in addition to legislative reforms, there must be '[c]lear prosecution guidelines to prevent the minimisation of offences'.<sup>55</sup>

### Improving victim-survivor experiences

- 6.65 Some research participants thought that further training for police prosecutors is necessary because sometimes police prosecutors question the reliability of victim-survivors who appear scattered, seemingly unaware of the effects of trauma on memory.<sup>56</sup>
- 6.66 Yumba-Meta submitted:<sup>57</sup>
- Many victim-survivors report being 'palmed off' or receiving minimal assistance from legal representatives. This must be addressed through training, supervision, and standards for culturally competent practice.

## Judicial officers

### Improving informed decision-making

- 6.67 Stakeholders agreed that judicial officers need further training on non-fatal strangulation.<sup>58</sup> For example, the Red Rose Foundation submitted there must be<sup>59</sup>
- mandatory training for all Judges on DFV, including coercive control, and developing and adopting guidelines in tandem with or prior to these legislative changes, in consultation with the DFV sector and subject-matter experts from the community.

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- 6.68 If recommendation 9 is implemented, Magistrates would need to be trained on non-fatal strangulation to assist them to:
- decide whether a perpetrator could be punished adequately in the Magistrates Court
  - appropriately sentence matters involving non-fatal strangulation, both within and beyond domestic settings.
- 6.69 Legal Aid Queensland (FLS) submitted:<sup>60</sup>
- [N]on-specialised Magistrates Courts would benefit from training about their ability to exercise discretion in these matters. This would ensure that all Magistrates are aware of the range of penalties available for non-fatal strangulation and can utilise their discretion to ensure adequate punishment for the perpetrator.
- 6.70 Further, some police and lawyers who participated in our research, and stakeholders, considered that Magistrates have a limited understanding of non-fatal strangulation.<sup>61</sup> DVAC submitted that there is a ‘need to provide education to Magistrate[’s in regards to the complex and serious context of strangulation’ and ‘the health impacts of strangulation’.<sup>62</sup>

### Existing training and resources

- 6.71 The National Judicial College of Australia offers training and education programs to all Australian judicial officers, including courses on Family Violence and the Courts, Managing Sexual Assault Hearings, and Children and the Court.<sup>63</sup> Some of these courses include information on non-fatal strangulation.
- 6.72 Training and education programs are also offered by the Australasian Institute of Judicial Administration.<sup>64</sup> Further, the Queensland Magistrates Court offers professional development for Magistrates that has previously included sessions on strangulation and Queensland District Court and Supreme Court Judges undertake professional development.<sup>65</sup>
- 6.73 The National Judicial College of Australia has set a national standard for the time the Australian judiciary should spend on professional development, specifically:<sup>66</sup>
- on appointment each officer should be offered an orientation program and, within 18 months, have the opportunity to attend a 5-day national residential orientation program
  - each officer should be able to spend at least 5 days a year participating in professional development activities.
- 6.74 The Women’s Safety and Justice Taskforce considered that Queensland judicial officers have enough available time throughout the year to complete the minimum 5 days of training and professional development.<sup>67</sup>
- 6.75 In addition to training and education, the Australasian Institute of Judicial Administration publishes the National Domestic and Family Violence Bench Book, while Queensland Courts publish several benchbooks for judicial officers, including the Magistrates Court Criminal Law Benchbook and the Supreme and District Courts Benchbook.<sup>68</sup> Some of these bench books include information on strangulation.

## Restorative justice/dispute resolution providers

### Specialised training

- 6.76 Stakeholders expressed concerns about the use of restorative justice, including that best practice is still evolving and there is a need for facilitators to be trained to ensure the process is trauma-informed and safe.<sup>69</sup>
- 6.77 The United Nations Handbook on Restorative Justice Programmes states that, ‘before delivering restorative justice in sensitive, complex or serious cases, facilitators should be experienced and receive mentoring and advanced training’.<sup>70</sup> It outlines that facilitators working in these areas must understand the traumatic impact of violence, including its impact on the victim-survivor, and understand the research and theory on various serious crimes, including the impacts of power and control in DFV and sexual violence offending.<sup>71</sup>
- 6.78 Research has examined best practice on restorative justice and the potential expansion of adult restorative justice conferencing (‘ARJC’) in Queensland. That research noted the need for ‘specialised training ... to suit the specific risks and needs in each case’, but particularly in sensitive and complex cases.<sup>72</sup> It recommended engagement of considerably experienced facilitators to work on complex and sensitive cases and that there be ongoing specialised training offered. It was suggested:<sup>73</sup>
- Specialised training should be developed in conjunction with support agencies (such as sexual, family and domestic violence services) and designed in such a way that it creates a fully embedded, rather [than] ‘bolt-on’, model of capacity building.
- 6.79 Some legal professionals consider that delays in restorative justice conferencing for youth perpetrators are often due to a scarcity of trained facilitators.<sup>74</sup>
- 6.80 A Restorative Justice Sexual and Gender Based Violence Practice Guide has been developed for use at ARJC. That guide — and any other relevant training, policies, guidelines and resources made available by restorative justice/dispute resolution providers — would need to be reviewed and updated to ensure they include relevant information on non-fatal strangulation.

## Human rights considerations

- 6.81 Recommendations 11–12 aim to enhance criminal justice personnel’s understanding of non-fatal strangulation and its impacts as well as relevant laws, practices and procedures, with a view to improving the investigation, prosecution, hearing, sentencing and restorative justice conferencing of non-fatal strangulation matters. We consider these recommendations are compatible with human rights.
- 6.82 It will be important to ensure implementation of recommendations 11–12 occurs in a way that is consistent throughout Queensland so as not to limit the right to recognition and equality before the law.

## Impact of reform

- 6.83 Implementation of recommendations 11–12 would have resourcing implications for the QPS, ODPP, National Judicial College of Australia, Australasian Institute of Judicial Administration, Queensland Courts and restorative justice/dispute resolution providers. It will be necessary to ensure they are adequately funded and resourced to complete their reviews and update their programs and resources.

## 6. Improving evidence collection and informed decision-making



- 6.84 Further, depending on the outcome of the reviews, police, prosecutors, judicial officers and restorative justice/dispute resolution facilitators may be required to engage in additional training and education beyond that they are already required to do, taking time away from their duties. If recommendations 6–8 are implemented, the numbers of officers and staff who would need to engage in training may increase given the expansion to offences that apply to non-fatal strangulation beyond domestic settings. Incorporating any updated training and education into existing programs available to police, prosecutors, judicial officers and restorative justice/dispute resolution facilitators could minimise these impacts.
- 6.85 Recommendations 11–12 are intended to promote statewide consistency in the criminal justice response to non-fatal strangulation. However, different communities may have different needs and this may need to be reflected in any updated training, policies, guidelines and resources.

## Implementation

- 6.86 Recommendations 11–12 should be implemented prior to commencement of any legislative changes arising from implementation of recommendations 2–9 and 14 (see Figure 1.2 in [Chapter 1](#)). It may be implemented alongside recommendations 1 and 13. Legal Aid Queensland (FLS) submitted:<sup>75</sup>
- Education and training for police, prosecutors and medical professionals will be necessary if the proposed offences become law, so as to ensure that all participants in the criminal justice process are aware of how to appropriately respond to matters of non-fatal strangulation.
- 6.87 The Women’s Safety and Justice Taskforce and the Commission of Inquiry into QPS Responses to DFV made a number of recommendations about training for police, prosecutors, judicial officers and restorative justice facilitators on DFV and sexual violence.<sup>76</sup> While most recommendations relevant to police have been implemented, recommendations relevant to others are still in progress.<sup>77</sup> For example, the ODPP is in the process of developing and implementing relevant training and education for legal and non-legal staff, including the Police Prosecution Corps.<sup>78</sup>
- 6.88 The Women’s Safety and Justice Taskforce also made recommendations to review the ODPP Domestic and Family Violence Guidelines and the Director’s Guidelines.<sup>79</sup> These reviews are currently underway and we have been told that the revised guidelines will include information on non-fatal strangulation.
- 6.89 Recommendations 11–12 could be implemented as part of implementation of outstanding Taskforce recommendations, although should not be delayed for this to occur.
- 6.90 The Victims’ Commissioner submitted that a Judicial Commission could be responsible for ongoing education of judicial officers in Queensland to ensure officers have a contemporary understanding of DFV and sexual violence.<sup>80</sup> A Judicial Commission was recommended by the Women’s Safety and Justice Taskforce.<sup>81</sup> The Queensland Government has consulted with key stakeholders about establishing an independent Queensland Judicial Commission but a decision is yet to be made as to whether it will be established.<sup>82</sup> If established, it would be appropriate for the Commission to be responsible for providing non-fatal strangulation training to judicial officers.

# Health professionals

## Our reforms explained

 	<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> <p>(a) develop, regularly review and update their training, policies, guidelines and resources on non-fatal strangulation and relevant laws, practices and procedures.</p> <p>(b) develop a best practice non-fatal strangulation assessment and documentation protocol, tailored to their operational needs.</p> <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>
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6.91 Recommendation 13 aims to improve health professionals' understanding of non-fatal strangulation and ensure consistent, high-quality evidence collection practices in non-fatal strangulation matters across Queensland, both within and beyond domestic settings.

6.92 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, should:

- develop, regularly review and update their training, policies, guidelines and resources on non-fatal strangulation and relevant laws, practices and procedures
- develop a best practice non-fatal strangulation assessment and documentation protocol, tailored to their operational needs.

6.93 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.

6.94 We also recommend that 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 (recommendation 13).

6.95 In 2025, Queensland Health rolled out comprehensive training and resources on non-fatal strangulation for health professionals as part of the Domestic and Family Violence Toolkit of resources. The training aims to equip health professionals with the knowledge and resources needed to enquire about, recognise symptoms of, treat, document and refer non-fatal strangulation presentations. The training package consists of:

- a training and education PowerPoint presentation and facilitators guide which addresses:

## 6. Improving evidence collection and informed decision-making

- non-fatal strangulation and its impacts
- the risks of non-fatal strangulation, including in DFV contexts
- the non-fatal strangulation offence
- how health professionals can respond to victim-survivors, including what information to give to victim-survivors and what questions to ask to screen for non-fatal strangulation,<sup>83</sup> find out about current and historical strangulation events and enquire about signs and symptoms
- medical imaging in non-fatal strangulation matters
- documentation — Queensland Health recommends adoption of the North West Hospital and Health Service Acute Post Strangulation Assessment form
- referrals, for example, to social workers, DFV or other support services, police (including High Risk Teams) and general practitioners (for on-going care)
- a health response flowchart that guides health professionals on how to respond to victim-survivors presenting with non-fatal strangulation, including questions to ask, things to document, information to give to victim-survivors, considerations around imaging, and what referrals should be made<sup>84</sup>
- a documentation fact sheet that provides guidance on what could be documented and the types of questions to ask to elicit relevant information from victim-survivors who have experienced non-fatal strangulation
- a follow-up care and discharge information sheet for victim-survivors that outlines common signs and symptoms of non-fatal strangulation, provides aftercare instructions, discusses serious problems and where to obtain medical care if any arise, and provides details of support services
- information posters on non-fatal strangulation for staff areas and patient-facing areas
- a microlearning video on non-fatal strangulation.

6.96 Queensland Health will release further resources, including a documentation fact sheet developed in collaboration with the QPS, resources for young people on sexual strangulation, and further resources on identifying the signs and symptoms of non-fatal strangulation.

6.97 The Queensland Health DFV Specialist Health Workforce Community of Practice, the Red Rose Foundation and Dr Julia De Boos developed the non-fatal strangulation training package. Currently, the training is only available to Queensland Health staff, but is not mandatory.

6.98 In developing, reviewing and updating their training, policies, guidelines and resources, listed bodies should leverage the training and resources developed as part of the Queensland Health non-fatal strangulation package, adapting the training and resources as necessary to their service environment.

6.99 Training, policies, guidelines and resources should include:

- up-to-date, evidence-based information on non-fatal strangulation and its impacts, including the matters listed at [1.85] (see [Chapter 1](#))
- information on relevant laws, including relevant reforms arising from this review
- information on how to effectively respond to patients who have experienced non-fatal strangulation, including:
  - how to screen for non-fatal strangulation, document signs, symptoms and injuries, and make appropriate referrals (including to specialists, if warranted),

## 6. Improving evidence collection and informed decision-making

noting that health professionals can seek formal assistance with assessing non-fatal strangulation victim-survivors from Forensic Medicine Queensland

- what information to give to victim-survivors.

- 6.100 Many of these matters are already included in the Queensland Health training package.
- 6.101 In conducting their reviews, listed bodies should collaborate with victim-survivors and experts in the area, such as the Australian Institute for Strangulation Prevention and the Strangulation Trauma Centre. Training, policies, guidelines and resources should be evidence-based, trauma-informed and culturally-safe. They should take an intersectional approach that considers the impacts of non-fatal strangulation on people experiencing DFV and/or coercive control, Aboriginal peoples and Torres Strait Islander peoples, people from culturally and linguistically diverse communities, people from LGBTIQ+ communities, people with disability and children and young people.
- 6.102 Listed bodies may wish to consider embedding any publicly available training module developed as part of implementation of recommendation 1 into its non-fatal strangulation training package.
- 6.103 To ensure statewide consistency in evidence collected in non-fatal strangulation matters, we also recommend that Queensland Health, Queensland Hospital and Health Services, Queensland Primary Health Networks and the Queensland Ambulance Service, as well as relevant professional colleges, develop a best practice non-fatal strangulation assessment and documentation protocol, tailored to their operational needs (recommendation 13). This protocol should be based on the North West Hospital and Health Service Acute Post Strangulation Assessment form.

## Case for reform

### Improving evidence collection

- 6.104 A rapid review of approaches to preventing DFV and sexual violence commissioned by the Australian Government found significant potential for prevention in activating the health response.<sup>85</sup> To that end, the rapid review expert panel recommended:<sup>86</sup>
- equipping and resourcing general practitioners and other health professionals to identify and support a diverse range of DFV and sexual violence victim-survivors
  - mandatory training of general primary and mental health professionals in DFV and sexual violence as a requirement for registration through the Australian Health Practitioner Regulation Agency
  - introducing and expanding multi-agency approaches, with an immediate focus on collaborative responses that increase access to forensic examinations.
- 6.105 Stakeholders considered that health professionals need further training on how to screen for non-fatal strangulation and document signs, symptoms and injuries, noting that sometimes this may be the only evidence in the case. Stakeholders thought it important that health professionals are aware of what screening questions to ask because:<sup>87</sup>
- victim-survivors often present to health professionals with other injuries and do not usually disclose non-fatal strangulation
  - once their breathing returns to normal victim-survivors often focus on visible injuries
  - the health system can be the gateway for victim-survivors to enter the criminal justice system.

## 6. Improving evidence collection and informed decision-making

6.106 Some health stakeholders told us they had not received training on how to properly document non-fatal strangulation matters for the purposes of legal proceedings and did not feel confident being able to engage in thorough evidence collection.<sup>88</sup>

6.107 We heard that general practitioners in particular require further guidance on how to screen for, assess, document and make referrals for non-fatal strangulation as well as their medico-legal obligations. The RACGP Queensland submitted that 'GPs have a key role in identification, education and appropriate treatment' of non-fatal strangulation:<sup>89</sup>

[W]hile GPs are primarily responsible for medical care, they need to understand the legal issues associated with domestic and family violence so they can best advocate for their patients and assist their patients by providing information on legal options and referrals to legal and other support services.

6.108 The RACGP Queensland further submitted:<sup>90</sup>

It is important for GPs to recognise and respond to victim-survivors to get the help they need. For many victims, many injuries are internal or delayed in showing a physical sign, requiring specific clinical vigilance, and timely follow-up. ... GPs can support the prosecution of criminal charges of non-fatal strangulation through routine practice, particularly when injuries are not visible to the naked eye. GPs have a range of investigative tools with differing sensitivity available to reveal and record evidence of non-fatal strangulation and assist clinical investigation.

6.109 Our research revealed that:<sup>91</sup>

- some health professionals are not aware of how or why to conduct a medical assessment in matters involving child strangulation victim-survivors (see [Chapter 8](#))
- in one instance, a doctor did not make any records of the strangulation of a victim-survivor
- victim-survivors think that health professionals may not be adequately aware of the consequences of non-fatal strangulation
- victim-survivors wanted more information about non-fatal strangulation and its health impacts.

6.110 Stakeholders agreed that health professionals need further training on non-fatal strangulation and its impacts, and that it may be necessary to refer victim-survivors on for specialist care.<sup>92</sup> The Victims' Commissioner submitted:<sup>93</sup>

Despite the prevalence of strangulation and its potentially fatal consequences, non-fatal strangulation remains poorly understood with[in] the medical sector. ... Many healthcare providers lack the appropriate training to recognise, screen for and address possible brain injuries resulting from strangulation. 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.

6.111 We heard there are disparate responses to non-fatal strangulation by health professionals across the State.<sup>94</sup> Health stakeholders told us there are inconsistencies in professionals' knowledge of non-fatal strangulation, the questions to ask and what to document, as well as the availability of resources to guide assessments. We also heard that different assessment protocols are used across the State. DVAC submitted:<sup>95</sup>

We have identified significant concerns regarding the disparate responses to strangulation for women our service supports within health systems including hospitals and medical centres where responses to strangulation depend on the

## 6. Improving evidence collection and informed decision-making

education and training of the practitioners. Some women report receiving little to no medical care when presenting to hospital post-strangulation.

- 6.112 High-quality, detailed and accurate documentation by health professionals in non-fatal strangulation matters can assist in establishing offence elements, particularly where victim-survivors withdraw their support for the case. It has been associated with an increased likelihood of successful prosecutions and guilty pleas.<sup>96</sup> Further, as the RACGP Queensland submitted:<sup>97</sup>

Although many victim-survivors may not wish to proceed with a prosecution when they initially present to the GP, victim-survivors may choose to proceed at some future time. Ensuring that non-fatal strangulation is well-documented empowers victim-survivors to make the choice to proceed into the future.

- 6.113 Some stakeholders considered that victim-survivors should always receive a CT or MRI scan following non-fatal strangulation. One confidential submission outlined that while CT and MRI scanning may be able to identify injuries not visible on external examination, current limited research does not support that strangulation victim-survivors should be routinely imaged. Rather, imaging should only be performed when clinically indicated. Further research is needed in this space.
- 6.114 The Domestic and Family Violence Death Review and Advisory Board has previously recommended that public health clinicians and general practitioners receive training on how to identify and respond to non-fatal strangulation, and that Queensland Health and the QPS examine how the use of clinical forensic evidence in non-fatal strangulation cases can be improved and standardised across the State.<sup>98</sup>
- 6.115 In 2025, the South Australian Royal Commission into Domestic, Family and Sexual Violence recommended that South Australia Health<sup>99</sup>
- review its practices, policies and procedures to ensure that paramedics and other relevant healthcare providers are consistently and confidently screening for and responding to instances of non-fatal strangulation among all young people and adults.

## Human rights considerations

- 6.116 Recommendation 13 seeks to enhance health professionals' understanding of non-fatal strangulation and its impacts, relevant laws and best practice in responding to strangulation victim-survivors to improve the health response to non-fatal strangulation as well as evidence collection in non-fatal strangulation matters. We consider this recommendation is compatible with human rights.
- 6.117 It will be important to ensure implementation of recommendation 13 occurs in a way that is consistent throughout Queensland so as not to limit the right to recognition and equality before the law.

## Impact of reform

- 6.118 Recommendation 13 will have resourcing implications for Queensland Health, Queensland Hospital and Health Services, Queensland Primary Health Networks and the Queensland Ambulance Service as well as relevant professional colleges, such as 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.

## 6. Improving evidence collection and informed decision-making


- 6.119 Researchers have noted that it can be expensive to implement structured protocols and some medical record systems may not be able to accommodate their use.<sup>100</sup> We heard from stakeholders that many Hospital and Health Services in Queensland still use paper-based records and some hospital systems may not have the capacity to take on extra documentation requirements.
- 6.120 Requiring listed health professionals to undertake non-fatal strangulation training may require staff to engage in additional training and education beyond that they are already required to do, taking time away from their duties. Consideration should be given to ways to mitigate these impacts, such as incorporating non-fatal strangulation training into existing mandatory training and education delivered through professional colleges or employers, or allocating staff dedicated professional development days.
- 6.121 Recommendation 13 intends to promote statewide consistency in the health response to non-fatal strangulation. However, other systemic factors may impact whether this can be achieved, for example, the disparity in facilities and resources available in rural areas compared to cities. Further, different communities may have different needs and this may need to be reflected in training, policies, guidelines and resources.

## Implementation

- 6.122 Recommendation 13 should be implemented prior to commencement of any legislative changes arising from implementation of recommendations 2–9 and 14 (see Figure 1.2 in [Chapter 1](#)). It may be implemented alongside recommendations 1 and 11–12.
- 6.123 In implementing recommendation 13, careful consideration would need to be given to how best to deliver the required training and education on non-fatal strangulation, for example, whether it is delivered through professional colleges or accreditation programs, or by employers.
- 6.124 Queensland Health’s Domestic and Family Violence Specialist Health Workforce could deliver training to frontline staff in Hospital and Health Services across Queensland and actively promote this training.

## Jurors

### Our reforms explained

	<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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## 6. Improving evidence collection and informed decision-making

- 6.125 Recommendation 14 aims to address misconceptions about non-fatal strangulation and its impacts, both physical and psychological. As discussed at [1.90] (see [Chapter 1](#)), research shows the community may not understand strangulation and its impacts.
- 6.126 Recommendation 14 is to introduce three jury directions into the Evidence Act 1977, namely, directions on:
- (a) lack of physical injury to the victim-survivor
  - (b) differences in the victim-survivor's account
  - (c) victim-survivor responses to giving evidence at trial.
- 6.127 These directions should apply in criminal proceedings for the amended non-fatal strangulation offence or, for jury direction (a), for another offence involving conduct that completely or partially restricts the victim-survivor's respiration and/or blood circulation.
- 6.128 Stakeholders generally agreed that the above jury directions should be introduced in non-fatal strangulation trials.<sup>101</sup>

### Lack of physical injury

- 6.129 A direction on lack of physical injury to the victim-survivor could be modelled on the direction in s 103ZU of the Evidence Act 1977 which currently applies to criminal proceedings for sexual offence charges.
- 6.130 However, the recommended new direction should apply to criminal proceedings:
- for the amended non-fatal strangulation offence or another offence involving conduct that completely or partially restricts the victim-survivor's respiration and/or blood circulation
  - where there is no evidence of external physical injuries to the victim-survivor.
- 6.131 In such proceedings, the Judge may give a direction that:
- people who experience complete or partial restriction of respiration and/or blood circulation may have no external physical injuries, and
  - the absence of injury does not, of itself, mean that a person is not telling the truth.
- 6.132 The Judge should have discretion about when to give such a direction, including before evidence is adduced and/or during their summing up.<sup>102</sup>

### Differences in victim-survivor's account

- 6.133 A direction on differences in the victim-survivor's account could be modelled on the direction in s 103ZY of the Evidence Act 1977 which currently applies to criminal proceedings for sexual offence charges. A Judge must give that direction if evidence is given or likely to be given, or a question is asked or likely to be asked of a witness that tends to suggest a difference in the victim-survivor's account that may be relevant to their truthfulness or reliability.<sup>103</sup> 'Difference' in account is defined to include a gap or inconsistency in the account, and a difference between the account and another account.<sup>104</sup>
- 6.134 Where such circumstances are met in criminal proceedings for the amended non-fatal strangulation offence, the Judge should be required to direct the jury:
- that experience shows:
    - people may not remember all the details of a non-fatal strangulation offence or may not describe a non-fatal strangulation offence in the same way each time
    - trauma may affect people differently, including affecting how they recall events

## 6. Improving evidence collection and informed decision-making

- it is common for there to be differences in accounts of a non-fatal strangulation offence
  - both truthful and untruthful accounts of a non-fatal strangulation offence may contain differences
  - that it is up to the jury to decide whether any differences in the victim-survivor's account are important in assessing the victim-survivor's truthfulness and reliability.
- 6.135 Sections 103ZQ(2)–(5) of the Evidence Act 1977 contain requirements for when the direction in s 103ZY must be given and provides that a Judge is not required to use a particular form of words when giving the direction.<sup>105</sup> In implementing recommendation 14, equivalent provisions should be included in the Evidence Act 1977 for the direction on differences in the victim-survivor's account for the amended non-fatal strangulation offence.

### Responses to giving evidence

- 6.136 A direction on the victim-survivor's response to giving evidence could be modelled on the direction in s 103ZV of the Evidence Act 1977 which currently applies to criminal proceedings for sexual offence charges. That direction must be given by a Judge if there is a good reason to do so or, if a party requests the direction be given, unless there is a good reason not to do so.<sup>106</sup>
- 6.137 Where such circumstances are met in criminal proceedings for the amended non-fatal strangulation offence, the Evidence Act 1977 should provide for a jury direction to the effect 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
  - the presence or absence of emotion or distress does not, of itself, mean that a person is not telling the truth about a non-fatal strangulation offence.
- 6.138 Sections 103ZY(2)–(5) of the Evidence Act 1977 also apply to the direction in s 103ZV and equivalent provisions should be introduced for the direction on responses to giving evidence in recommendation 14.

## Case for reform

### Lack of physical injury

- 6.139 Lack of physical injury, signs and symptoms following strangulation is well-documented in the literature. One study found that 50% of strangulation victim-survivors had no visible external injuries following the event, with 67% of victim-survivors not reporting any symptoms.<sup>107</sup> Another study found that 49.4% of strangulation victim-survivors had no signs of injury, 32.9% had no symptoms, and 24.1% had neither signs nor symptoms.<sup>108</sup> Some of the victim-survivors who participated in our research had no visible injuries following strangulation.<sup>109</sup>
- 6.140 Despite this, research shows that Queensland defence lawyers sometimes use lack of injuries following strangulation to create doubt.<sup>110</sup> One confidential submission told us that sometimes the absence of injuries on imaging is incorrectly put forward as evidence that strangulation did not occur.
- 6.141 Findings from our research and feedback from stakeholders indicates that experts, both treating and non-treating, are sometimes called to give evidence in non-fatal strangulation

cases.<sup>111</sup> When called, they are generally asked to give evidence about the significance of injuries and the absence of injuries. Medical experts usually testify that:<sup>112</sup>

- lack of visible injuries does not exclude non-fatal strangulation as having occurred
- injuries observed to the head or neck of a person, signs observed or symptoms reported may support that non-fatal strangulation occurred, but not to the exclusion of other explanations for the injuries, signs or symptoms
- if visible injuries were present, the likely mechanism and force used to cause those injuries.

6.142 In the absence of expert evidence, a jury direction in non-fatal strangulation trials about lack of physical injury may combat misconceptions about what injuries might be expected to result from such conduct. This would reduce the need for health professionals to give evidence in criminal proceedings, which some stakeholders said was disrupting and time-consuming. Health stakeholders supported this approach.<sup>113</sup>

## Differences in victim-survivor's account and responses to giving evidence

6.143 The directions on differences in the victim-survivor's account and responses to giving evidence address misconceptions about memory and recall following non-fatal strangulation as well as how victim-survivors experience trauma, particularly in DFV contexts.

6.144 In [Chapter 1](#), we explained that non-fatal strangulation particularly impacts memory and victim-survivors may not be able to remember aspects of the event clearly, at all or in chronological order, or their accounts may be inconsistent over time.<sup>114</sup> Further, non-fatal strangulation can be terrorising and result in trauma. In addition to affecting memory and recall, trauma can impact victim-survivors' psychological, emotional and behavioural functioning.<sup>115</sup>

6.145 Despite this, research shows that Queensland defence lawyers have used the following to demonstrate the victim-survivors' unreliability and establish doubt about the perpetrator's guilt in non-fatal strangulation matters:<sup>116</sup>

- inconsistencies in victim-survivors' testimony
- issues with victim-survivors' memory
- victim-survivors' behavioural and emotional responses during or after the strangulation event, including when giving evidence to police and the court.

This research is consistent with our own research findings which showed that where non-fatal strangulation trials do occur, the focus is often on undermining the victim-survivor's credibility and reliability.<sup>117</sup>

6.146 While any victim-survivor of strangulation can potentially experience these impacts, they may be intensified for victim-survivors in DFV contexts because, for example, victim-survivors may have experienced repeated or prolonged traumatic events. For this reason, we consider it appropriate to limit the jury directions on differences in the victim-survivor's account and responses to giving evidence to the amended non-fatal strangulation offence.

## Human rights considerations

6.147 Recommendation 14 aims to address misconceptions about non-fatal strangulation and its impacts to assist juries to better assess the evidence, apply the law and reach a just verdict in complex criminal trials, including those involving DFV or coercive control. We consider this recommendation is compatible with human rights.

## Potential limitations that are reasonable and demonstrably justifiable

- 6.148 In allowing the listed jury directions to be given in some, not all, criminal proceedings involving non-fatal strangulation conduct, recommendation 14 could potentially limit the right to recognition and equality before the law. The jury directions may also give rise to the perception that the Judge is partial to the victim-survivor, which may result in the jury considering their evidence through a more favourable lens. This could potentially limit the right to a fair hearing. As the jury directions are mandatory in certain circumstances, the recommendation may also encroach on the court's independence.
- 6.149 However, the purpose of the potential limitations on these rights is consistent with a free and democratic society based on dignity, equality and freedom as it ensures juries are better equipped to make an evidence-based, informed decision, particularly in trials involving DFV or coercive control. Jurors would have an appropriate lens through which to assess the evidence, guarding them from making incorrect assumptions on relevant issues.
- 6.150 The jury directions are based on those that exist in the Evidence Act 1977 for sexual offences and reflect findings from medical and social scientific research.
- 6.151 There are no less restrictive or reasonably available alternatives to achieve the purpose of the limitations. The public education campaign (see recommendation 1) may help to inform the public about non-fatal strangulation and its impacts, but there is no guarantee that the jurors in a particular case will have been exposed to the campaign or will apply that information to their assessment of the evidence. Jury directions are the most effective and direct way to ensure that the jury considers the evidence in proper context.
- 6.152 Providing the court with discretion to give the directions will not achieve the purpose to the same extent as it may result in an inconsistent application of the directions, with directions given in some cases but not others. It may also result in cases where the directions are not given despite there being good reasons for doing so.
- 6.153 As such, we consider that the limitations on the right to recognition and equality before the law and the right to a fair hearing are reasonable and demonstrably justifiable, having regard to the purpose of the limitations to assist the jury to make an informed decision.

## Impact of reform

- 6.154 Introducing the jury directions in recommendation 14 may impact police and prosecutorial decisions, including whether to charge or withdraw charges when there is no evidence of injuries to the victim-survivor or when police or prosecutors are concerned that the victim-survivor's credibility or reliability may be challenged.

## Implementation

- 6.155 Amendments arising from recommendation 14 should not come into effect until after recommendations 1 and 11–13 are implemented (see Figure 1.2 in [Chapter 1](#)). Recommendation 14 could be implemented alongside recommendations 2–9.
- 6.156 In implementing recommendation 14, the Queensland Government should consider extending the directions on differences in the victim-survivor's account and responses to giving evidence to all DFV offences, given the particular characteristics of DFV offending and its impacts on victim-survivors. It may be appropriate to locate such directions within the division in the Evidence Act 1977 on jury directions related to DFV.<sup>118</sup>

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- 101 Queensland Law Reform Commission, Non-Fatal Strangulation: Section 315A - What We Heard (Background Paper No 2, September 2025) 'Improving understanding, evidence collection and informed decision-making'.
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- 103 Evidence Act 1977 (Qld) ss 103ZY(1)-(2). This is the approach taken in Victoria: *Jury Directions Act 2015* (Vic) s 54D.
- 104 Evidence Act 1977 (Qld) s 103ZY(3).
- 105 Evidence Act 1977 (Qld) ss 103ZQ(2)-(5).
- 106 Evidence Act 1977 (Qld) s 103ZQ(1). This is the approach taken in NSW and Victoria: *Criminal Procedure Act 1986* (NSW) ss 292, 292D; *Jury Directions Act 2015* (Vic) s 54K. In South Australia, the direction must be given if lack of consent is in issue: *Evidence Act 1929* (SA) s 34N(1)(d).
- 107 Gael Strack, George McClane and Dean Hawley, 'A Review of 300 Attempted Strangulation Cases Part I: Criminal Legal Issues' (2001) 21(3) *The Journal of Emergency Medicine* 303, 305.
- 108 Renate Zilkens et al, 'Non-Fatal Strangulation in Sexual Assault: A Study of Clinical and Assault Characteristics Highlighting the Role of Intimate Partner Violence' (2016) 43 *Journal of Forensic and Legal Medicine* 1, 3–4. See also Vanita Parekh et al, 'Informing Therapeutic Care and Legal Process in Assault Cases Involving Non-Fatal Strangulation' (2025) 110 *Journal of Forensic and Legal Medicine* 102826, 1-5, 3.
- 109 Queensland Law Reform Commission, Non-Fatal Strangulation: Section 315A Review - 'I Just Want to Be Heard': The Voices of Strangulation Victim-Survivors (Research Report No 1, April 2025) 13.
- 110 Sarah Kendall, 'A Trauma-Informed Non-Fatal Strangulation Trial: Victim-Witnesses, Brain Injury and PTSD' (PhD Thesis, The University of Queensland, 2024) 156–8.
- 111 Queensland Law Reform Commission, Non-Fatal Strangulation: Section 315A Review - Investigating, Prosecuting and Defending Non-Fatal Strangulation in Queensland: The Experiences of Police and Lawyers (Research Report 2, July 2025) 28.
- 112 Sarah Kendall, 'A Trauma-Informed Non-Fatal Strangulation Trial: Victim-Witnesses, Brain Injury and PTSD' (PhD Thesis, The University of Queensland, 2024) 150–1. Kendall found that experts also sometimes gave evidence on the signs and symptoms of strangulation.
- 113 Queensland Law Reform Commission, Non-Fatal Strangulation: Section 315A - What We Heard (Background Paper No 2, September 2025) 'Improving understanding, evidence collection and informed decision-making'.
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Informed Non-Fatal Strangulation Trial: Victim-Witnesses, Brain Injury and PTSD' (PhD Thesis, The University of Queensland, 2024) 19–26.

<sup>115</sup> Sarah Kendall, 'A Trauma-Informed Non-Fatal Strangulation Trial: Victim-Witnesses, Brain Injury and PTSD' (PhD Thesis, The University of Queensland, 2024) 23–6.

<sup>116</sup> Sarah Kendall, 'A Trauma-Informed Non-Fatal Strangulation Trial: Victim-Witnesses, Brain Injury and PTSD' (PhD Thesis, The University of Queensland, 2024) 152–6.

<sup>117</sup> Queensland Law Reform Commission, Non-Fatal Strangulation: Section 315A Review - Investigating, Prosecuting and Defending Non-Fatal Strangulation in Queensland: The Experiences of Police and Lawyers (Research Report 2, July 2025) 28.

<sup>118</sup> Evidence Act 1977 (Qld) pt 6A, div 3.

# CHAPTER 7

## Improving victim-survivor experiences

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# Introduction

- 7.1 Our terms of reference asked us to examine procedural rules and practices applicable to non-fatal strangulation offence proceedings and to make recommendations on any matters relevant to the issues in the review.
- 7.2 This chapter addresses a key issue arising from the findings from our research projects and feedback obtained from stakeholders — strangulation victim-survivors had poor experiences with the criminal justice system (including with police, lawyers and the court) as well as the health system.
- 7.3 We were told that the criminal justice process can be re-traumatising, disempowering and does 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.
- 7.4 Our findings are consistent with findings from other research, including the Commission of Inquiry into QPS Responses to DFV and the Women’s Safety and Justice Taskforce.<sup>1</sup>
- 7.5 This chapter presents three recommendations that aim to improve victim-survivor experiences of the health and justice systems following strangulation by promoting safety, trustworthiness and transparency, and empowerment, voice and choice. These recommendations relate to:
- strangulation health centres (recommendation 15)
  - the victim advocate service (recommendation 16)
  - restorative justice (recommendation 17).
- 7.6 This chapter also discusses a final recommendation directed at data collection, monitoring and review (recommendation 18).

## Strangulation health centres

### Our reforms explained

	<p><b>R15</b> The Queensland Government should consider funding the development, implementation and resourcing of strangulation health centres in Queensland.</p>
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- 7.7 Recommendation 15 aims to improve the health and broader system response to strangulation victim-survivors. It recommends that the Queensland Government consider funding the development, implementation and resourcing of strangulation health centres in Queensland.
- 7.8 As strangulation is a gendered crime that often occurs in the context of complex relational circumstances (see [Chapter 1](#)), we intend that strangulation health centres provide a similar model of care to women’s health centres. That is, the provision of accessible, trauma-informed and culturally safe, multidisciplinary and integrated health services. Evaluations of women’s health centres show that such centres may increase access to care for diverse patient

## 7. Improving victim-survivor experiences

populations and improve patient and provider satisfaction, providing comprehensive, convenient and single-site care for women.<sup>2</sup> Research has also shown that women choose to use such centres because they seek a woman-friendly and woman-centred service, a safe environment and continuity of care.<sup>3</sup>

- 7.9 The expert panel of the rapid review of approaches to preventing DFV and sexual violence considered that there is significant potential in activating the health response to prevent DFV and sexual violence.<sup>4</sup> It recommended:<sup>5</sup>
- equipping and resourcing general practitioners and other health professionals to identify and support a diverse range of DFV and sexual violence victim-survivors
  - introducing and expanding multi-agency approaches, with an immediate focus on collaborative responses that increase access to forensic examinations.
- 7.10 The purpose of strangulation health centres would be to ensure:
- victim-survivors receive timely and adequate acute and ongoing healthcare, and information on strangulation and its impacts
  - robust evidence is collected and documented by ensuring staff are specially trained in non-fatal strangulation assessments and forensic documentation as well as 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, such as DFV support services, counsellors, medical specialists, general practitioners, QPS High Risk Teams and legal services.
- 7.11 Strangulation health centres would be similar to Thuthuzela Care Centres in South Africa which were introduced as 'one-stop facilities' for sexual assault and rape.<sup>6</sup>
- 7.12 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 (including the training and resources in recommendations 1 and 11–13)
  - conduct research on non-fatal strangulation, including being involved in monitoring and evaluating relevant reforms that arise from this review (see recommendation 18).
- 7.13 In its submission to this review, the Victims' Commissioner recommended<sup>7</sup>
- 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.
- 7.14 Strangulation health centres could be responsible for maintaining such a resource hub.
- 7.15 In considering whether to fund strangulation health centres, the Queensland Government may wish to consider funding women's health centres more generally, which incorporate the elements described above, rather than dedicated strangulation health centres.

## Case for reform

### Improving the health response to strangulation victim-survivors

- 7.16 The purpose of strangulation health centres would be to address many of the systemic issues that we heard about during this review, including the need for a better and more consistent

response to non-fatal strangulation and improved evidence collection by health professionals. These issues are discussed in [Chapter 6](#).

- 7.17 Stakeholders told us emergency departments are often the gateway for strangulation victim-survivors to receive health care. However, they considered that often there are barriers for victim-survivors attending and receiving adequate care at emergency departments. For example:<sup>8</sup>
- emergency departments triage their patients so that people with other more obvious life-threatening conditions are usually seen before strangulation victim-survivors, especially when victim-survivors have no or minimal observable injuries
  - there can be significant delays in victim-survivors being seen by health professionals
  - it can be stressful for victim-survivors to attend hospital following a DFV event, especially if they have to wait in a waiting room with other people or, particularly in regional or remote areas, the perpetrator
  - emergency department staff may not adequately understand non-fatal strangulation and its impacts, or have the time or resources to respond in a trauma-informed way
  - patients may not receive any follow-up from the hospital if they had no visible injuries.
- 7.18 Stakeholders, including victim-survivors, considered that a follow-up from health professionals (and police) is particularly necessary in non-fatal strangulation matters because injuries may be delayed.
- 7.19 Victim-survivors also said they wanted to receive more specialist medical attention once they had seen their general practitioner or attended at the hospital, such as being referred for appropriate scans.<sup>9</sup>
- 7.20 The Victims' Commissioner submitted that timely and '[i]mproved access to medical services is critical to protecting victim-survivors, and improving the evidence available for prosecution'.<sup>10</sup>
- 7.21 Research has found that strangulation victim-survivors were more likely to present to Clinical Forensics ACT afterhours.<sup>11</sup> That research suggested 24-hour services are key to early medical intervention, identification of injuries and collection of high-quality evidence.<sup>12</sup> In addition, being able to access multidisciplinary services, such as health care, counselling, police and support, on a 24-hour basis is critical to enabling victim-survivors to make choices.<sup>13</sup>
- 7.22 In [Chapter 6](#), we discussed some of the barriers to collecting adequate medical evidence about non-fatal strangulation. Health stakeholders told us that usually the treating doctor is called to give evidence, but they tend to be more junior than the reviewing doctor. Further, we were told that some health professionals do not feel confident giving expert witness testimony about non-fatal strangulation. Our research also found that some health professionals are not aware of how or why to conduct a medical assessment in matters involving child strangulation victim-survivors (see [Chapter 8](#)). Robust medical evidence can increase the likelihood of guilty pleas and reduce the need to rely on victim-survivors' testimony at trial.
- 7.23 Victim-survivors told us they wanted more information on non-fatal strangulation and its impacts, relevant signs and symptoms to look out for, and how to look after themselves following strangulation.<sup>14</sup> One victim-survivor told us:<sup>15</sup>
- All I got was the old head knock pamphlet, about if you experience vomiting and that kind of thing ... I didn't get anything specific to strangulation.
- 7.24 Victim-survivors also wanted more information about the services available to them as well as criminal justice processes and outcomes.<sup>16</sup> This is discussed in detail below from [7.60].

## 7. Improving victim-survivor experiences

- 7.25 As suggested above, rather than dedicated strangulation health centres, the Queensland Government may wish to consider funding women’s health centres, which incorporate the elements described above at [7.10] for non-fatal strangulation as well as other gendered types of harm, such as DFV or sexual violence more broadly.
- 7.26 Women’s Health New South Wales explained why women’s health centres are important:<sup>17</sup>
- Many factors — biological, social, cultural, environmental and economic — influence women’s health status, their need for health services and their ability to access appropriate services. In particular women’s health needs stem from the fact that:
- Women are more socially disadvantaged than men in terms of poverty, education and power. Socially disadvantaged people are more likely to become ill.
  - Women are more likely to use health services because of their role as carers of children, older people, disabled people and the extra strain this places on their health.
  - Women have particular sexual and reproductive health needs in pregnancy, childbirth and menopause.
  - Due to gender inequality women are treated differently than men both in society generally resulting for example in violence against women and sexual assault and within the health system where women complain that their health problems are not treated seriously by health professionals or that they are inappropriately prescribed tranquillisers.
- 7.27 A 2024 study of women’s experiences of the Australian health system found that two thirds of women respondents reported experience of health care related gender bias or discrimination.<sup>18</sup> They reported:
- feelings of abandonment, shame, blame and self-doubt
  - financial burdens and lost educational and career opportunities
  - delayed diagnosis and treatment which led to disease progression, fewer treatment options and worse health outcomes.
- 7.28 Women’s health centres may improve the experiences of women seeking healthcare, including strangulation victim-survivors.

## Human rights considerations

- 7.29 While we consider recommendation 15 is compatible with human rights, if the Queensland Government decides to fund strangulation health centres:
- the right to recognition and equality before the law may be limited if such centres are not accessible across Queensland
  - the right to health may be limited if Queenslanders do not have equitable access to such centres, without discrimination.

## Impact of reform

- 7.30 The extent of funding needed for developing, implementing and resourcing strangulation health centres in Queensland would depend on the design of such centres. If implemented, it is likely that there would be reduced demand on emergency departments and general practitioners.

## 7. Improving victim-survivor experiences

- 7.31 However, there is a risk that implementing such centres may create inconsistencies and inequalities in the health response to non-fatal strangulation. This is because not all strangulation victim-survivors may be able to attend such centres, whether this be because the seriousness of their injuries requires them to attend an emergency department, they are not taken to a strangulation health centre by police or paramedics, or such centres are not in their local area.
- 7.32 Some of these concerns could be mitigated if all key Queensland health professionals (including emergency medicine physicians, forensic physicians and nurses, general practitioners, paramedics and emergency department nurses and social workers) are trained in non-fatal strangulation and have access to a best practice assessment and documentation protocol (recommendation 13). If implemented, strangulation health centres could work with relevant bodies to develop, implement and regularly review training and resources.


## Implementation

- 7.33 In considering whether to fund strangulation health centres, the Queensland Government should consider a range of ways such centres could operate. The Government should consider existing strangulation-focused models of care in Queensland, including the Mater Health strangulation aftercare pathway, the Strangulation Trauma Centre and the Australian Institute for Strangulation Prevention, as well as models of women's health centres. In doing so, the Government should consult with victim-survivors and relevant support services to hear what they need and what would work for them. The Government should also consider first funding a pilot strangulation (or women's) health centre or centres.
- 7.34 Mater Health has implemented a specialist model of care for strangulation victim-survivors. This model of care involves social workers conducting a risk assessment and collaborating with health care professionals in its public emergency department. It also includes a dedicated strangulation aftercare pathway where social workers:
- ensure victim-survivors are connected with relevant services and are supported in their conversations with police at the hospital
  - phone victim-survivors 72-hours after hospital discharge to follow-up.
- 7.35 The Strangulation Trauma Centre provides counselling, court support and support accessing health care and services for victim-survivors. The Australian Institute for Strangulation Prevention develops and implements training, and conducts research on non-fatal strangulation.
- 7.36 Non-government women's health centres exist across Australia. Women's Health New South Wales, the peak body for such centres in New South Wales, is currently engaged in a project on non-fatal strangulation which has included development of information and resources for health care providers, service providers and patients.<sup>19</sup> The project has also involved implementing dedicated pathways for responding to non-fatal strangulation in clinical settings. Staff at women's health centres have received specific training on non-fatal strangulation. A similar approach could be taken if women's health centres, rather than strangulation health centres, were funded in Queensland.
- 7.37 If strangulation health centres are funded, regional and remote areas should be prioritised. Stakeholders told us about the equity issues that exist in regional and remote areas in Queensland, the differences between Hospital and Health Services across the State (for example, some have paper-based records, some do not have imaging machines), and the difficulties accessing adequate health care following strangulation in such areas.

- 7.38 Police, paramedics and support services should also be educated about what strangulation health centres do to facilitate referrals of victim-survivors to such centres in appropriate circumstances.
- 7.39 Recommendation 15 should be implemented immediately and can be implemented alongside other recommendations made in this review, including recommendations about legislative reforms and training and education (see Figure 1.2 in [Chapter 1](#)).

## Victim advocate service

### Our reforms explained

	<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>
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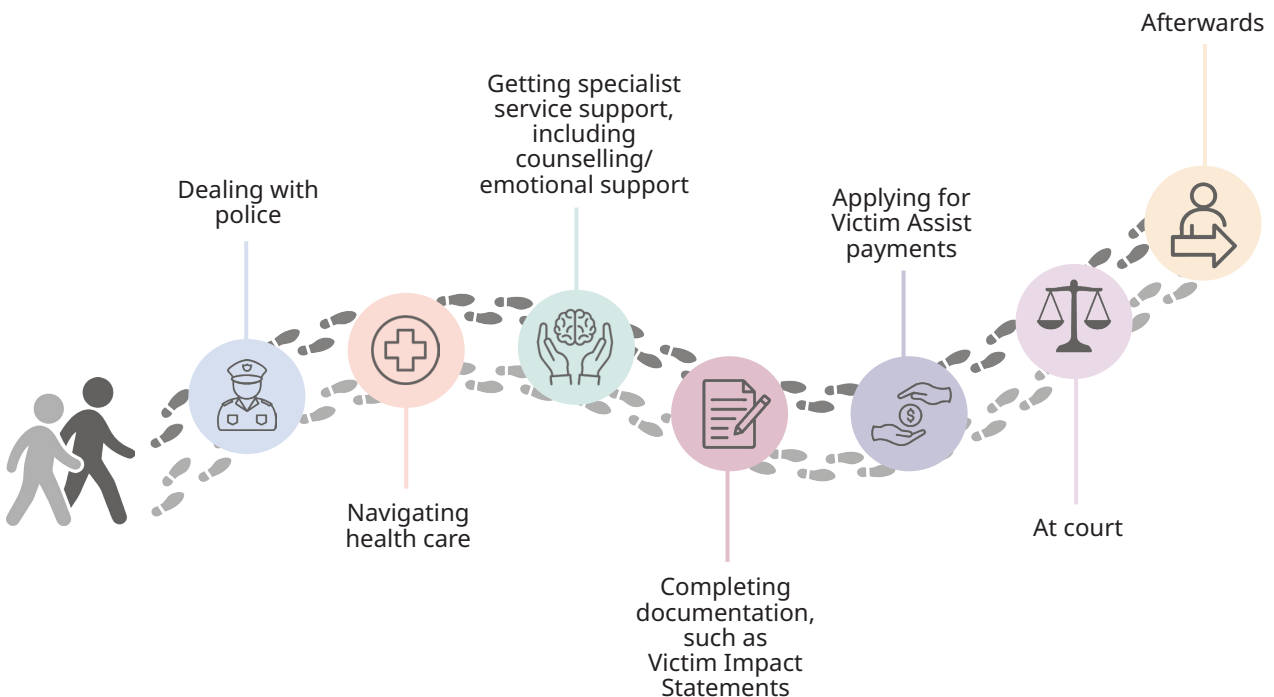
- 7.40 Recommendation 16 provides guidance to the Queensland Government regarding the establishment of a victim advocate service to ensure strangulation victim-survivors are allocated appropriate resources and consideration when funding, developing and implementing the victim advocate service.
- 7.41 The Women’s Safety and Justice Taskforce recommended introducing victim advocates to help victim-survivors of sexual offences navigate the service and criminal justice systems, including by providing them with necessary information.<sup>20</sup> An inquiry into the support provided to victims of crime supported this recommendation but recommended ‘that the Queensland Government examine how such services can be expanded to all victims of crime’.<sup>21</sup>
- 7.42 The Queensland Government supported the Women’s Safety and Justice Taskforce recommendation and committed to providing permanent funding of \$10 million per year, for the next 5 years, to a victim advocate service.<sup>22</sup> The service will work alongside existing agencies to provide dedicated support through the justice process for every victim-survivor who needs support, regardless of the crime. In this way, the victim advocate service will provide support to a wider range of victim-survivors than the Women’s Safety and Justice Taskforce anticipated.
- 7.43 The Department of Youth Justice and Victim Support are in the preliminary design phase of the victim advocate service. We recommend that, in implementing a victim advocate service, the Queensland Government should:
- ensure services are individualised, trauma-informed and culturally safe, as recommended by the Women’s Safety and Justice Taskforce<sup>23</sup>

## 7. Improving victim-survivor experiences

- 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.

7.44 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 7.1). Victim advocates could minimise re-traumatisation of victim-survivors by empowering them to make their own choices and ensuring transparency in the criminal justice process.

**Figure 7.1: The role of victim advocates**



### Individualised, trauma-informed and culturally safe services

7.45 To ensure the victim advocate service provides services that are individualised, trauma-informed and culturally safe, at a minimum victim advocates should receive training in trauma-informed practice and cultural safety, and have qualifications in psychology or relevant social sciences. This would ensure victim advocates are equipped to engage with a diverse range of victim-survivors, including strangulation victim-survivors, as well as to appropriately assess risk and triage.

7.46 Funding constraints may limit the type of engagement that victim advocates can have with victim-survivors. For example, most engagement may occur online or via telephone, with the potential for some in-person support for high-risk victim-survivors. While we emphasise that victim-survivors should have choice about how they engage with victim advocates, we consider that in-person support is an important and preferable method of engagement with strangulation victim-survivors who have experienced DFV or sexual violence, given their high-risk status.

## Referrals

- 7.47 Referrals to victim advocates should occur at the preliminary stage of contact with the criminal justice system. This may be when the victim-survivor makes a complaint to police or police otherwise decide to pursue criminal charges. This would ensure an immediate point of contact which will limit uncertainty and confusion for victim-survivors.

## Risk assessment and triaging

- 7.48 Victim-survivors should be triaged according to risk, using a risk assessment mechanism to ensure targeted engagement with victim-survivors at higher risk of harm and withdrawal from the criminal justice process. This will be particularly important given the victim advocate service will not be limited to any particular types of victims of crime. Victim-survivors of DFV and sexual violence, including those who experience non-fatal strangulation, should automatically be flagged as high risk.

## Information

- 7.49 It is intended that victim advocates will work alongside existing supports, such as support services, Victim Assist Queensland and ODPP Victim Liaison Officers, to fill gaps or address limitations in information made available to victim-survivors. It will be important for victim advocates and existing supports to engage in information sharing to ensure efficient co-support for victim-survivors.
- 7.50 If recommendation 9 is implemented, non-fatal strangulation matters may be finalised in magistrates-level courts. As the ODPP does not generally have carriage of matters at that court level, some non-fatal strangulation victim-survivors will not have contact with ODPP Victim Liaison Officers. Therefore, victim advocates may need to provide focused resourcing to support victim-survivors whose matters are finalised in magistrates-level courts.
- 7.51 The Charter of Victims' Rights includes a number of rights for victim-survivors, including the right to provide a Victim Impact Statement to the court.<sup>24</sup> Victim advocates could play an important role in ensuring victim-survivors are aware of their rights under the Charter.

## Case for reform

### Current support systems are difficult to navigate

- 7.52 The victim support system in Queensland has been described as complex.<sup>25</sup>
- 7.53 Many support services provide critical support to strangulation victim-survivors in Queensland. We consulted with many of those services during our review, including services that:
- have specific expertise in non-fatal strangulation
  - provide support for DFV or sexual violence more generally
  - provide support to victim-survivors at particular points in the process
  - provide support for victim-survivors from particular groups, such as children and young people, Aboriginal peoples and Torres Strait Islander peoples, people from culturally and linguistically diverse communities, people from LGBTIQ+ communities, and people with disability (including brain injuries).
- 7.54 These support services provide different levels of support in various combinations depending on funding and expertise. Support may include providing information and education,

emotional support and counselling, case management and practical assistance (including with housing or security enhancements), and court support.

7.55 However, stakeholders told us about the lack of service system support in regional and remote communities for victim-survivors of strangulation and DFV more broadly.<sup>26</sup>

7.56 For victim-survivors who enter the criminal justice system, there are other supports provided by government, including by:

- the Office of the Victims' Commissioner
- Victim Assist Queensland, which also funds VictimConnect
- the ODPP victim liaison service.

7.57 These bodies have different roles. The Victims' Commissioner oversees the Charter of Victims' Rights and publishes information about the criminal justice system.<sup>27</sup> Victim Assist Queensland supports victim-survivors by connecting them with specialist support services and providing financial assistance if they are eligible.<sup>28</sup> The victim liaison service at the ODPP employs Victims Liaison Officers around the State to<sup>29</sup>

ensure that victims and their families receive timely information about the prosecution of the offender, the court process, and, if applicable, the victims' role as witnesses. A significant part of the Victim Liaison Officer's role is to refer victims to support agencies, including Victim Assist Queensland.

## Strangulation victim-survivors are withdrawing from the criminal justice process

7.58 As explained in [Chapter 1](#), strangulation is inherently dangerous. Because of this, victim-survivors should immediately be categorised as high-risk, particularly if they experienced strangulation in the context of DFV or coercive control. Yet, strangulation victim-survivors are also at high risk of withdrawing from the criminal justice process.

7.59 Findings from our research showed that about half of non-fatal strangulation charges are not successful and we were told that this was largely because of victim-survivors' reluctance to proceed. In [Chapter 8](#), we explain several reasons why strangulation victim-survivors can be reluctant to proceed with such charges.

7.60 One reason given was lack of information. Some stakeholders agreed that inadequate information provided to victim-survivors was one reason for attrition. QIFVLS told us about the experiences of its clients:<sup>30</sup>

As complainants or relatives of complainants, they are often simply not informed about the progress of the prosecution, further entrenching distrust in the legal system to report violence in the first place.

7.61 We found there are gaps or limitations in the information provided to strangulation victim-survivors at all stages of the criminal justice process.<sup>31</sup> A key finding from our research with victim-survivors was that they did not receive sufficient information. This made the entire process confusing. Victim-survivors specifically wanted more information about:<sup>32</sup>

- non-fatal strangulation, its potential consequences, and next steps in seeking medical or service support
- the progress of the investigation
- the criminal justice process and their role in the process
- hearing dates and outcomes, including bail hearings

## 7. Improving victim-survivor experiences

- safety options at court.

7.62 Victim-survivors wanted this information as early as possible.

7.63 Stakeholders identified limitations in existing supports available for strangulation victim-survivors. Legal Aid Queensland (FLS) submitted:<sup>33</sup>

The direct communication between [Victim Liaison Officers] and victim-survivors is often inconsistent, incomplete, and lacking in detail. For example, in matters where the victim-survivor has provided a victim impact statement (VIS), [we] have observed that the victim-survivor is often left unsure as to whether the VIS has been put before the court and considered in sentencing.

7.64 Many stakeholders agreed that victim-survivors needed to be given more information throughout all stages of the criminal justice process. This is consistent with earlier inquiries regarding victim-survivors more generally which found that victim-survivors<sup>34</sup>

experience difficulty when looking for answers and advocates in the criminal justice system. Victims are often unaware of what treatment to expect from investigating or prosecuting agencies.

7.65 Stakeholders in our review considered that a consistent point of contact for information and resources may enhance victim-survivor safety and feelings of security.<sup>35</sup> We consider a victim advocate service could bridge the gaps that currently exist by acting as the single point of contact for victim-survivors, tailoring communication with them in an accessible way.

7.66 Recently, the Australian Law Reform Commission recommended introducing Justice System Navigators, like victim advocates, to advocate and provide support for sexual violence victim-survivors throughout the criminal justice system.<sup>36</sup> The Commission noted that such a role has 'been shown to reduce the likelihood of complainant's dropping out of the criminal justice process'.<sup>37</sup>

## Alternatives not recommended

7.67 A few stakeholders suggested that victim-survivors should be able to have their own lawyers. Legal Aid Queensland (CLS), while supportive of the introduction of a victim advocate service in line with the Women's Safety and Justice Taskforce recommendation, cautioned against victim advocates having legal standing, stating:<sup>38</sup>

[We are] cautious about introducing any victim advocate with legal standing in criminal law proceedings, noting strict conditions would need to apply to preserve the integrity of a witnesses version to ensure that miscarriages of justice do not occur, as this has significant potential to cause further trauma to a victim-survivor witness.

7.68 Other stakeholders considered that information could be provided to victim-survivors via an online portal.<sup>39</sup> We note that the Victims' Commissioner has developed 'A victim's pathway' resource for adults who have experienced sexual violence<sup>40</sup> and that a similar resource exists for victims of property crime.<sup>41</sup> We consider that access to such information is beneficial. However, reliance on online information could create barriers to accessing support and information for some victim-survivors, particularly those in regional or rural Queensland, those with unreliable internet access, or those from culturally and linguistically diverse communities.

## Human rights considerations

7.69 Recommendation 16 supports Women's Safety and Justice Taskforce recommendations to establish a victim advocate service and provides guidance about the design of such a service of

particular relevance for strangulation victim-survivors. The recommendation aims to improve victim-survivors' experiences of the criminal justice and service systems following strangulation. We consider this recommendation is compatible with human rights.

- 7.70 This recommendation promotes several rights, including the right to recognition and equality before the law. A victim advocate service could provide advocacy support to victim-survivors, in particular by providing information related to support, health and justice systems following non-fatal strangulation. This may bolster equality, particularly given non-fatal strangulation is a gender-based form of violence.
- 7.71 While we consider recommendation 16 is compatible with human rights, there is a risk that it may limit the right to recognition and equality before the law if it is not implemented in a way that makes the service available for all throughout Queensland.
- 7.72 Implementing recommendation 16 may limit the right to privacy and reputation. Effective operation of the victim advocate service will likely require sharing of victim-survivors' personal information within and across services. However, we note that the right to privacy and reputation may be subject to lawful or other non-arbitrary limitations. If implemented, the service would be required to operate within the bounds of relevant privacy legislation to protect victim-survivors' information and data. Further, the sharing of information is likely to be consensual and non-arbitrary given it will be the victim-survivor who will be engaging with, and consenting to, the service and any referrals. Therefore, we consider the right will not be limited.

## Impact of reform

- 7.73 Implementing a victim advocate service could improve victim-survivors' experiences of the criminal justice system and potentially reduce attrition. However, the anticipated design of the service is intended to support all victim-survivors of crime, not only strangulation victim-survivors or other victim-survivors of violence, including DFV and sexual violence. Without adequate resourcing, the victim advocate service may find its capacity stretched, which could undermine its intended purpose — to be a consistent point of support for a victim-survivor throughout the criminal justice process.


## Implementation

- 7.74 Queensland's victim advocate service is currently in its development stage and is expected to be operational by mid-2026. Recommendation 16 should be implemented immediately, alongside development of the service. Recommendation 16 can also be implemented alongside other recommendations made in this review, including recommendations about legislative reforms and training and education (see Figure 1.2 in [Chapter 1](#)).
- 7.75 Prior to the victim advocate service becoming operational in mid-2026, strangulation victim-survivors may continue not to receive the information they need. This gap could be mitigated in the interim with further training for criminal justice personnel, including police, on how to effectively respond to strangulation victim-survivors (recommendation 11).
- 7.76 To ensure regional and remote areas are not disadvantaged, in implementing a victim advocate service resources and staffing should be distributed equitably across Queensland. If such a service is first piloted, an in-person service in regional and remote Queensland could be prioritised to commence bridging the support gaps that exist in those areas.
- 7.77 Prior to implementation of a victim advocate service, the QPS and ODPP will need to update their policies on responding to non-fatal strangulation as well as DFV and sexual violence more

broadly to ensure they provide guidance on advising victim-survivors of their right for referral to an advocate.

# Restorative justice

## Our reforms explained

	<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>
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7.78 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 harmed them. This takes place in a meeting format called a conference, beyond the court system. During the process, perpetrators are encouraged to take responsibility for their actions and take steps towards repairing any harm.

7.79 Recommendation 17 is that there should be clarity and guidance about:

- referral of matters involving either adult or child perpetrators of non-fatal strangulation to restorative justice. This may include referral at various stages of the criminal justice process, including pre-charge, pre-conviction and post-conviction (both pre-and post-sentence).
- the suitability of matters involving non-fatal strangulation for restorative justice.
- the qualifications and training required for potential facilitators of restorative justice for matters involving non-fatal strangulation.

7.80 We also recommend that restorative justice processes:

- be trauma-informed, culturally safe and prioritise the needs and interests of victim-survivors. Prioritising victim-survivors' needs and interests may require specialised and flexible delivery of restorative justice conferences or other restorative justice processes.
- respond to the educative needs of perpetrators and victim-survivors by including an educative component about the risks and dangers associated with non-fatal strangulation. Facilitators should be aware of the programs that are available and can be included in agreements that may assist perpetrators to further understand these risks and, where relevant, to manage their anger in other ways.

## Case for reform

- 7.81 Victim-survivors who experience strangulation may have a range of justice needs. However, the criminal justice system does not provide an opportunity to meet all individual justice needs of victim-survivors. It can also re-victimise and re-traumatise victim-survivors.<sup>42</sup>
- 7.82 In a submission from a victim-survivor we were told:<sup>43</sup>
- Last year I requested that police withdraw a criminal complaint for non-fatal strangulation relating to my ex-partner. The reasons for this were as follows:
- I wanted to move on with my life and not be re-traumatised by the criminal court system
  - The criminal court process puts the victim on trial ...
  - My aim was for my ex-partner to understand what he did was wrong — not necessarily impose a jail sentence.
- 7.83 Restorative justice can improve access to justice by providing an alternative, or complementary, pathway for victim-survivors. It can also support perpetrators to take responsibility for wrongdoing.
- 7.84 The values underpinning restorative justice include truth, fairness, physical and emotional safety of participants, respect and dignity for all, inclusion, empowerment, safeguarding of rights, reparation, voluntariness, solidarity and transparency.<sup>44</sup> Many of these values mirror the principles of trauma-informed practice, aligning with our fifth guiding principle of being trauma-informed. Research has demonstrated that both victim-survivors and perpetrators generally have a high satisfaction rate when they engage in restorative justice.<sup>45</sup>
- 7.85 In Queensland, restorative justice processes are provided for youth justice and for adults. There is some disparity in the frameworks surrounding the provision of restorative justice for non-fatal strangulation matters, depending on the perpetrator's age. Further, while there are government-supported restorative justice processes, it is sometimes offered by private providers.

## Youth justice

- 7.86 Young people are increasingly engaging in non-fatal strangulation. Access to restorative justice services for young people and the people they harm should be supported by clear referral pathways and underpinned by frameworks to ensure safety.
- 7.87 The Women's Safety and Justice Taskforce made recommendations for an independent review of youth justice conferencing for sexual offences, which was to identify opportunities for improvement to better meet the needs of victim-survivors.<sup>46</sup> Subsequently, a parliamentary inquiry into support for victims of crime recommended an expansion of the opportunities to better meet victim-survivors' needs for youth justice conferencing more generally.<sup>47</sup> In 2024, another parliamentary committee that inquired into ongoing reforms to the youth justice system and support for victims of crime made a number of recommendations about restorative justice processes, including that<sup>48</sup>
- the Queensland Government significantly increase the resources allocated to restorative justice processes in order to reduce delays and improve the experiences of victims who participate in these processes.
- 7.88 Recommendation 17 supports those recommendations.

## Existing processes

- 7.89 The Department of Youth Justice and Victim Support is responsible for administering restorative justice processes involving perpetrators who were under 18 at the time of committing the offence. Facilitators come from several teams that service all of Queensland. They undertake comprehensive training.<sup>49</sup>
- 7.90 Restorative justice is legislated in the Youth Justice Act 1992.<sup>50</sup> Restorative justice processes under the Act include conferencing and, in limited circumstances, an alternative diversion program.<sup>51</sup> An alternative diversion program involves the child agreeing to take remedial actions, participate in educational programs or other activities to strengthen their familial or community relationships.<sup>52</sup>
- 7.91 At a conference, victim-survivors can choose to participate in various ways, which may or may not involve them attending the conference in person.<sup>53</sup> Before conferencing for certain offences, such as sexual offences, victim-survivors are linked to counselling and support services and perpetrators can be required to undertake targeted counselling or other educative interventions.<sup>54</sup>
- 7.92 Police can make a referral to restorative justice as an alternative to charging. Courts can also make a referral as a diversionary measure instead of conviction, or restorative justice can be ordered pre-sentence or as part of the sentence.<sup>55</sup>
- 7.93 Facilitators assess the suitability of referrals for restorative justice in all situations,<sup>56</sup> and courts and police also assess suitability as part of making a referral.<sup>57</sup> In determining suitability, the nature of the offence is considered.<sup>58</sup> However, no offences are excluded from restorative justice processes for young people and the people they harm.
- 7.94 We were told that between 2020–21 and 2024–25 there were 15 restorative justice referrals to the Department of Youth Justice and Victim Support for offences related to non-fatal strangulation. The majority of those (7 of 15) were referred in 2024-25.

## Enhancing restorative justice conferencing for adults

- 7.95 Access to restorative justice services for adults and the people they harm is more limited, especially for high-risk offences such as non-fatal strangulation. Like young people, restorative justice for adults should be supported by clear referral pathways and underpinned by frameworks to ensure safety.
- 7.96 The Queensland Government offers Adult Restorative Justice Conferencing ('ARJC') through the Dispute Resolution Branch of the Department of Justice. Compared to youth justice conferencing, it is a much smaller operation and does not have the same clarity in legislative framework, nor operating guidelines.<sup>59</sup> Although ARJC services are statewide, there is not a physical presence in each region.
- 7.97 The Women's Safety and Justice Taskforce made detailed recommendations about ARJC in Queensland, including:<sup>60</sup>
- development of a sustainable long-term plan for expansion of ARJC in Queensland for all criminal offences, along with appropriate funding
  - co-design of a victim-centric legislative framework for ARJC in Queensland that, among other things:
    - includes principles and safeguards for use in DFV-related offence matters, underpinned by a gender-sensitive and trauma-informed approach
    - sets out suitability assessment processes

## 7. Improving victim-survivor experiences

- establishes criteria and processes to assess the suitability of facilitators
- undertaking of a pilot ARJC program for adult sexual and DFV offences, to be independently evaluated to inform statewide roll out.

- 7.98 These recommendations were supported by the Queensland Government. The recommendation to develop a long-term plan is complete,<sup>61</sup> although we anticipate that funding is likely to be an ongoing issue.
- 7.99 A Restorative Justice Sexual and Gender Based Violence Practice Guide has been developed. Further, a report by KPMG, 'Expansion of ARJC in QLD — A report on options for the sustainable and long-term expansion of ARJC in Queensland', which includes an implementation plan, has been delivered and is currently under consideration by Government. Other recommendations are yet to be implemented.
- 7.100 Recommendation 17 supports the recommendations made by the Women's Safety and Justice Taskforce.

### Existing processes

- 7.101 Police, prosecutors, courts, corrective services and victim-survivors can make a referral to ARJC. Referrals can be made pre-charge, post-charge and pre-conviction, and can be requested pre- and post-sentence.<sup>62</sup>
- 7.102 Facilitators assess the suitability of matters for ARJC.<sup>63</sup> In doing so, they consider whether a restorative justice conference will cause further harm.<sup>64</sup> Both the QPS and the ODPP have policies regarding the appropriateness of referring matters to ARJC.
- 7.103 Currently, the QPS OPM does not permit officers or prosecutors to refer a matter to ARJC if the offence is a DFV offence.<sup>65</sup> Only the officer in charge of a police prosecution corps can authorise such a referral.<sup>66</sup>
- 7.104 The ODPP Director's Guidelines do not refer to ARJC specifically, but QSAC has reported that the ODPP can refer any matter to ARJC where it is deemed to be in the public interest.<sup>67</sup> However, QSAC has heard that submissions to the ODPP to refer matters to ARJC have been rejected without reasons being provided and noted that 'its use for sexual violence offences has traditionally been limited'.<sup>68</sup>
- 7.105 We were told that very few (n = 24) non-fatal strangulation matters have been the subject of an ARJC in the last five years (2020–2024). However, there has been a significant uptick in usage in the most recent year, coinciding with the pilot program implemented as part of the Women's Safety and Justice Taskforce recommendations. ARJC employed a high-risk facilitator responsible for ensuring support for other facilitators in high-risk cases and who could also co-convene in such cases.<sup>69</sup> Non-fatal strangulation would be considered high-risk as it involves DFV or sometimes sexual offending and 'there is a risk of re-victimisation, the stakes are high and the person may be facing significant punishment'.<sup>70</sup>

### A framework to support and protect strangulation victim-survivors

- 7.106 Stakeholders were divided about the use of restorative justice for matters involving non-fatal strangulation.<sup>71</sup> Some stakeholders considered that restorative justice may be beneficial in non-fatal strangulation matters because it gives power and choice to victim-survivors about how they want to proceed and can provide an educative function.<sup>72</sup>
- 7.107 Stakeholders considered that restorative justice can be an effective option in Aboriginal and Torres Strait Islander communities. For example, the Victims' Commissioner submitted:<sup>73</sup>

## 7. Improving victim-survivor experiences

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.

- 7.108 In regional and remote communities, Aboriginal stakeholders and Torres Strait Islander stakeholders told us they want families to stay together and be rehabilitated together, and that options other than incarceration where people can be educated or conferenced together are more suitable for community. Some Elders in community advocated for their involvement in the restorative justice process.<sup>74</sup>
- 7.109 However, other stakeholders expressed concern about the use of restorative justice between parties where coercive control dynamics exist, noting that the process and victim-survivor could easily be manipulated and the victim-survivor's safety may be undermined. Victim-survivors could also face pressure, or lateral violence, from family or community to consent to restorative justice when it is not their preference.<sup>75</sup> One victim-survivor discussed restorative justice but submitted 'there should be an option here where the victim does not have to be in the same room as the perpetrator'.<sup>76</sup>
- 7.110 Other stakeholders thought that perpetrator accountability may not be adequately achieved by restorative justice conferencing for non-fatal strangulation offending. These concerns are mentioned in the literature, particularly about restorative justice for sexual offending and offences involving DFV.<sup>77</sup>
- 7.111 We note that the ACT has a restorative justice process that can include DFV and sexual violence, which would extend to non-fatal strangulation.<sup>78</sup> Data recently published indicates that acts endangering health, the offence that includes but is not limited to non-fatal strangulation, constituted 12.1% of the referrals of intimate partner violence and 6.2% of the referrals of family violence to restorative justice from 2018 to 2022.<sup>79</sup> Evaluation of the ACT's program found:<sup>80</sup>
- high levels of satisfaction among both victim-survivors and perpetrators
  - the justice needs of victim-survivors were met
  - little evidence that victim-survivors were pressured or manipulated into participating, or felt unsafe during the process.
- 7.112 Stakeholders were also uneasy about the possibility of victim-survivors not being fully informed as to the purpose and operation of restorative justice. The Victims' Commissioner submitted:<sup>81</sup>
- 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.
- 7.113 Legal Aid Queensland (CLS) submitted that implementation of an appropriate framework to support and protect victim-survivors who choose to engage in restorative justice for matters involving non-fatal strangulation could allay concerns. Legal Aid Queensland (CLS) also supported increased availability for restorative justice as an option within the criminal justice system in general.<sup>82</sup>
- 7.114 Recommendation 17 is directed towards ensuring an appropriate framework exists regardless of the age of perpetrator and regardless of who provides the restorative justice process. Consistent with existing best practice on restorative justice for DFV matters,<sup>83</sup> such a framework should:

## 7. Improving victim-survivor experiences

- assist those who are making suitability assessments to know what to look for to ensure the process is not re-traumatising or unsafe for victim-survivors.<sup>84</sup>
- ensure that facilitators, particularly those who work with high-risk matters, have appropriate training,<sup>85</sup> including on non-fatal strangulation. Training is discussed further in [Chapter 6](#).
- provide flexible options for victim-survivors to participate in the process.<sup>86</sup>
- build in measures to ensure restorative justice conferences are culturally appropriate, such as a requirement for co-design.<sup>87</sup>
- support conferences being co-convened. This aspect of the model in the ACT was referred to as ‘helpful for identifying coercive and controlling behaviours ... [and protected] practitioners from being manipulated’ by the perpetrator.<sup>88</sup>
- clearly articulate the points in the process at which education about non-fatal strangulation for victim-survivors and perpetrators could be delivered. Perpetrator participation in treatment and both victim-survivor and perpetrator engagement in therapy are suggested best practice.<sup>89</sup> We suggest that similar processes as are used for sexual offending in youth justice conferencing be considered for non-fatal strangulation conferencing involving both adults and children.

7.115 Stakeholders agreed that there needs to be education for perpetrators about the risks and dangers associated with non-fatal strangulation. For example, the Red Rose Foundation recommended<sup>90</sup>

the development and implementation of targeted education and intervention programs for perpetrators of non-fatal strangulation and related domestic and sexual violence offences with experts from specialist DFV services and perpetrator response programmes.

## Human rights considerations

- 7.116 Recommendation 17 builds on the Women’s Safety and Justice Taskforce recommendations related to restorative justice. It provides guidance for development of a framework to support and protect strangulation victim-survivors who wish to engage in restorative justice, and to promote the rights of victim-survivors and perpetrators. Specificity of the framework as to when matters may be suitable for restorative justice aims to provide consistency in decision-making. We consider this recommendation is compatible with human rights.
- 7.117 Recommendation 17 promotes the right to recognition and equality before the law by requiring the needs of victim-survivors to be prioritised, and giving them more choice and control about how they would like to resolve the matter. This is particularly important for Aboriginal peoples and Torres Strait Islander peoples and their communities.
- 7.118 We note that if restorative justice is not accessible to all people throughout Queensland, this right also has the potential to be limited.

## Impact of reform

- 7.119 Recommendation 17 would require the Dispute Resolution Branch to be adequately resourced. Stakeholders who expressed reluctance about using restorative justice for matters involving non-fatal strangulation were concerned that the AJRC program in particular is under-resourced. If restorative justice is used more often for matters involving non-fatal strangulation, more high-risk facilitators would need to be available and consideration may need to be given to partnering with an organisation/s to provide counselling and education.

## 7. Improving victim-survivor experiences


- 7.120 Further, increasing the number of conferences, introducing requirements for pre-conference counselling and education, and introducing requirements for co-designing where necessary would result in delays to finalise these matters without adequate supporting resources. This would undermine one of the most significant benefits of restorative justice, that is, timely resolution.
- 7.121 In the context of sexual violence, the Australian Law Reform Commission noted that '[r]estorative justice research highlights that without adequate resourcing, it is impossible to provide safe, high quality restorative justice that minimises' associated risks.<sup>91</sup> However, the Commission reiterated that while high-quality restorative justice is expensive, research indicates it may be more cost-effective than traditional criminal justice responses.<sup>92</sup>
- 7.122 Similarly, the Women's Safety and Justice Taskforce cautioned that 'when done well, restorative justice can be costly to implement'.<sup>93</sup> However, it went on to say:<sup>94</sup>
- [A]n effective restorative justice scheme may also provide value for money for government by assisting victims to heal better and faster, reducing the impact of the trauma and supporting them to return to their full and meaningful lives.

## Implementation

- 7.123 A Restorative Justice Sexual and Gender Based Violence Practice Guide has been developed and is now part of ARJC's policy and procedures. If recommendation 17 is implemented, this practice guide would need to be reviewed to ensure guidance is provided specifically for matters involving non-fatal strangulation. The guide should include information about the risks and dangers of non-fatal strangulation, the different contexts in which it can occur, and the impacts of non-fatal strangulation on victim-survivors and how this might affect their participation in a conference process. Similar guidance should be provided for youth justice conferencing.
- 7.124 Further, both the QPS and the ODPP would need to review their policies on restorative justice. It should be made clear in those policies that police and prosecutors should speak with victim-survivors about restorative justice before making a decision to accept or reject a request for restorative justice.
- 7.125 As discussed above, several Women's Safety and Justice Taskforce recommendations about restorative justice are yet to be implemented and a report on options for the expansion of ARJC in Queensland is currently under consideration by the Queensland Government. Recommendation 17 could be implemented as part of this broader response, however, should not be delayed to occur concurrently with that response (see Figure 1.2 in [Chapter 1](#)).

# Data collection, monitoring and review

## Our reforms explained

	<p><b>R18</b> The Queensland Government should:</p> <ul style="list-style-type: none"> <li>(a) review the scope of ‘relevant relationship’ as defined in the Domestic and Family Violence Protection Act 2012.</li> <li>(b) improve health and criminal justice data collection on non-fatal strangulation.</li> <li>(c) monitor the implementation of reforms recommended in this review and evaluate outcomes and impacts between three to five years after implementation.</li> </ul>
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- 7.126 Recommendation 18 is directed at data collection, monitoring and review with the aim of improving the evidence base on non-fatal strangulation in Queensland. A robust evidence base is needed to determine whether just outcomes are being achieved, including whether victim-survivors’ experiences are improved and perpetrators are being held accountable. This recommendation promotes our second guiding principle (evidence-based) and third guiding principle (justice).
- 7.127 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. ‘Domestic relationship’ (as used in the non-fatal strangulation offence) is defined in the Criminal Code (Qld) to mean a relevant relationship under the Domestic and Family Violence Protection Act 2012.<sup>95</sup> Both terms are used in contexts (criminal and civil) beyond the non-fatal strangulation offence.
- 7.128 The review of the scope of relevant relationship should prioritise consideration of:
- the impacts of the current definition on Aboriginal peoples and Torres Strait Islander peoples, and people from culturally and linguistically diverse communities
  - the need to broaden the term so that it applies to modern types of relationships.
- 7.129 In conducting the review, regard should be had to ensuring a definition intended to recognise the breadth of family connections, particularly in civil contexts, is not used indiscriminately in criminal contexts.
- 7.130 Recommendation 18(b) is that the Queensland Government improve health and criminal justice data collection on non-fatal strangulation to identify trends. To that end, any data collected should be used collectively and in an anonymised way.
- 7.131 Health record management systems across Queensland should:
- be required to record the context of injuries — to be able to identify the contexts in which non-fatal strangulation is occurring
  - be electronic — to facilitate analysis of long-term impacts.

- 7.132 Criminal justice data collection should be improved to ensure the following information is captured in a structured and consistent way:
- demographic information about perpetrators and victim-survivors, including Aboriginal and Torres Strait Islander status, whether they are culturally and linguistically diverse, age, gender and any identified disability
  - contextual details about the offending — including whether the victim-survivors' respiration and/or blood circulation was restricted for offending involving non-fatal strangulation conduct
  - contextual details about victim-survivors and their relationship to perpetrators
  - details about reasons for withdrawal of charges
  - information about defences left to the jury.
- 7.133 More ready access to Magistrates Court transcripts would also assist in analysing data.
- 7.134 Recommendation 18(c) is that the Queensland Government monitor the implementation of reforms recommended in this review and evaluate outcomes and impacts between 3 and 5 years after implementation. This recommendation is directed at the ongoing review of reforms arising from this review to ensure they are achieving what they intend to achieve. Many of the reforms this review recommends are intended to improve outcomes and victim-survivor experiences in non-fatal strangulation matters.
- 7.135 To facilitate evaluation of our reforms, access to information, such as trial transcripts, sentencing remarks, and transcripts of sentencing in magistrates-level courts, should be freely available to those responsible for monitoring and evaluation. They should also be produced in bulk deliveries related to the matter, rather than as separate documents.

## Case for reform

### Scope of 'relevant relationship'

- 7.136 During this review, we were told of issues relevant beyond the non-fatal strangulation offence. A significant issue that stakeholders raised was the current scope of 'domestic relationship' and, relatedly, 'relevant relationship'.
- 7.137 Relevant relationship has been defined to include family relationships, that is, relatives.<sup>96</sup> The Domestic and Family Violence Protection Act 2012 expands the concept of this term to mean a person who the first person regards or regarded as a relative, or a person who regards or regarded themselves as a relative of the first person, if it is or was reasonable to regard the person as a relative.<sup>97</sup> In making that assessment, cultural factors should be considered 'especially considering that for some people the concept of a relative may be wider than is ordinarily understood'.<sup>98</sup> The Act expressly notes that examples of people who may have a wider concept of a relative include Aboriginal peoples, Torres Strait Islander peoples, members of certain communities with non-English speaking backgrounds and people with particular religious beliefs.<sup>99</sup>
- 7.138 Some stakeholders were concerned that these terms were too broad, particularly as they apply to Aboriginal peoples and Torres Strait Islander peoples, and people from culturally and linguistically diverse communities. They were concerned this could lead to over-criminalisation of certain cohorts. Some of the police and lawyers who participated in our research agreed. For example, one counsel told us:<sup>100</sup>

Potentially the definition of domestic relationship means that there are a greater number of Aboriginal and Torres Strait Islander people charged because of that

## 7. Improving victim-survivor experiences

extended meaning of 'family' within those First Nations communities ... I think I've seen a lot more choking and strangulation offences in [location redacted], where it's a different type of relationship to an intimate relationship, so it might be a father and child, or sisters, uncle and nephew, all sorts of relationships covered and they don't need to be blood relatives

- 7.139 However, we were also told that police and prosecutors generally do not exceed fair limits and that usually the relationships they had seen alleged for non-fatal strangulation between Aboriginal peoples and Torres Strait Islander peoples were intimate partners.<sup>101</sup>
- 7.140 Other stakeholders were concerned that the scope of domestic/relevant relationship was too narrow and does not adequately apply to certain modern relationships, such as dating relationships, casual relationships and 'situationships'. We heard that the limitations of the current scope may be particularly problematic for those belonging to the LGBTIQ+ community.
- 7.141 North Queensland WLS submitted:<sup>102</sup>
- 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.
- 7.142 A review of the scope of relevant relationship would provide vital information about the appropriateness of the scope of this term, including as it applies to the non-fatal strangulation offence. This will be crucial for assessing outcomes and impacts of the offence.

### Data collection and ongoing review of reforms

- 7.143 Monitoring and evaluation are critical to enable the Queensland Government and stakeholders to understand what changes have occurred from reforms following this review, what is and is not working, and whether intended outcomes are achieved. Given some stakeholders had concerns about some of the recommended reforms, evaluation will be particularly important.
- 7.144 The Red Rose Foundation submitted that there should be a<sup>103</sup>
- rigorous, ongoing evaluation of how effective non-fatal strangulation charges and prosecutions are at preventing subsequent violence against victim-survivors.
- 7.145 Effective monitoring and evaluation cannot occur without adequate data. We have identified several areas in need of further research:
- Longitudinal data on health consequences following strangulation, regardless of the context in which it occurs.
  - Data on strangulation in contexts beyond DFV, including sporting contexts. The Queensland Law Society submitted:<sup>104</sup>
- It is important to assess how frequently non-domestic strangulation offences occur and in what contexts (e.g. assault, following online dating interactions, organised crime violence).
- Data on strangulation in sexual contexts. The Victims' Commissioner submitted:<sup>105</sup>
- 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.
- Data on children as victim-survivors and witnesses in non-fatal strangulation matters.
- 7.146 We heard from stakeholders about the limitations of how data generally is captured in existing record management systems used by Queensland Hospital and Health Services. For example,

some Hospital and Health Services use paper-based records while others use electronic records, data tends to be recorded in silos, and the context of injuries and illnesses (such as DFV) does not have to be recorded. This can make it difficult to track and analyse data, and creates inconsistencies in data collection.

- 7.147 The Domestic and Family Violence Death Review and Advisory Board discussed these limitations and recommended that data should consistently be recorded about the context of injury ‘to allow the system to better understand the prevalence and impact of DFV and [intimate partner sexual violence]’.<sup>106</sup>
- 7.148 There are several limitations of criminal justice data available in Queensland. These include:
- fragmented systems across different agencies
  - poor records of victim-survivor, perpetrator and offending context variables, largely because many existing data sources are administrative in nature and developed for operational rather than research purposes
  - difficulties in retrieving or accessing information through various databases.
- 7.149 Those limitations have been expressed in numerous reports and recommendations have been made to address them.<sup>107</sup> For example, the Women’s Safety and Justice Taskforce recommended that the Queensland-Wide Interlinked Courts database be replaced and data analytics capability and data integration across the criminal justice system be improved.<sup>108</sup> QSAC recommended that administrative systems used by Queensland courts at different levels be linked.<sup>109</sup> QSAC also made recommendations to improve:<sup>110</sup>
- data collection processes, to obtain information about demographics and the nature of the relationship between parties
  - access to lower court transcripts
  - the functionality of the Queensland Sentencing Information System.
- 7.150 We support these recommendations.
- 7.151 We emphasise the need for a robust evidence base, both from a health and criminal justice perspective, to be able to effectively monitor and evaluate the outcomes and impacts of our reforms and address some of the gaps in the research identified during our review.

## Human rights considerations

- 7.152 We consider that recommendations 18(a) and 18(c) are compatible with human rights. Recommendation 18(b) aims to improve the health and criminal justice evidence base on non-fatal strangulation in Queensland to ensure system responses are data driven. We also consider this recommendation is compatible with human rights.
- 7.153 Recommendation 18(b) may limit the right to privacy and reputation by collecting the personal information of victim-survivors and perpetrators. However, this right may be subject to lawful or other non-arbitrary limitations. Those collecting health and criminal justice data on non-fatal strangulation will be required to operate within the bounds of relevant privacy legislation to protect victim-survivors’ and perpetrators’ information and data. Further, anyone engaging in research with such data should be required to adhere to relevant ethical guidelines. Therefore, we consider that the limitation on the right to privacy and reputation is reasonable and demonstrably justifiable, having regard to the purpose of the limitation and the rights promoted.

## Implementation

- 7.154 The review of the scope of 'relevant relationship' should occur as soon as possible, as should improving health and criminal justice data collection (see Figure 1.2 in [Chapter 1](#)). Implementation of recommendations 18(a) and 18(b) should not prevent implementation of other reforms arising from this review. As recommended, review of reforms arising from our recommendations should occur between 3 and 5 years following their implementation.
- 7.155 Monitoring and evaluation of recommendations as they are relevant to DFV and sexual violence contexts could occur as part of the Queensland Government's Domestic, Family and Sexual Violence System Monitoring and Evaluation Framework.<sup>111</sup>

## References

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Part 1

Part 2

Part 3

**Part 4**

Part 5



# CHAPTER 8

## Reform context

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# Introduction

- 8.1 In [Chapter 1](#), we discussed in detail how strangulation is dangerous. This chapter explores other key contextual factors that underpin the issues considered in this review. It proceeds in five parts, which discuss how:
- many non-fatal strangulation charges are not successful, even when compared to assault occasioning bodily harm (DVO) charges
  - non-fatal strangulation matters take a long time to finalise, even when compared to assault occasioning bodily harm (DVO) charges
  - many strangulation victim-survivors are reluctant to proceed
  - special considerations arise for Aboriginal peoples and Torres Strait Islander peoples in non-fatal strangulation matters
  - special considerations arise for children as victim-survivors and witnesses in non-fatal strangulation matters.
- 8.2 These factors have informed the recommendations made in this review.
- 8.3 Before discussing these contextual factors, we briefly outline how non-fatal strangulation and assault occasioning bodily harm (DVO) charges proceed through the criminal justice system. A detailed explanation of how non-fatal strangulation charges proceed through the criminal justice process can be found in our consultation paper and in research report 2.

## The criminal justice process

- 8.4 For adult perpetrators, police lodge both non-fatal strangulation and assault occasioning bodily harm (DVO) charges in the Magistrates Court. Non-fatal strangulation charges are then usually committed to the District Court for trial or sentence, unless they are dismissed or withdrawn in the Magistrates Court. The same process applies for assault occasioning bodily harm (DVO) charges that have a circumstance of aggravation, such as those where the perpetrator is armed or in company (s 339(3) of the Criminal Code (Qld)).
- 8.5 In contrast, charges for the simpliciter form of assault occasioning bodily harm (DVO) (s 339(1) of the Criminal Code (Qld)) can be tried or sentenced in the Magistrates Court. These charges can be committed to the District Court if the perpetrator informs the Magistrates Court that they want to be tried by a jury, or the Magistrate otherwise decides not to deal with it in the Magistrates Court.
- 8.6 Offences will only proceed in the District Court where the ODPP present an indictment.
- 8.7 For child perpetrators, police lodge both non-fatal strangulation charges and assault occasioning bodily harm (DVO) charges (simpliciter and aggravated forms) in the Childrens Court (Magistrate). The Magistrate may finalise such charges by way of summary trial or sentence if the child is legally represented and consents for this to occur. Proceeding this way is subject to the Magistrate's overriding power to abstain from hearing a matter.
- 8.8 Otherwise, such charges are usually committed to the Childrens Court of Queensland for finalisation, unless dismissed or withdrawn in the Childrens Court (Magistrate). Matters that are committed will only proceed to the Childrens Court of Queensland where the ODPP present an indictment.

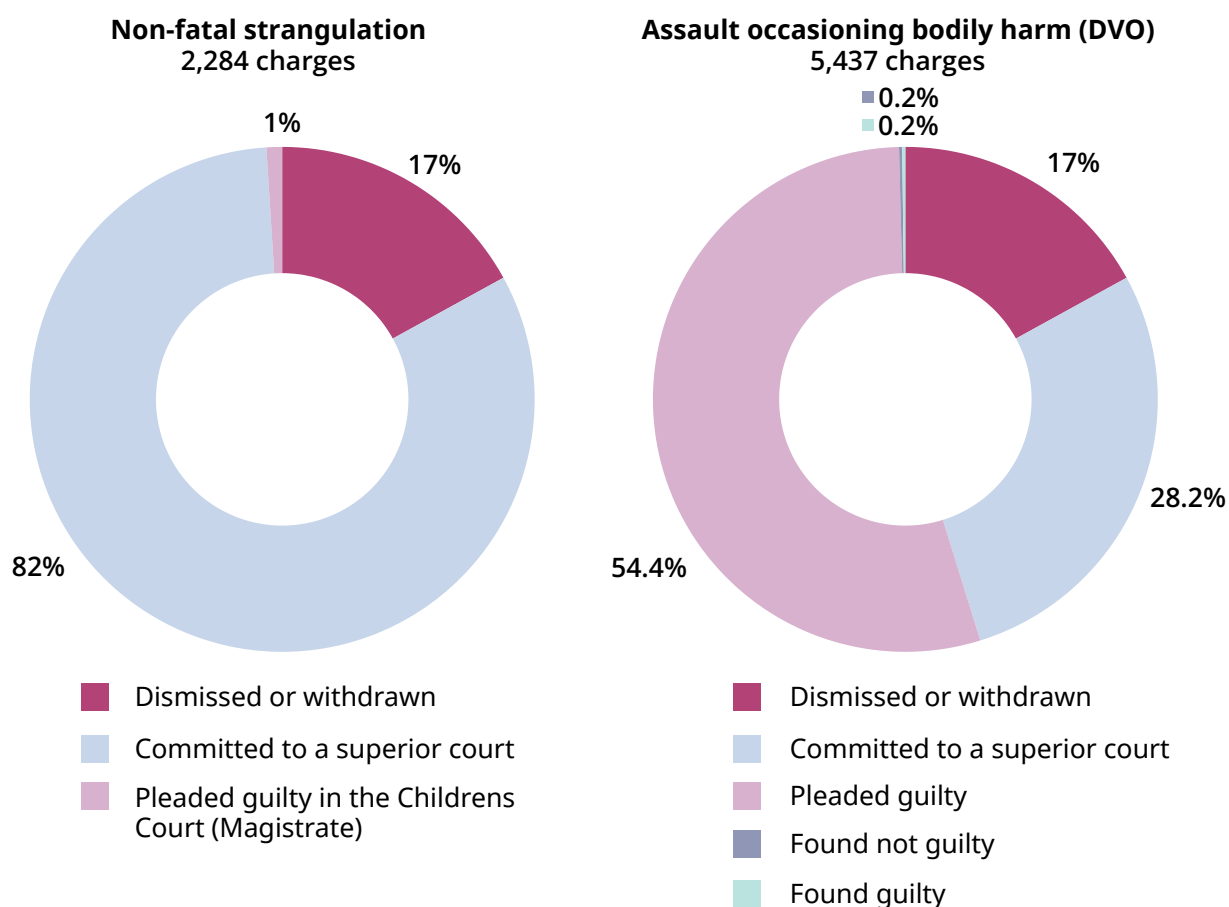
# Many non-fatal strangulation charges are not successful

- 8.9 In 2022, the Queensland Audit Office found that 51% of non-fatal strangulation charges finalised since 2016 resulted in a conviction. The remainder of the charges did not result in a finding of guilt for reasons including that the case was dismissed or the person was found not guilty at trial.<sup>1</sup>
- 8.10 We analysed data for all non-fatal strangulation charges finalised from July 2022 to June 2024, focusing on outcomes in magistrates-level courts (the Magistrates Court and Childrens Court (Magistrate)) and superior courts (the District Court, Childrens Court of Queensland and Supreme Court). We also statistically compared data for non-fatal strangulation charges with data for all assault occasioning bodily harm (DVO) charges (both simpliciter and aggravated forms) finalised during the same period. The methodology we used to do this is explained in [Appendix C](#).
- 8.11 This section discusses some of the key findings from our research, including:
- many non-fatal strangulation charges were not successful because they were dismissed or withdrawn, which is consistent with findings from our other research and feedback from stakeholders<sup>2</sup>
  - a significantly higher proportion of non-fatal strangulation charges laid against all perpetrators were dismissed or withdrawn in superior courts compared to assault occasioning bodily harm (DVO) charges
  - a significantly higher proportion of non-fatal strangulation charges laid against children were dismissed or withdrawn in magistrates-level courts compared to assault occasioning bodily harm (DVO) charges.

## Magistrates-level courts

- 8.12 From July 2022 to June 2024, 2,284 non-fatal strangulation charges were lodged in magistrates-level courts (n = 2,191, 95.9% male perpetrators and n = 89, 3.9% female perpetrators). In the same period, 5,437 assault occasioning bodily harm (DVO) charges were lodged in magistrates-level courts (n = 4,790, 88.1% males and n = 644, 11.8% females). A significantly higher proportion of assault occasioning bodily harm (DVO) charges lodged in the Magistrates Court (but not the Childrens Court (Magistrate)) were laid against females compared to non-fatal strangulation charges.
- 8.13 Figure 8.1 shows the outcomes for these charges.

**Figure 8.1: Outcomes for non-fatal strangulation and assault occasioning bodily harm (DVO) charges in magistrates-level courts, July 2022 to June 2024**

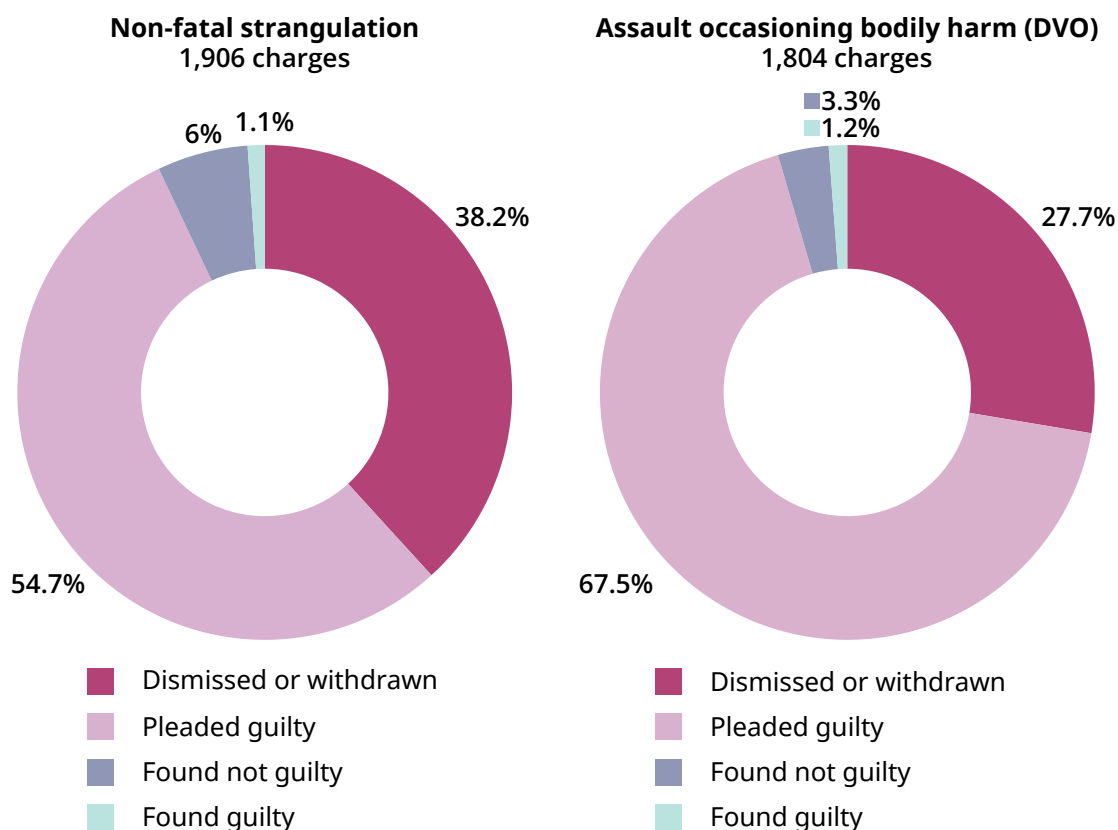


- 8.14 There was a significant association between charge type and charge outcome in magistrates-level courts, with a higher proportion of non-fatal strangulation charges committed to a superior court and a lower proportion resulting in a guilty plea compared to assault occasioning bodily harm (DVO) charges. Further analyses showed there were no significant differences depending on whether the assault occasioning bodily harm was a simpliciter form that could be finalised in a magistrates-level court or an aggravated form that must proceed to a superior court. This indicates the reason a higher proportion of non-fatal strangulation charges were committed is probably not because non-fatal strangulation charges have to be finalised in a superior court.
- 8.15 In respect of the proportion of charges dismissed or withdrawn in magistrates-level courts, there was no significant difference between non-fatal strangulation and assault occasioning bodily harm (DVO) charges, either simpliciter or aggravated. This may suggest that police prosecutions are reluctant to negotiate any type of DFV charge, rather than reluctant to negotiate charges that must be finalised in a superior court.

## Superior courts

- 8.16 From July 2022 to June 2024, there were 1,906 non-fatal strangulation charges and 1,804 assault occasioning bodily harm (DVO) charges on indictment in superior courts. Figure 8.2 shows the outcomes for these charges.

**Figure 8.2: Outcomes for non-fatal strangulation and assault occasioning bodily harm (DVO) charges in superior courts, July 2022 to June 2024**



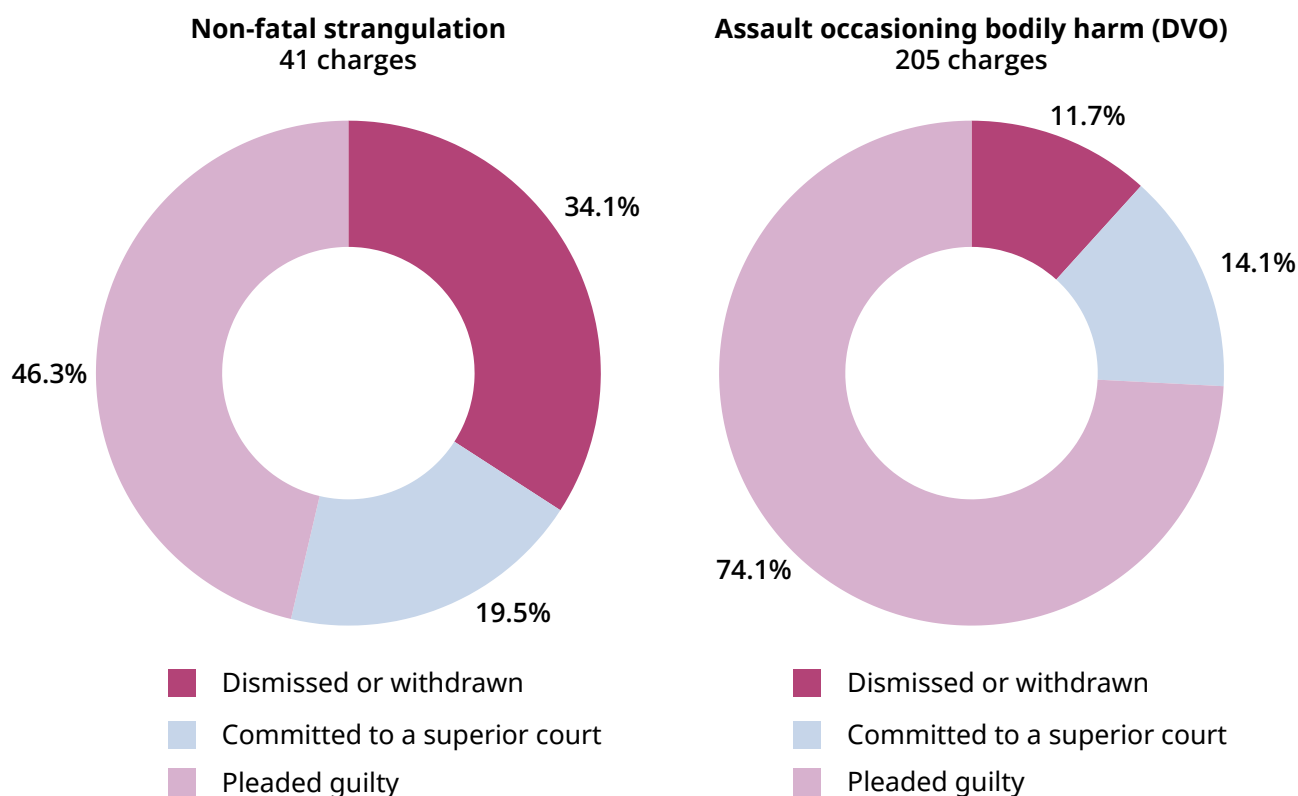
- 8.17 There was a significant association between charge type and charge outcome in superior courts, with further analyses showing that this association only applied to the simpliciter form of assault occasioning bodily harm (DVO). A lower proportion of non-fatal strangulation charges resulted in a guilty plea and a higher proportion of non-fatal strangulation charges resulted in a finding of not guilty compared to charges for the simpliciter form of assault occasioning bodily harm (DVO). As these two offences have the same maximum penalty of 7 years imprisonment, these findings suggest that it may not be the maximum penalty that influenced the proportion of guilty pleas. However, this could still be influenced by the sentence likely to be awarded — in the study period, a significantly higher proportion of adults convicted for non-fatal strangulation received a sentence of imprisonment compared to adults convicted for assault occasioning bodily harm (DVO).
- 8.18 Although there was no difference between the proportion of charges dismissed or withdrawn in magistrates-level courts for non-fatal strangulation and assault occasioning bodily harm (DVO) charges, a higher proportion of non-fatal strangulation charges were dismissed or withdrawn in superior courts compared to charges for the simpliciter form of assault occasioning bodily harm (DVO). This may indicate the ODPP considers it more difficult to prove the elements of non-fatal strangulation (which generally requires evidence from the victim-survivor that their respiration was restricted) compared to assault occasioning bodily harm (DVO) simpliciter charges (where the victim-survivor does not necessarily need to give evidence to prove bodily harm occurred). We found victim-survivors can be reluctant to proceed in non-fatal strangulation matters (see below from [8.37]).
- 8.19 The significant association between charge type and proportion of charges dismissed or withdrawn did not extend to the aggravated form of assault occasioning bodily harm (DVO). This may have been because the additional elements of aggravation made that offence

difficult to prove, similar to the difficulty proving the elements of the non-fatal strangulation offence.

## Child perpetrators

8.20 From July 2022 to June 2024, 41 non-fatal strangulation charges and 205 assault occasioning bodily harm (DVO) charges laid against children were lodged in magistrates-level courts. Figure 8.3 shows the outcomes for these charges.

**Figure 8.3: Outcomes for non-fatal strangulation and assault occasioning bodily harm (DVO) charges laid against children in magistrates-level courts, July 2022 to June 2024**

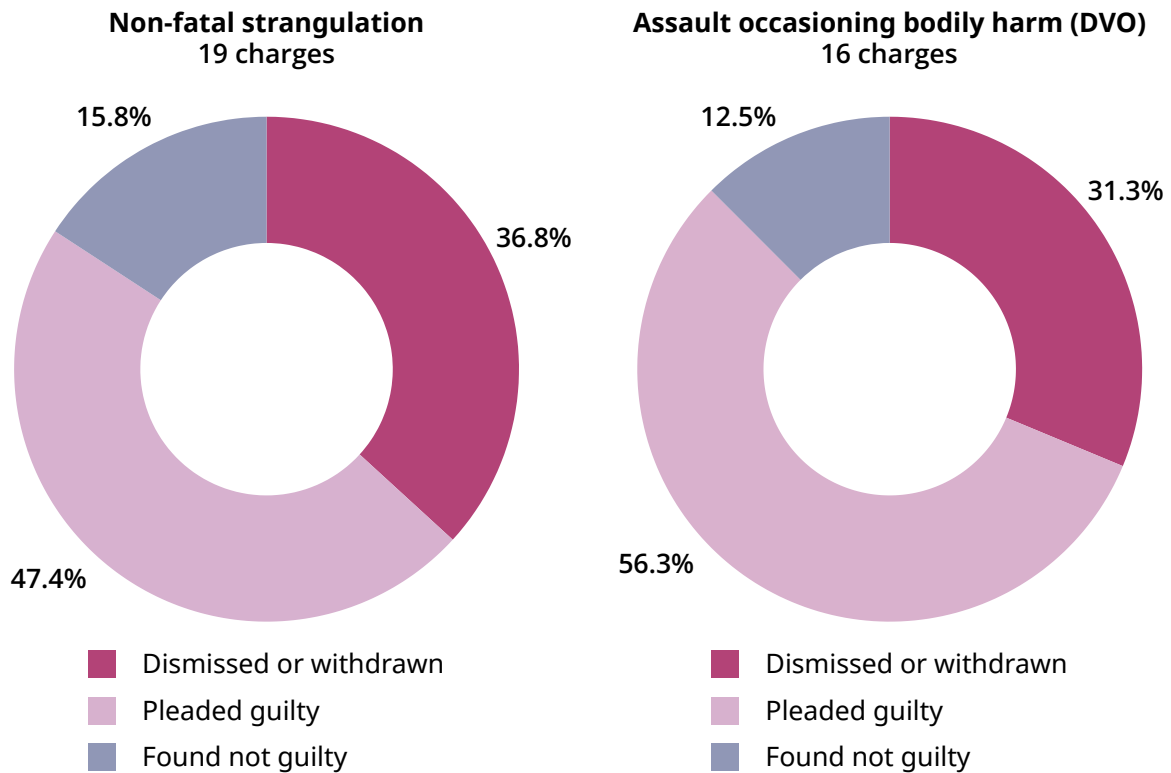


8.21 There was a significant association between charge type and charge outcome in magistrates-level courts. A higher proportion of non-fatal strangulation charges were dismissed or withdrawn and a lower proportion of non-fatal strangulation charges resulted in a guilty plea compared to assault occasioning bodily harm (DVO) charges.

8.22 In the same period, 19 non-fatal strangulation charges and 16 assault occasioning bodily harm (DVO) charges laid against children were lodged in superior courts. Figure 8.4 shows the outcomes of those charges.

8.23 Unlike charges laid against children in magistrates-level courts, there was no significant association between charge type and charge outcome in superior courts.

**Figure 8.4: Outcomes for non-fatal strangulation and assault occasioning bodily harm (DVO) charges laid against children in superior courts, July 2022 to June 2024**



## Non-fatal strangulation matters take a long time to finalise

8.24 We analysed a sample of non-fatal strangulation charges (n = 980) finalised in any court between July 2023 to June 2024, focusing on mean finalisation times from lodgement in magistrates-level courts to finalisation either in a magistrates-level court or a superior court. We also statistically compared this data with a sample of assault occasioning bodily harm (DVO) charges (n = 947) finalised in any court during the same period.

8.25 Our key findings from that research were:

- non-fatal strangulation charges take a significantly longer time to finalise on average compared to assault occasioning bodily harm (DVO) charges:
  - overall
  - in magistrates-level courts
  - in superior courts, only for the simpliciter charge of assault occasioning bodily harm (DVO)
  - that resulted in a guilty plea in superior courts, only for the simpliciter charge of assault occasioning bodily harm (DVO)
  - that went to trial in a superior court
  - against children, overall

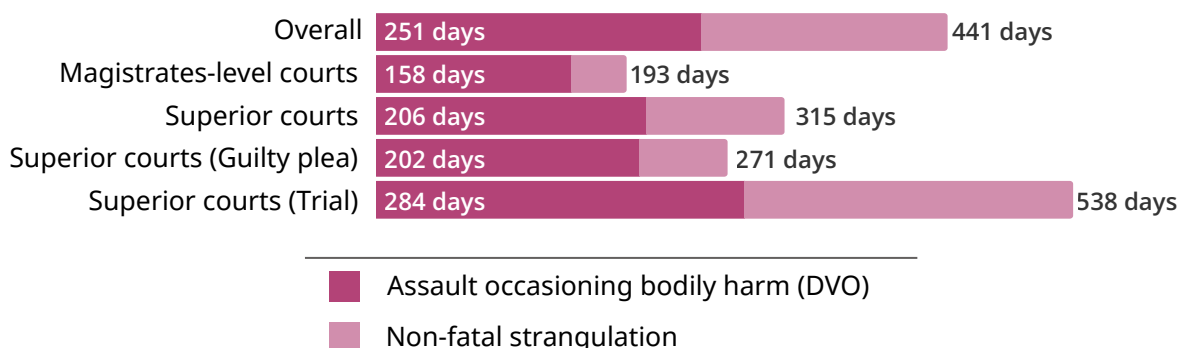
- against children, in magistrates-level courts
  - against children who pleaded guilty in magistrates-level courts
  - for non-fatal strangulation charges, there was a significant difference in average finalisation times depending on charge outcome.
- 8.26 Although our other research found that police and lawyers thought the biggest factor in the time to finalise non-fatal strangulation charges was the requirement to proceed to a superior court, our court data analysis suggests otherwise. This is because:
- In superior courts, non-fatal strangulation charges that went to trial took a significantly longer time to finalise on average compared to both simpliciter and aggravated forms of assault occasioning bodily harm (DVO).
  - In superior courts, non-fatal strangulation charges took a significantly longer time to finalise on average compared to assault occasioning bodily harm (DVO) simpliciter charges. This could be explained by the fact that a higher proportion of non-fatal strangulation charges were dismissed or withdrawn, and a lower proportion resulted in a guilty plea compared to assault occasioning bodily harm (DVO) simpliciter charges. However, we found that non-fatal strangulation charges that resulted in a guilty plea still took a significantly longer time to finalise on average.
  - Non-fatal strangulation charges laid against children took a significantly longer time to finalise on average compared to assault occasioning bodily harm (DVO) charges even though both charges can be dealt with in the same way.
- 8.27 Therefore, other factors specific to the non-fatal strangulation offence may be contributing to the delays experienced in those matters. Police and lawyers who participated in our research thought this could be the time taken to gather evidence (such as medical records or forensic evidence) or gain cooperation from unwilling victim-survivors.<sup>3</sup>
- 8.28 We make recommendations in [Chapter 5](#) to address delay in non-fatal strangulation matters.

## Court type and matter outcomes

- 8.29 On average, non-fatal strangulation charges took significantly longer than assault occasioning bodily harm (DVO) charges to finalise:
- overall — 441 days compared to 251 days, from lodgement in a magistrates-level court to case finalisation in any court
  - in magistrates-level courts — 193 days compared to 158 days, from lodgement in a magistrates-level court to finalisation in a magistrates-level court
  - in superior courts, only for the simpliciter charge of assault occasioning bodily harm (DVO) — 315 days compared to 206 days, from lodgement in a superior court to finalisation in a superior court.
- 8.30 In superior courts, there was also a significant difference in average finalisation times between non-fatal strangulation and assault occasioning bodily harm (DVO) charges:
- that resulted in a guilty plea, only for the simpliciter charge of assault occasioning bodily harm (DVO) — 271 days from lodgement in a superior court to finalisation in a superior court for non-fatal strangulation charges compared to 202 days for assault occasioning bodily harm (DVO) simpliciter charges
  - that went to trial — 538 days from lodgement in a superior court to finalisation in a superior court for non-fatal strangulation charges compared to 284 days for assault occasioning bodily harm (DVO) charges.

8.31 Figure 8.5 compares the average finalisation times for non-fatal strangulation and assault occasioning bodily harm (DVO) charges during the study period.

**Figure 8.5: Average finalisation times for non-fatal strangulation and assault occasioning bodily harm (DVO) charges, July 2023 to June 2024**

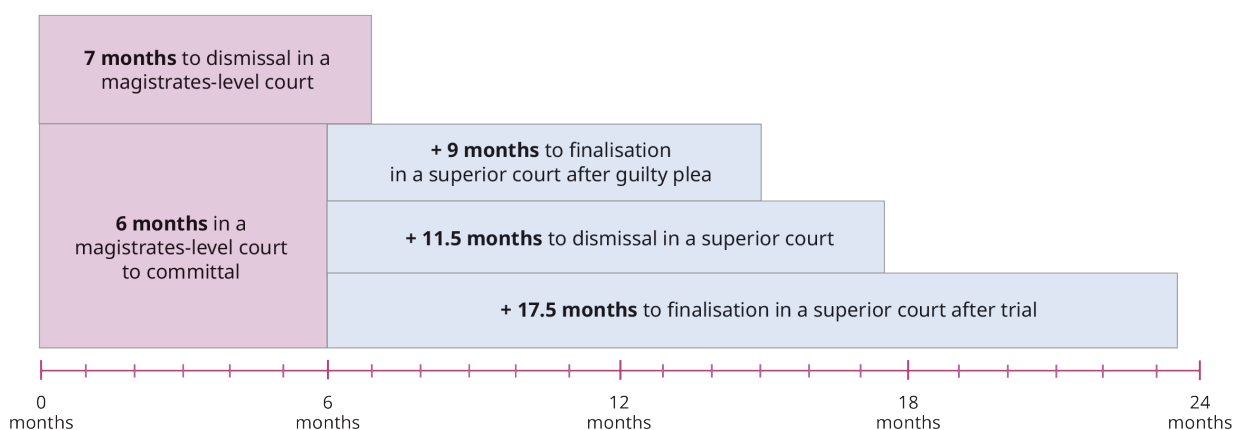


8.32 There was also a significant difference in average finalisation times between outcomes for non-fatal strangulation charges in both magistrates-level courts and superior courts (see Figure 8.6).

8.33 Non-fatal strangulation charges that were dismissed or withdrawn in magistrates-level courts took significantly longer to finalise (M = 212 days or 7 months from lodgement in a magistrates-level court to finalisation in a magistrates-level court) compared to non-fatal strangulation charges that were committed (M = 187 days or 6 months).

8.34 In superior courts, non-fatal strangulation charges that went to trial took significantly longer to finalise (M = 534 days or 17.5 months from lodgement in a superior court to finalisation in a superior court) compared to charges that were dismissed or withdrawn (M = 351 days or 11.5 months) and that resulted in a guilty plea (M = 271 days or 9 months).

**Figure 8.6: Average finalisation times by outcome for non-fatal strangulation charges, July 2023 to June 2024**



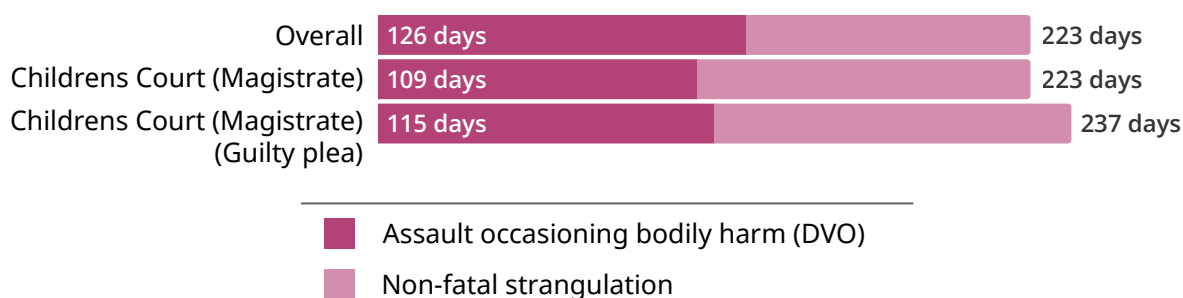
## Child perpetrators

8.35 Non-fatal strangulation charges laid against children took significantly longer to finalise on average compared to assault occasioning bodily harm (DVO) charges laid against children:

- overall — 223 days compared to 126 days, from lodgement in the Childrens Court (Magistrate) to finalisation in any court
- in the Childrens Court (Magistrate) — 223 days compared to 109 days, from lodgement in the Childrens Court (Magistrate) to finalisation in the Childrens Court (Magistrate)
- who pleaded guilty in the Childrens Court (Magistrate) — 237 days compared to 115 days, from lodgement in the Childrens Court (Magistrate) to finalisation in the Childrens Court (Magistrate).

8.36 Figure 8.7 compares these average finalisation times.

**Figure 8.7: Average finalisation times for non-fatal strangulation and assault occasioning bodily harm (DVO) charges laid against children, July 2023 to June 2024**



## Many victim-survivors are reluctant to proceed

8.37 A key finding from our research projects, and feedback from stakeholders, was that victim-survivor reluctance to proceed is a key factor in discontinued or unsuccessful non-fatal strangulation prosecutions. Previous research has found that, in a sample of ODPP case files involving a non-fatal strangulation offence, 41% of victim-survivors withdrew from the prosecution, resulting in the offence either being replaced with an alternative charge or withdrawn altogether.<sup>4</sup>

8.38 We heard from police, lawyers and victim-survivors who participated in our research, as well as from stakeholders, of reasons why strangulation victim-survivors did not proceed or withdrew.<sup>5</sup> We discuss some of these reasons below.

## Delay in proceedings

Victim-survivors told us they were dissatisfied with the length of time it took to resolve their case.<sup>6</sup> One victim-survivor said that the 3 year wait for her case to reach trial 'was just torturous. It was like being assaulted all over again'.<sup>7</sup>

Police and lawyers agreed that the longer a matter takes, the more likely it is that victim-survivors will withdraw from the case.<sup>8</sup> We heard from a police prosecutor that there is<sup>9</sup>

probably a lot of reasons for that. Sometimes I think that complainants might just have a gut full of it. It just goes on for so long. They're sick of it. The distance between when the event starts [and] getting to the point [of committal], or you're going to go to a hearing, it's been 12 or 18 months before the courts. ... Eighteen months down the track ... the reason for making the complaint is sort of dissipated, because there's distance between the event and now.

The Red Rose Foundation submitted:<sup>10</sup>

We acknowledge that delays can force victim-survivors to disengage, particularly when compounded by retraumatising processes.

## Poor experiences or reluctance to engage with police

Victim-survivors told us they had poor experiences when they reported, or tried to report, to police. For example, we heard that police minimised or did not believe reports of strangulation, did not appear to understand the impacts of strangulation, or treated victim-survivors in a way they felt was discriminatory.<sup>11</sup> One victim-survivor told us the police officer at the front counter of a police station 'didn't believe me. She was completely diminishing what I was saying'. Another described her experience at the police station as 'totally humiliating'.<sup>12</sup>

Other victim-survivors were not even able to report strangulation to police because stations were unattended or officers were too busy.<sup>13</sup> This had significant impacts on some victim-survivors, who ultimately decided not to return to report the conduct to police.

## Not wanting to go through the court process

Some victim-survivors told us they decided not to pursue non-fatal strangulation charges because they did not want to go through the lengthy court process and be cross-examined.<sup>14</sup> One victim-survivor said:<sup>15</sup>

If I choose to go ahead, what does that mean if it only goes to trial in two years or in three years? And what will I remember of the incident? Do I want to re-live it or do I want to rehash it all? His team, if he has a team that defends him, will be putting me on trial and I'd be having to defend myself, as if I'm the one who did wrong.

Another told us that the court process was 'a nightmare the entire way' and that she 'got hammered in that court for four days and made out to be anything you could imagine'.<sup>16</sup>

The Victims' Commissioner recognised that the re-traumatising nature of criminal proceedings can influence victim-survivors to withdraw:<sup>17</sup>

Victims may disengage due to the retraumatising nature of proceedings, including lengthy delays, cross examination, and pressure from perpetrators or their families.

## Lack of information about and support to go through the criminal justice system

We heard from many victim-survivors that they did not receive enough information, including information about the court process and information from police (about, for example, the progress of their matter or outcomes of bail hearings).<sup>18</sup> One victim-survivor told us:<sup>19</sup>

I just feel I'm always confused, even to that point I'm confused. 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.

That is the part that I didn't feel respected and I feel for the whole process, when I thought I was supposed to get a bit of support from them, I didn't. I feel I got something really opposite from that. It's like every time I talk to them, I actually need more time to recover from the trauma I received just by talking to them.

Not having enough information about court processes often left victim-survivors feeling unsafe and without the means to make choices about their involvement in court proceedings.

We heard from a lawyer that:<sup>20</sup>

A lot of people don't follow through with their complaint or don't show up later because they haven't appreciated what the process is going to look like ... [I]t's a shame that complainants aren't really properly educated about the process.

## Pressure from the perpetrator, family, friends or the community

Stakeholders and research participants agreed that victim-survivors may not proceed with a non-fatal strangulation charge because of pressure from the perpetrator, family, friends or the community, which is particularly an issue in smaller communities or Aboriginal communities and Torres Strait Islander communities.

We were told by a police prosecutor that 'there's no doubt there's a degree of interference that happens with complainants that we don't ever know about'. Another police prosecutor said their approach to DFV matters was to proceed with charges even without the support of the victim-survivor because<sup>21</sup>

right now, particularly with domestic violence matters, and particularly with Indigenous people, the aggrieved, the family and the defendant would think it was entirely the aggrieved's fault that the matter was proceeding and that would put immense pressure on them to not cooperate. ...

[I]f we don't take that resilient approach, the family and the defendant are right, it's up to the complainant or the aggrieved as to whether it proceeds and we just can't have that because that puts a great deal of pressure on her and is significant incentive for the defendant and family to put pressure on her.

One victim-survivor told us she did not report the strangulation to police because she thought it would result in her being killed by the perpetrator.<sup>22</sup>

8.39 Stakeholders and research participants also mentioned other reasons why victim-survivors might withdraw from non-fatal strangulation proceedings, including:

- fear of child protection becoming involved

- not wanting the perpetrator to go to prison
- practical considerations about children and their relationship with the perpetrator, such as losing income, a home or support.

8.40 Recommendations made in [Chapter 5](#), [Chapter 6](#) and [Chapter 7](#) of this report aim to address some of the above issues.

## Aboriginal peoples and Torres Strait Islander peoples

8.41 Special considerations arise for Aboriginal peoples and Torres Strait Islander peoples in non-fatal strangulation matters, including:

- it can sometimes be challenging to proceed with such matters
- Aboriginal peoples and Torres Strait Islander peoples are over-represented as both perpetrators and victim-survivors in non-fatal strangulation matters.

## Challenges proceeding with non-fatal strangulation

8.42 Stakeholders and participants in our research raised a number of reasons why it was sometimes challenging to proceed with non-fatal strangulation matters involving Aboriginal peoples and Torres Strait Islander peoples, including, for example:<sup>23</sup>

- an unwillingness to report to police or health professionals, including due to:
  - distrust of police
  - fear that child protection may become involved
  - fear that other people in the community may find out, especially in small communities
- lateral violence against victim-survivors from the community and family
- lack of emergency accommodation for victim-survivors who report
- practical considerations about children and their relationship with the perpetrator, for example, losing income, a home or support.

8.43 QIFVLS submitted:<sup>24</sup>

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

8.44 Recommendations in [Chapter 6](#) and [Chapter 7](#) of this report aim to address challenges proceeding with non-fatal strangulation matters involving Aboriginal peoples and Torres Strait Islander peoples.

## Over-representation

- 8.45 Despite comprising only 4.6% of Queensland’s population,<sup>25</sup> our court data research (discussed further below from [8.54]) revealed a range of ways Aboriginal peoples and Torres Strait Islander peoples are over-represented for non-fatal strangulation.
- 8.46 For both non-fatal strangulation and assault occasioning bodily harm (DVO) charges, Aboriginal peoples and Torres Strait Islander peoples:
- were disproportionately represented as perpetrators (this disproportionate representation was higher for assault occasioning bodily harm (DVO) charges than for non-fatal strangulation charges)
  - were less likely than other people to:
    - have their charges dismissed or withdrawn in all courts
    - be found not guilty in superior courts
    - be granted bail
  - were more likely than other people to plead guilty.
- 8.47 Aboriginal peoples and Torres Strait Islander peoples charged with non-fatal strangulation (but not assault occasioning bodily harm (DVO)) were more likely to have their charges committed than other people.
- 8.48 We also found that non-fatal strangulation charges laid against Aboriginal peoples and Torres Strait Islander peoples took a significantly shorter time to finalise on average compared to charges laid against other people. This may have been because a significantly higher proportion of charges laid against Aboriginal peoples and Torres Strait Islander peoples resulted in a guilty plea which, on average, took a shorter time to finalise than charges which were dismissed or withdrawn or that went to trial in superior courts (see above from [8.33]).
- 8.49 We found no significant association between Aboriginal and Torres Strait Islander status and penalty ordered if convicted, with 96.5% of Aboriginal and Torres Strait Islander adult perpetrators and 96.6% of other adult perpetrators sentenced to imprisonment. Similarly, we found no significant difference in average imprisonment length ordered between Aboriginal peoples and Torres Strait Islander peoples (983.2 days) and other people (1000.5 days).<sup>26</sup>
- 8.50 Police and lawyers who participated in our research thought the reasons for the over-representation of Aboriginal peoples and Torres Strait Islander peoples in non-fatal

### Aboriginal peoples and Torres Strait Islander peoples

- comprised approximately 21% of non-fatal strangulation perpetrators

were **more likely** than other non-fatal strangulation perpetrators to:

- have their charges committed to a superior court
- plead guilty\*

were **less likely** than other non-fatal strangulation perpetrators to:

- have their charges dismissed or withdrawn\*
- be found not guilty\*
- be granted bail\*

\* this occurred for assault occasioning bodily harm (DVO) charges too

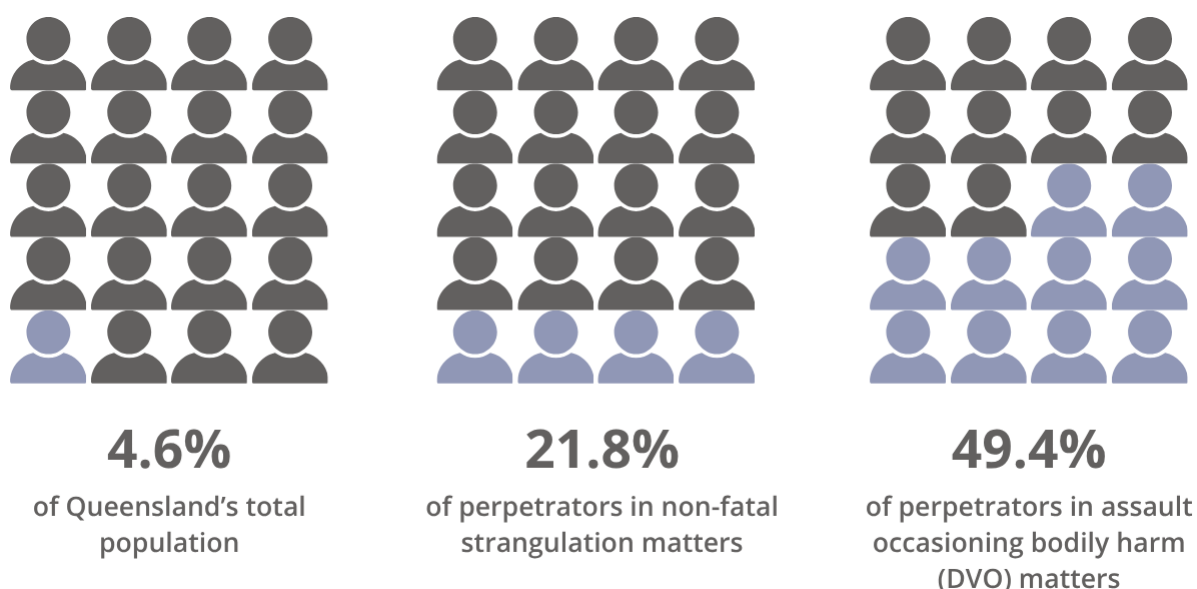
strangulation matters related to reasons for over-representation in the criminal justice system more generally, especially for DFV offences.<sup>27</sup> However, some participants thought the current scope of the offence (applying to ‘domestic relationships’ as defined in the Domestic and Family Violence Protection Act 2012) had the potential to unfairly impact Aboriginal peoples and Torres Strait Islander peoples.<sup>28</sup> This is an issue that applies more broadly to any offence that utilises this term. It is discussed further in [Chapter 7](#).

- 8.51 A health stakeholder confirmed that, in their experience, Aboriginal women and Torres Strait Islander women are over-represented strangulation victim-survivors.
- 8.52 Stakeholders also considered that misidentification of the person most in need of protection in the context of DFV is a significant issue, especially for Aboriginal women and Torres Strait Islander women.
- 8.53 Some recommendations in this report, particularly [Chapter 6](#) and [Chapter 7](#), aim to address some of these issues. However, other issues will require systemic change that is beyond the scope of our terms of reference. Some of these issues were identified in the criminal defences review consultation paper.<sup>29</sup>

### Proportion of perpetrators charged

- 8.54 From July 2022 to June 2024, 21.8% (n = 497) of non-fatal strangulation charges lodged in magistrates-level courts were laid against Aboriginal peoples and Torres Strait Islander peoples. While this is higher than the proportion of Aboriginal peoples and Torres Strait Islander peoples in Queensland’s population (4.6%), a significantly higher proportion of assault occasioning bodily harm (DVO) charges lodged in magistrates-level courts were laid against Aboriginal peoples and Torres Strait Islander peoples (49.4%, n = 2,686) compared to non-fatal strangulation charges (see Figure 8.8).

**Figure 8.8: Proportion of Aboriginal peoples and Torres Strait Islander peoples in the Queensland population, as non-fatal strangulation perpetrators and as assault occasioning bodily harm (DVO) perpetrators, compared to other people in Queensland**



- 8.55 In the same period, 20.4% (n = 388) of non-fatal strangulation charges and 28.7% (n = 517) of assault occasioning bodily harm (DVO) charges on indictment in superior courts were laid against Aboriginal peoples and Torres Strait Islander peoples. This difference was only

significant for charges on indictment in the District Court (not the Childrens Court of Queensland or Supreme Court).

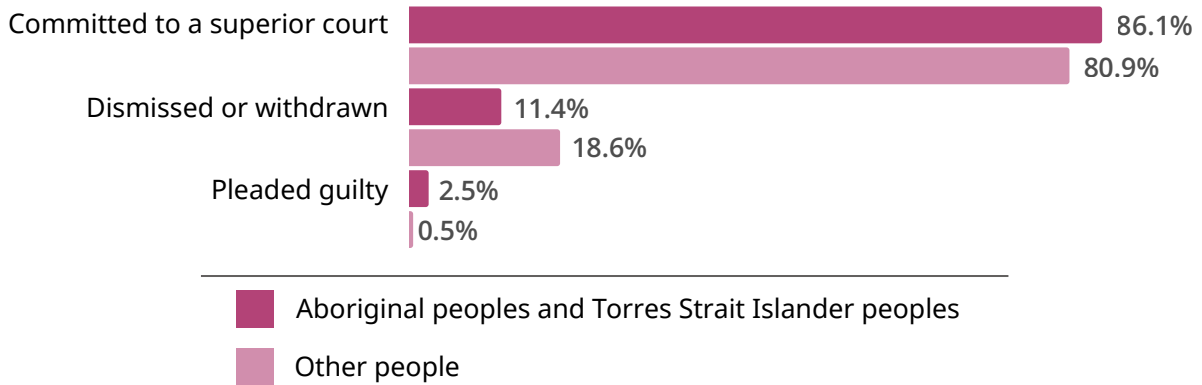
## Matter outcomes

### Magistrates-level courts

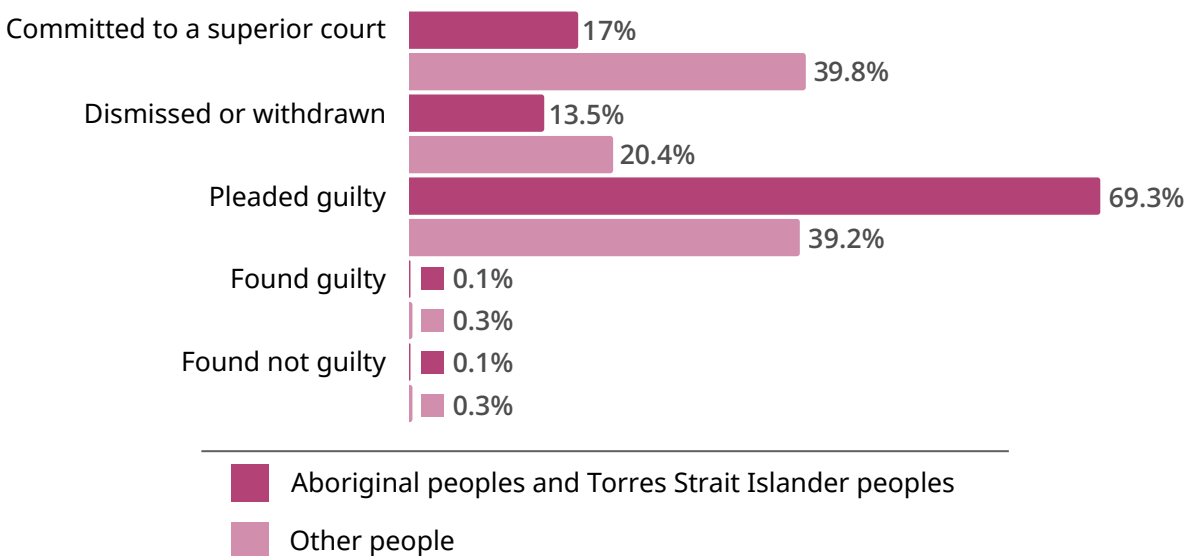
8.56 From July 2022 to June 2024, there was a significant association between Aboriginal and Torres Strait Islander status and non-fatal strangulation charge outcome in magistrates-level courts. In the same period, there was also a significant association between Aboriginal and Torres Strait Islander status and assault occasioning bodily harm (DVO) charge outcome in magistrates-level courts. Figures 8.9 and 8.10 show the outcomes for these charges.

**Figure 8.9: Outcomes in magistrates-level courts for non-fatal strangulation charges laid against Aboriginal peoples and Torres Strait Islander peoples, and other people, July 2022 to June 2024.**

Note: guilty pleas were in the Childrens Court (Magistrate) only.



**Figure 8.10: Outcomes in magistrates-level courts for assault occasioning bodily harm (DVO) charges laid against Aboriginal peoples and Torres Strait Islander peoples, and other people, July 2022 to June 2024**

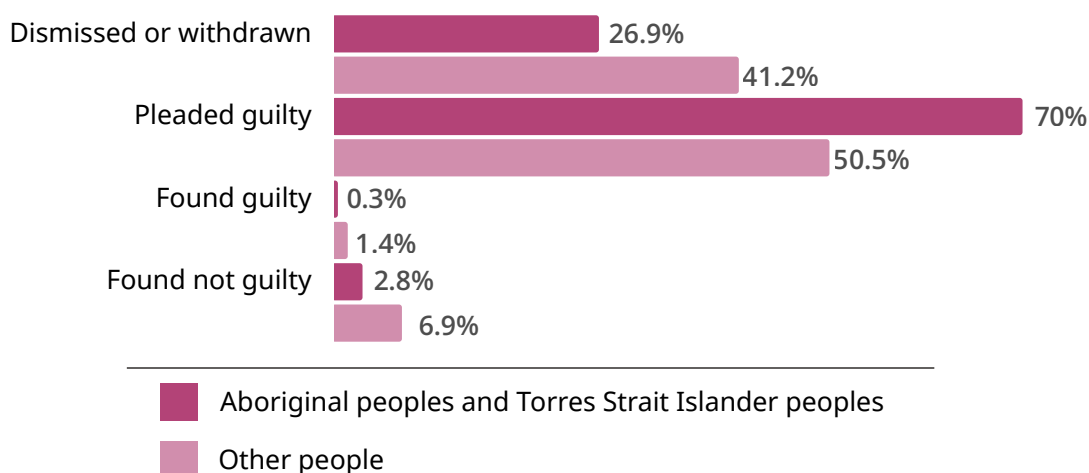


- 8.57 A higher proportion of non-fatal strangulation charges laid against Aboriginal peoples and Torres Strait Islander peoples were committed to a superior court compared to other people. The opposite occurred for assault occasioning bodily harm (DVO) charges, likely because a large proportion of such charges were finalised by way of guilty plea in a magistrates-level court.
- 8.58 A lower proportion of non-fatal strangulation charges laid against Aboriginal peoples and Torres Strait Islander peoples were dismissed or withdrawn compared to other people. A similar pattern occurred for assault occasioning bodily harm (DVO) charges.

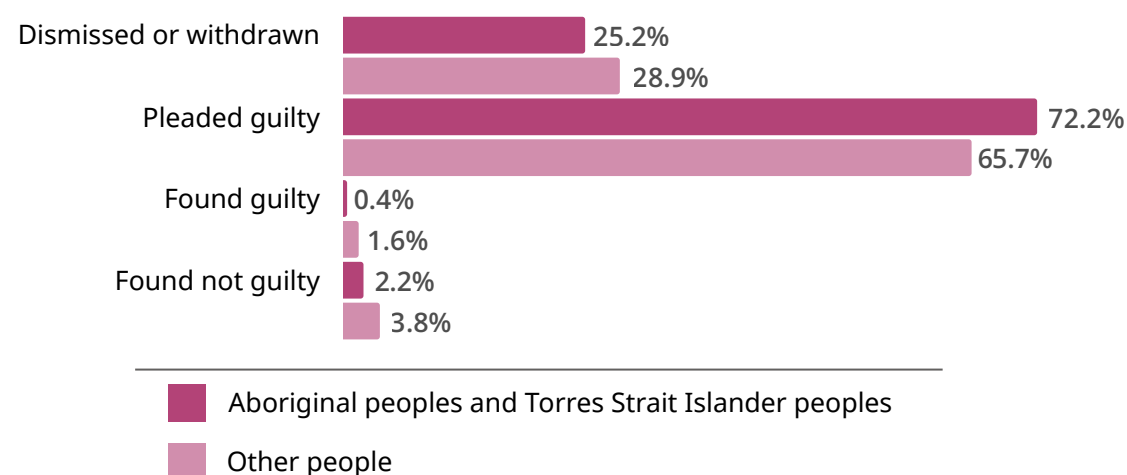
### Superior courts

- 8.59 In the same period, there was a significant association between Aboriginal and Torres Strait Islander status and non-fatal strangulation charge outcome, as well as Aboriginal and Torres Strait Islander status and assault occasioning bodily harm (DVO) charge outcome, in superior courts. Figures 8.11 and 8.12 show the outcomes for these charges.

**Figure 8.11: Outcomes in superior courts for non-fatal strangulation charges laid against Aboriginal peoples and Torres Strait Islander peoples, and other people, July 2022 to June 2024**



**Figure 8.12: Outcomes in superior courts for assault occasioning bodily harm (DVO) charges laid against Aboriginal peoples and Torres Strait Islander peoples, and other people, July 2022 to June 2024**



- 8.60 Like charges in magistrates-level courts, a lower proportion of non-fatal strangulation charges laid against Aboriginal peoples and Torres Strait Islander peoples were dismissed or withdrawn compared to other people. This was the same for assault occasioning bodily harm (DVO) charges.
- 8.61 A lower proportion of non-fatal strangulation and assault occasioning bodily harm (DVO) charges laid against Aboriginal peoples and Torres Strait Islander peoples also resulted in a finding of not guilty or a finding of guilty compared to other people.
- 8.62 However, a higher proportion of non-fatal strangulation charges laid against Aboriginal peoples and Torres Strait Islander peoples resulted in a guilty plea compared to other people. This was the same for assault occasioning bodily harm (DVO) charges.

## Interpretation of findings

- 8.63 We were told by stakeholders and research participants that the lawyers largely responsible for representing Aboriginal peoples and Torres Strait Islander peoples are inadequately resourced. This may impact their time and ability to make submissions that may result in a non-fatal strangulation charge being dismissed or withdrawn in magistrates-level courts. Further, legal representatives' concerns about cultural factors and racist stereotypes may have influenced some decisions.
- 8.64 Gratuitous concurrence is the tendency of Aboriginal peoples and Torres Strait Islander peoples to agree with those in authority regardless of actual agreement or understanding. We heard that gratuitous concurrence may impact whether instructions are given by perpetrators to legal representatives to make submissions for dismissal or withdrawal. Gratuitous concurrence may also bolster the evidence available against the perpetrator, leaving legal representatives with less ability to argue that matters should be dismissed or withdrawn and less room for argument at any trial.

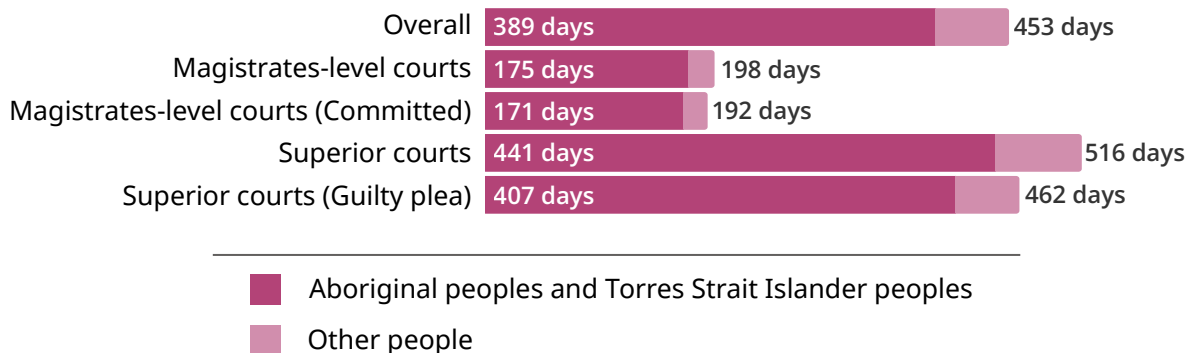
## Bail

- 8.65 From July 2022 to June 2024, a significantly lower proportion of Aboriginal peoples and Torres Strait Islander peoples were granted bail for a non-fatal strangulation charge compared to other people:
- in lower courts — 40.6% compared to 55%
  - in superior courts — 29.1% compared to 39.5%.
- 8.66 The same pattern occurred for assault occasioning bodily harm (DVO) charges:
- in lower courts — 35.1% compared to 51.3%
  - in superior courts — 20.5% compared to 31.8%.
- 8.67 Most perpetrators who were not granted bail were held on remand in custody.
- 8.68 We were told by stakeholders and research participants that Aboriginal peoples and Torres Strait Islander peoples may be less likely to obtain bail and more likely to be held on remand because:
- they may have more entries in their existing criminal history
  - of socio-economic difficulties
  - it may be difficult for those from remote communities to get bail for any offence, particularly so for non-fatal strangulation as the offence puts the perpetrator in a show cause position.<sup>30</sup>

## Finalisation times

- 8.69 From July 2023 to June 2024, non-fatal strangulation charges laid against Aboriginal peoples and Torres Strait Islander peoples took a significantly shorter time to finalise on average compared to non-fatal strangulation charges laid against other people:
- overall — 389 days compared to 453 days, from lodgement in a magistrates-level court to finalisation in any court
  - in magistrates-level courts — 175 days compared to 198 days, from lodgement in a magistrates-level court to finalisation in a magistrates-level court
  - in superior courts — 441 days compared to 516 days, from lodgement in a magistrates-level court to finalisation in a superior court.
- 8.70 We conducted further analyses to examine average finalisation times by non-fatal strangulation matter outcome and found:
- in magistrates-level courts — significantly shorter finalisation times for charges laid against Aboriginal peoples and Torres Strait Islander peoples that were committed to a superior court (171 days from lodgement in a magistrates-level court to finalisation in a magistrates-level court) compared to other people (192 days), but no significant differences for other matter outcomes.
  - in superior courts — significantly shorter finalisation times for charges laid against Aboriginal peoples and Torres Strait Islander peoples that resulted in a guilty plea (407 days from lodgement in a magistrates-level court to finalisation in a superior court) compared to other people (462 days), but no significant differences for other matter outcomes.
- 8.71 Figure 8.13 compares these average finalisation times.

**Figure 8.13: Average finalisation times for non-fatal strangulation charges laid against Aboriginal peoples and Torres Strait Islander peoples, and other people, July 2023 to June 2024**

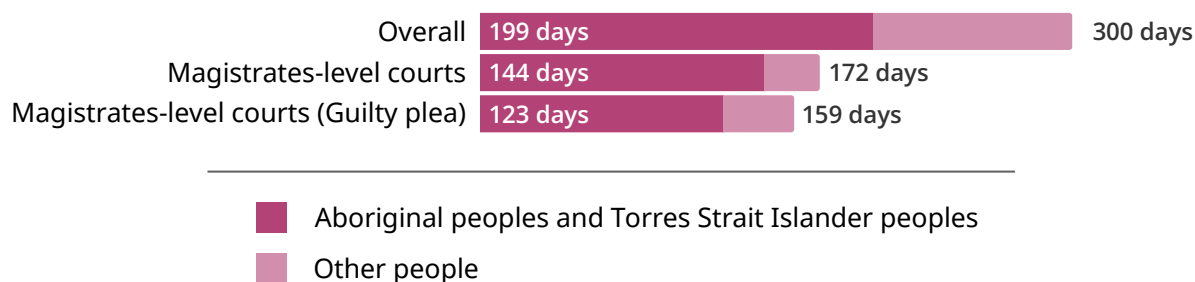


- 8.72 In the same period, assault occasioning bodily harm (DVO) charges laid against Aboriginal peoples and Torres Strait Islander peoples also took a significantly shorter time to finalise on average compared to such charges laid against other people:
- overall — 199 days compared to 300 days, from lodgement in a magistrates-level court to finalisation in any court
  - in magistrates-level courts — 144 days compared to 172 days, from lodgement in a magistrates-level court to finalisation in a magistrates-level court.

8.73 Further analysis of finalisation times by assault occasioning bodily harm (DVO) charge outcome found that, in magistrates-level courts, charges laid against Aboriginal peoples and Torres Strait Islander peoples that resulted in a guilty plea had significantly shorter finalisation times (123 days from lodgement in a magistrates-level court to finalisation in a magistrates-level court) compared to other people (159 days). There were no significant differences for other charge outcomes.

8.74 Figure 8.14 compares these average finalisation times.

**Figure 8.14: Average finalisation times for assault occasioning bodily harm (DVO) charges laid against Aboriginal peoples and Torres Strait Islander peoples, and other people, July 2023 to June 2024**



8.75 Comparatively shorter average finalisation times for non-fatal strangulation and assault occasioning bodily harm (DVO) charges laid against Aboriginal peoples and Torres Strait Islander peoples may have been because a higher proportion of such charges resulted in a guilty plea (see above at [8.62]) and a lower proportion of such perpetrators were granted bail (see above at [8.65]) compared to other people.

## Child victim-survivors and witnesses

8.76 Previous research has found that children have been both victim-survivors of non-fatal strangulation and witnesses to the strangulation of others in Queensland.<sup>31</sup> Academics have noted the need for further research in this area, particularly in relation to:<sup>32</sup>

- children as strangulation victim-survivors in DFV contexts and how to best identify these events in health and criminal justice contexts
- the prevalence of children as witnesses to the strangulation of another person
- how best to support children as victim-survivors and witnesses following a non-fatal strangulation event
- whether the presence of children influences charge decisions.

8.77 To address some of these gaps, research project 4 examined the criminal justice response to children as victim-survivors and witnesses in non-fatal strangulation matters in Queensland. As described in detail in [Appendix C](#), we conducted semi-structured interviews and focus groups with Child Protection and Investigation Unit ('CPIU') police officers, ODPP prosecutors, and support service staff in Queensland. We distilled 7 key findings from that research.

**1. Children are victim-survivors of and witnesses to strangulation in DFV and sexual violence contexts.**

CPIU officers and prosecutors told us they had experience with children as victim-survivors of non-fatal strangulation in DFV contexts. In those cases, perpetrators were usually a biological parent (both mothers and fathers), a step-parent or a romantic partner of a biological parent. Participants thought that strangulation often occurred as part of coercive control or alleged discipline.

All support service staff reported they had experience with children as victim-survivors of non-fatal strangulation in sexual contexts, including strangulation during sexual assaults and sexual choking. In such contexts, perpetrators were usually family members or sexual partners, whether of a casual or ongoing nature.

Participants told us that children most commonly witnessed the strangulation of another in DFV contexts, such as witnessing one parent strangle another parent. However, participants also described instances where children witnessed strangulation at school (children strangled each other) and where children were forced to watch pornography that depicted strangulation of an adult.

Participants reported that, in the cases they had experience with, child victim-survivors were aged between 5 and 17-years-old and child witnesses were aged between 18 months and 17-years-old.

**2. Children can describe the act of strangulation but may struggle to articulate restriction of breath.**

CPIU officers told us that children as young as 5-years-old can often verbally articulate the strangulation conduct in recorded statements. For example, children told officers that someone 'choked me', their 'hands were on my neck' or they were 'squeezing my throat'. Children also demonstrated these actions to police using non-verbal cues.

However, CPIU officers discussed how children 12 years and under can have difficulty communicating that breathing was restricted, especially if providing a witness statement. As such, officers told us they often used other evidence to establish this element, such as descriptions of having a sore throat, struggling to talk or yell, or having a raspy voice. They also used statements about feeling lightheaded or dizzy.

**3. The adequacy of evidence collected depends on how soon after the event police and/or medical professionals respond to children.**

When responding to non-fatal strangulation matters involving children, CPIU officers aim to collect a range of evidence, including photographs of any injuries, a recorded statement from the child, forensic medical examination reports, body-worn camera footage and emergency services phone call recordings. The length of time between the event and police involvement can impact whether such evidence can be collected and, if collected, its quality.

Participants told us that, in cases where there was sufficient evidence to establish a non-fatal strangulation charge, both police and paramedics attended soon after the event (and referred child victim-survivors on for a medical assessment) or the victim-survivor had immediately sought medical attention at a hospital.

CPIU officers and support service staff said this did not always occur, discussing examples where the child victim-survivor reported the event months later or the strangulation event was discovered when the child was seeking support for or reporting a different incident. In

such circumstances, child victim-survivors were generally not referred on for a medical assessment.

Support service staff also emphasised that if the strangulation occurred in a sexual context, children were often reluctant to report to police or medical professionals. Reasons they gave for this included a belief that such conduct was normal, not knowing they could report it, lack of awareness about the dangers, and not wanting parents to find out.

Prosecutors also discussed examples where officers who identified child witnesses at the scene did not refer them to the CPIU to provide a statement. This made it difficult for prosecutors to obtain a reliable statement.

#### **4. Although statements from children can be powerful evidence in non-fatal strangulation matters, CPIU officers and prosecutors are concerned taking statements could re-traumatise children.**

CPIU officers and prosecutors agreed that statements from children (as victim-survivors and witnesses) are crucial to building a strong prosecution case for non-fatal strangulation matters involving children. However, participants expressed concern about whether such statements should be taken, citing the potential for re-traumatisation and impacts on the child's safety.

CPIU officers told us that there are no official procedures or policies to guide police in deciding whether to take a child's statement. Generally, officers will assess the child's cognitive capacity (their ability to speak, recall and tell the truth), age and emotional state.

Further, both CPIU officers and prosecutors told us they will assess the strength of other evidence collected when deciding whether to expose a child to the risk of re-traumatisation by taking their statement.

Some participants suggested there needs to be a formalised process that can be presented to the court explaining why a child's statement was not included in the brief of evidence.

#### **5. Family and cultural factors can impact whether children give a statement in non-fatal strangulation matters.**

Support service staff told us that child strangulation victim-survivors sometimes decided to withdraw their statement, or support for the case, due to family or cultural factors. For example, children were concerned about being removed from their home, their parent being punished, losing family relationships, or being ostracised within their cultural or religious group. Similarly, child victim-survivors who experienced strangulation in a sexual context sometimes decided not to pursue charges due to fear of losing their romantic or sexual relationship, although participants also told us that sometimes children did not pursue charges because of coercive control.

We were told that adult victim-survivors sometimes decided not to let their child/ren provide a statement of what they had witnessed because of the same family and cultural factors described above.

Participants agreed it is important to inform victim-survivors and witnesses of the importance of providing a statement and pursuing a charge, as well as the process for taking a statement, but that it is also important to consider how external factors impact children's safety and wellbeing.

In addition to family and cultural factors, participants told us that the delay between initial reporting and court proceedings impacts whether children or their parents/guardians decide to withdraw support for the case.

#### **6. Criminal justice personnel and health professionals need further training.**

CPIU officers reported they received extensive training on how to appropriately engage with children and apply trauma-informed practice, and on the medical impacts of non-fatal strangulation for children. Similarly, prosecutors reported they had received training on how to engage with vulnerable child victim-survivors and witnesses, although this was not specific to non-fatal strangulation matters.

Despite this, participants considered that criminal justice personnel and jurors have a limited understanding of child development which can impact perceptions of children's evidence. For example, children's vocabulary can become more sophisticated with age which may be perceived as their evidence changing over time (from initial statement to cross-examination), leading to an 'inconsistent' statement.

Participants thought that further training for criminal justice personnel is needed so that matters involving children (including non-fatal strangulation matters) are not adversely impacted by incorrect assumptions of children. They also thought that Judges should give directions to the jury to address this.

Participants thought that training and directions may need to address changes in children's vocabulary over time (which occurs as part of normal child development and is not necessarily indicative of an 'inconsistent' statement) and child behaviour (such as typical mannerisms of children, providing limited eye contact and appearing distracted).

Further, some support service staff expressed concern about health professionals not being aware of how or why to conduct a medical assessment in matters involving child strangulation victim-survivors.

#### **7. Children need further support and protection in non-fatal strangulation matters.**

All participants discussed the support and protection available to child victim-survivors and witnesses during the evidence collection stage (for example, referrals to medical professionals, psychology or counselling services, and child safety planning) as well as during conferencing (for example, Protect All Children Today volunteers).

However, participants also discussed the lack of support available for children during court proceedings for non-fatal strangulation matters. Participants reported that children often expressed concerns and had questions about court processes, including cross-examination, and the outcomes of trial. To address these issues, participants suggested extending the Intermediary Scheme to non-fatal strangulation matters across Queensland.<sup>33</sup>

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- 26 We note that average imprisonment lengths were calculated based on all non-fatal strangulation charges that resulted in a conviction, regardless of whether the charge was the most serious offence the perpetrator was convicted for. Perpetrators may have been sentenced for other more serious charges alongside the non-fatal strangulation offence which may have impacted the sentence ordered.
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- 32 Robin Fitzgerald et al, The Prosecution of Non-Fatal Strangulation Cases: An Examination of Finalised Prosecution Cases in Queensland, 2017 – 2020 (Report, 2022) 24–5.
- 33 Evidence Act 1977 (Qld) pt 2 div 4C. The Intermediary Scheme applies to vulnerable witnesses (including children under 16-years-old) in child sexual offence matters. Intermediaries assist witnesses with their communication needs to enable them to give their best evidence.





Part 1

Part 2

Part 3

Part 4

**Part 5**



# Appendix A: Our terms of reference

## 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 (including balancing the rights of victims and accused persons); and
  - (h) 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

# Appendix B: Consultation proposals and questions

## Our proposed model

### Proposal

- P1** Section 315A of the Criminal Code should be repealed and replaced with three new offences:
- **Offence 1:** unlawfully doing particular conduct that restricts respiration and/or blood circulation in the context of a domestic setting. This offence would prescribe a maximum penalty of 14 years' imprisonment.
  - **Offence 2:** unlawfully doing particular conduct in the context of a domestic setting. This offence would prescribe a maximum penalty of 7 years' imprisonment.
  - **Offence 3:** unlawfully doing particular conduct that restricts respiration and/or blood circulation. This offence would prescribe a maximum penalty of 10 years' imprisonment.

### Questions

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

#### Conduct and results of conduct

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

#### The role of consent

**Q3** What are your views about consent, including:

- whether the without consent requirement should be removed or retained?
- the circumstances in which the requirement should apply?
- whether lack of consent should be an element or a defence?
- how consent should be defined?

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

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

## Defences

### Proposal

**P2** The existing defences in the Criminal Code of provocation to assault (s 269), prevention of repetition of insult (s 270), and domestic discipline (s 280) should not apply to the three new offences.

### Questions

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

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

## Forum

### Proposal

**P3** Adult perpetrators who plead guilty should be sentenced in the Magistrates Court:

- unless the perpetrator elects otherwise
- subject to the Magistrate's overriding discretion.

Legally-represented child perpetrators should continue to be able to consent to have their case tried or sentenced in the Childrens Court (Magistrate).

### Question

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

## Practice and procedure

### Question

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

# Appendix C: Methodology

C.1 This appendix details the methodology we used to conduct research projects 3, 4 and 5. The methodologies for research projects 1 and 2, and analysis of stakeholder feedback, are explained in research report 1, research report 2 and background paper 2.

## Research project 3 – Court data research

C.2 Sharman, Douglas and Fitzgerald conducted an analysis of court data for non-fatal strangulation charges finalised in Queensland courts from 2016–17 to 2019–20.<sup>1</sup> Our research builds on theirs in several ways, including by examining court data for charges finalised following the Court of Appeal's judgment in *R v HBZ* in 2020 (as those authors recommended).<sup>2</sup> *R v HBZ* clarified the interpretation of non-fatal strangulation in s 315A by holding that it is not necessary to prove complete restriction of breath.<sup>3</sup>

C.3 Research project 3 had three main aims. First, to investigate:

- demographic characteristics of non-fatal strangulation perpetrators in Queensland
- non-fatal strangulation charge outcomes (for example, dismissed or withdrawn, committed, pleaded guilty, found guilty, found not guilty)
- sentences imposed for non-fatal strangulation
- finalisation times for non-fatal strangulation charges.

C.4 Second, to compare whether there were any differences in the data about the above listed matters depending on whether the perpetrator was an Aboriginal person or Torres Strait Islander person, or on the gender of the perpetrator.

C.5 Third, to compare whether findings for the above were unique to non-fatal strangulation in domestic settings or common to DFV assaults more generally, regardless of whether the offending involved non-fatal strangulation conduct. This comparison is the first of its kind for Queensland's non-fatal strangulation offence.

C.6 To investigate these aims, we analysed Queensland Wide Inter-linked Courts ('QWIC') data for charges of the non-fatal strangulation offence and assault occasioning bodily harm (DVO). The Courts Performance and Reporting Unit within the Department of Justice provided us with data. The QWIC database records information about appearances and finalisations in Queensland courts.

C.7 We analysed relevant variables for all non-fatal strangulation (n = 4190) and assault occasioning bodily harm (DVO) (n = 7241) charges finalised in Queensland courts between July 2022 and June 2024, regardless of whether those charges were recorded as the 'most serious offence'.

C.8 Given the large volume of data, for finalisation times we analysed a sample of non-fatal strangulation (n = 980) and assault occasioning bodily harm (DVO) (n = 947) charges finalised in Queensland courts between July 2023 and June 2024, regardless of whether those charges were recorded as the 'most serious offence'.

C.9 Once we obtained the data, it was cleaned and analysed using SPSS statistical analysis software. We conducted several statistical tests, including chi-square tests, t-tests and ANOVAs, as relevant. Where necessary, we conducted post-hoc analyses, for example, to explore differences between the simpliciter and aggravated forms of assault occasioning bodily harm (DVO).

## Limitations

- C.10 This research had some limitations. First, the variables recorded in the QWIC database limited the analyses we could conduct. We could not conduct some analyses (such as examination of recidivism) because data did not exist or was not easily obtainable.
- C.11 Second, data was not recorded about the reasons for the outcomes of the charges — for example, why charges were dismissed or withdrawn or why perpetrators pleaded guilty. For this reason, the findings of research project 3 need to be read in conjunction with the findings of research projects 1, 2 and 4. Those projects involved qualitative research with strangulation victim-survivors, police, lawyers and support services staff to obtain a more in-depth understanding of issues related to the criminal justice response to non-fatal strangulation in Queensland.

## Research project 4 – Children in non-fatal strangulation matters

- C.12 Research project 4 aimed to investigate:
- standard police processes and procedures when a child is a strangulation victim-survivor or witnesses the non-fatal strangulation of another
  - how these processes and procedures contribute to evidence collected in non-fatal strangulation matters
  - how this influences police and prosecutorial decision-making.
- C.13 We conducted 8 semi-structured interviews and 2 focus groups with 3 Child Protection and Investigation Unit ('CPIU') officers, 3 prosecutors and 9 support services staff (see Table C.1). All participants had experience with child victim-survivors or witnesses in non-fatal strangulation matters in Queensland.

**Table C.1: Research project 4 participants**

	Semi-structured interviews	Focus groups
<b>CPIU officers</b>	3	-
<b>Prosecutors</b>	1	1 (2 x prosecutors)
<b>Support services staff</b>	1 x Brisbane Youth Service 1 x Inala Hub Legal Centre 2 x PACT volunteers	1 (5 x support services staff from within QSAN)

- C.14 We contacted the QPS (CPIU), ODPP, Brisbane Youth Service, Inala Hub Legal Centre, Protect All Children Today ('PACT') and QSAN seeking potential research participants. We received the names of those interested in participating and provided potential participants with the participant information sheet and consent form, which explained the research, its risks and benefits, and consent procedures.
- C.15 Interviews and focus groups occurred over Microsoft Teams from mid-June to mid-July 2025.
- C.16 To ensure consistency, a single person conducted all interviews and focus groups using guidebooks. We developed three separate guidebooks — one each for CPIU officers, prosecutors and support services staff. We provided questions to participants in advance.

- C.17 We adapted guidebook questions to explore the varied experiences related to participants' roles in the criminal justice system (see Table C.2). For example, CPIU officers were asked about their experiences responding to, investigating and charging non-fatal strangulation matters in Queensland that involved children as victim-survivors or witnesses. Prosecutors were asked about their experiences prosecuting non-fatal strangulation matters in Queensland that involved children as victim-survivors or witnesses. Support services staff were asked about the experiences of child strangulation victim-survivors and witnesses in the criminal justice process.

**Table C.2: Question topics asked of participants**

Question topics	CPIU officers	Prosecutors	Support services
Circumstances of non-fatal strangulation cases involving children	✓	✓	✓
Evidence collection processes (types of evidence, when and how it is collected)	✓		✓
Statements from children	✓		✓
Medical impacts and assessments for child victim-survivors	✓	✓	✓
Evidence included in prosecution briefs		✓	
Conferencing and cross-examination of children		✓	✓
Discontinuation or withdrawal of non-fatal strangulation investigation or charge	✓	✓	✓
Training for non-fatal strangulation investigations and matters involving children	✓	✓	
Supports and protections for children	✓	✓	✓

- C.18 Interviews, which involved one participant, took between 25 and 60 minutes. Focus groups, which had two to five participants, took between 75 and 105 minutes. All were audio-visually recorded. We transcribed the recordings, de-identified the transcripts and then deleted the recordings.
- C.19 A single person thematically analysed the transcripts using NVivo qualitative analysis software. We conducted the analysis using a deductive approach guided by the project's key research questions which were developed from issues raised during the review. Codes were clustered into themes which, after careful reading and re-reading of the data, were refined to generate final themes.

## Limitations

- C.20 Research project 4 had some limitations. First, the research participants represented a small sample who were not randomly selected and who were recruited from a small area in

Queensland. This means their experiences cannot be generalised to the many stakeholders in the criminal justice process, or across Queensland.

- C.21 Second, participants were required to report their experiences to us. There are limitations to self-report research, including the potential for social desirability bias (participants might answer questions in a way that will be viewed favourably by society) or inaccurate recall of events.
- C.22 Despite these limitations, this research generates important information about the criminal justice response to children in non-fatal strangulation matters in Queensland. This is an area that is under-researched.

## Research project 5 – Sentencing remarks analysis

- C.23 Research project 5 aimed to investigate:
- the circumstances in which non-fatal strangulation conduct was alleged as part of other offences, specifically common assault (s 335 of the Criminal Code (Qld)) and the simpliciter form of assault occasioning bodily harm (s 339(1) of the Criminal Code (Qld))
  - the nature of the conduct involved, for example, whether it was conduct capable of restricting a person's respiration or blood circulation
  - the sentences given for these offences.
- C.24 As QSAC stated:<sup>4</sup>
- Sentencing remark transcripts provide an important record of what was said in court during the sentencing hearing. A sentencing remark is a statement made by a judicial officer in court when delivering a sentence. These sentencing remarks can contain valuable information about what happened during the offence and rich information about the defendant and the victim-survivor, and provide the ability to analyse what judicial officers say when explaining the reason for making a particular sentencing order.
- C.25 We obtained sentencing remarks from the Queensland Sentencing Information Service ('QSI') where available. QSI is a free online resource of sentencing information. It includes full text sentencing remark transcripts from superior courts, but generally not from magistrates-level courts.
- C.26 We used the QSI search function to perform the following searches for sentencing remarks published between 1 July 2016 and 30 June 2025 in the District Court, Childrens Court of Queensland or Supreme Court:
- 'chok\*' + Criminal Code Act 1899 + s 335 OR s 339(1)
  - 'strangl\*' + Criminal Code Act 1899 + s 335 OR 339(1)
  - 'suffocat\*' + Criminal Code Act 1899 + s 335 OR s 339(1)
  - 'neck' OR 'throat' + Criminal Code Act 1899 + s 335 OR s 339(1)
  - 'breath\*' + Criminal Code Act 1899 + s 335 OR s 339(1).
- C.27 Results of these searches are outlined in Table C.3.

**Table C.3: Search results from QGIS for sentencing remarks published between 1 July 2016 and 30 June 2025 in the District Court, Childrens Court of Queensland or Supreme Court**

Offence	Search term	Results
Common assault	chok*	10
Common assault	strangl*	2
Common assault	suffocat*	0
Common assault	neck OR throat	25
Common assault	breath*	6
Assault occasioning bodily harm	chok*	21
Assault occasioning bodily harm	strangl*	6
Assault occasioning bodily harm	suffocat*	2
Assault occasioning bodily harm	neck OR throat*	116
Assault occasioning bodily harm	breath*	42

- C.28 We excluded any cases that were duplicated and then undertook a manual review to exclude cases where:
- the offence was alleged to be committed prior to the introduction of the non-fatal strangulation offence
  - reference to the terms was not made in the context of the conduct involved in the charged offence.
- C.29 After excluding these cases, there were a total sample of 56 cases consisting of 16 cases where common assault was the most serious offence and 40 cases where assault occasioning bodily harm was the most serious offence. Each of the sentencing remarks in the sample was assigned a random identifier to maintain confidentiality.
- C.30 A single person manually coded the sentencing remarks in a descriptive classification table in Microsoft Excel using the following variables:
- year of sentence
  - sentencing court location
  - whether the perpetrator was an adult or child at the time of the offence
  - perpetrator gender
  - victim-survivor gender
  - relationship information at the time of the offence, such as partner-current, partner-former, expectation of/actual sexual intimacy, dating, family, neighbour, associate (other relationships where the people were known to each other) and stranger
  - conduct involved
  - consequence
  - evidence of restriction of respiration or blood circulation

- any other evidence of injury
- offence/s
- plea
- penalty type and length
- potential reasons why not charged as the non-fatal strangulation offence.

## Limitations

- C.31 Research project 5 had some limitations. First, as noted above, QGIS only has sentencing remarks for superior-level courts. However, both common assault and assault occasioning bodily harm charges can be finalised in magistrates-level courts. The level of court and the time served in custody prior to sentence in a superior court may have impacted the sentences given for the matters reviewed.
- C.32 Second, at times there were insufficient details in the sentencing remarks to extract all required information. Sometimes this meant the data was subject to interpretation by the person analysing the material.
- C.33 Regardless of these limitations, sentencing remarks are the best available resource to determine factors relevant to decision-making where there are budgetary constraints.

## References

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- <sup>1</sup> Leah Sharman, Heather Douglas and Robin Fitzgerald, Non-Fatal Strangulation Offence Convictions and Outcomes: Insights from Queensland Wide Interlinked Courts Data, 2016/2017-2019/2020 (Report, March 2022).
  - <sup>2</sup> R v HBZ (2020) 4 QR 171; Leah Sharman, Heather Douglas and Robin Fitzgerald, Non-Fatal Strangulation Offence Convictions and Outcomes: Insights from Queensland Wide Interlinked Courts Data, 2016/2017-2019/2020 (Report, March 2022) 4, 13, 15.
  - <sup>3</sup> R v HBZ (2020) 4 QR 171, 187 [57]-[58].
  - <sup>4</sup> Queensland Sentencing Advisory Council, Sentencing of Sexual Assault and Rape: The Ripple Effect (Final Report, December 2024) 51.

# Appendix D: List of preliminary consultations

This list chronologically reflects consultations that occurred before we published our consultation paper. We note that we consulted some consultees on more than one occasion but have only listed them once below.

We only list one stakeholder group per consultation, although there may have been multiple individuals from the same group.

	Stakeholder
1.	Professor at University of Melbourne
2.	Strategic Policy and Legislation (Department of Justice)
3.	Academic at University of Queensland (School of Psychology)
4.	The Red Rose Foundation
5.	Courts Performance and Reporting Unit, Queensland Courts
6.	Office of the Director of Public Prosecutions
7.	Senior Medical Officer
8.	Professor at Griffith University (School of Criminology and Criminal Justice)
9.	Queensland Centre for Domestic Violence Research
10.	Victim-survivors (launch event survey respondents)
11.	DFV and sexual violence support and advocacy workers (launch event survey respondents)
12.	Legal practitioners (launch event survey respondents)
13.	Community members (launch event survey respondents)
14.	Queensland Police Service
15.	Women's Legal Service

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16.	Women's Health New South Wales
17.	Legal Aid Queensland
18.	Aboriginal and Torres Strait Islander Legal Service
19.	Queensland Indigenous Family Violence Legal Service
20.	Adult Restorative Justice Services
21.	Queensland Sexual Assault Network
22.	Gold Coast Centre Against Sexual Violence
23.	Warringu Aboriginal and Torres Strait Islander Corporation
24.	Respect Inc
25.	Queensland Police Service (High Risk Team)
26.	Office of the Chief Medical Officer (Forensic Medicine Queensland)
27.	Coroner
28.	Domestic and Family Violence Death Review Advisory Board
29.	Queensland Domestic Violence Service Network
30.	Lifeline
31.	Micah Projects
32.	Catholic Care
33.	Community Action Inc
34.	Mackay Women's Services
35.	Cairns Regional Domestic Violence Service
36.	North Queensland Domestic Violence Resource

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37.	Domestic Violence Action Centre
38.	Edon Place
39.	Immigrant Women's Support Service
40.	Brisbane Youth Service
41.	District Court Judges
42.	District Court Judge SC
43.	District Court Judges KC
44.	Youth Advocacy Centre
45.	Associate Professor at University of Wollongong (School of Law)
46.	Professor at University of Wollongong (School of Law)
47.	Associate Professor at University of Technology Sydney (Faculty of Law)
48.	Professor at University of Wollongong (School of Law)
49.	Zig Zag
50.	Queensland Human Rights Commission
51.	Magistrate
52.	Youth Advocacy Centre
53.	Department of Women, Aboriginal and Torres Strait Islander Partnerships and Multiculturalism
54.	Mater Health
55.	Queer and Trans Workers Against Violence (QTWAV)
56.	Office of the Victims' Commissioner
57.	First Nations Justice Office

Appendix D. List of preliminary consultations

58.	Queensland Health
59.	Synapse
60.	Remote Indigenous Women's Shelter Network
61.	Mitakoodi Elders Council

# Appendix E: List of consultations

This list chronologically reflects consultations that occurred after we published our consultation paper.

We only list one stakeholder group per consultation, although there may have been multiple individuals from the same group. For an overview of the overall number of consultees and identified stakeholder categories, see [Chapter 1](#).

Generally, the consultation location indicates where we were when we held the consultation. However, we note a few consultations were held remotely with consultees and some were in a hybrid format, with both in-person and online attendance.

	Stakeholder	Consultation location
1.	Maroochydore Community Justice Group	Maroochydore
2.	Integrated Family and Youth Service	Maroochydore
3.	Laurel Place	Maroochydore
4.	Sunshine Coast Hospital and Health Service	Sunshine Coast
5.	Office of the Director of Public Prosecutions	Maroochydore
6.	Legal Aid Queensland	Maroochydore
7.	South West Hospital and Health Services	Charleville
8.	Lifeline	Charleville
9.	Far West Indigenous Family Violence Service	Charleville
10.	Queensland Aboriginal and Torres Strait Islander Coalition	Charleville
11.	Queensland Police Service	Charleville
12.	Cunnamulla Community Justice Group	Cunnamulla
13.	Strong Families, Strong Communities	Cunnamulla
14.	Lifeline	Cunnamulla
15.	Far West Indigenous Family Violence Service	Cunnamulla

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	Stakeholder	Consultation location
16.	Cunnamulla Aboriginal Corporation for Health	Cunnamulla
17.	Aboriginal and Torres Strait Islander Legal Service	St George
18.	South West Indigenous Corporation	St George
19.	Goondir Health	St George
20.	Goolburri Aboriginal Health Advancement	Roma
21.	Charleville & Western Areas Aboriginal & Torres Strait Islander Community Health	Roma
22.	Lifeline	Roma
23.	Act for Kids	Roma
24.	Drug Arm	Roma
25.	Maranoa Shire Council	Roma
26.	Queensland Corrective Services	Roma
27.	TASC National	Roma
28.	Ferrier and Co	Roma
29.	South West Hospital and Health Services	Roma
30.	Synapse	Brisbane
31.	Yumba Meta Limited	Brisbane
32.	Women's Safety and Victims and Community Support	Brisbane
33.	Small Steps 4 Hannah	Brisbane
34.	Centre for Women	Brisbane

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	Stakeholder	Consultation location
35.	Queensland Centre for Domestic and Family Violence Research (CQU)	Brisbane
36.	Department of Families, Seniors, Disability Services and Child Safety	Brisbane
37.	Act for Kids	Brisbane
38.	Brisbane Rape and Incest Survivors Support Centre	Brisbane
39.	Domestic Violence Action Centre	Brisbane
40.	Queensland Health	Brisbane
41.	Marabisda	Brisbane
42.	Salvation Army	Brisbane
43.	Brisbane Youth Service	Brisbane
44.	DV Connect	Brisbane
45.	Immigrant Women's Support Services	Brisbane
46.	54 Reasons	Brisbane
47.	Cairns Regional Domestic Violence Service	Brisbane
48.	Queensland Sexual Assault Network	Brisbane
49.	Toowoomba Together Incorporated	Brisbane
50.	Uniting Church of Australia	Brisbane
51.	The Red Rose Foundation	Brisbane
52.	Queensland Police Service	Mt Isa
53.	Magistrates Court	Mt Isa

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	Stakeholder	Consultation location
54.	Court Link	Mt Isa
55.	Magistrate	Mt Isa
56.	Murri Court Elders	Mt Isa
57.	North West Hospital and Health Service	Mt Isa
58.	North West Queensland Indigenous Community Social Services	Mt Isa
59.	54 Reasons	Mt Isa
60.	Injilnji Support Services	Mt Isa
61.	Gidgee Healing	Mt Isa
62.	Queensland Corrective Services	Mt Isa
63.	Aboriginal and Torres Strait Islander Legal Service	Mt Isa
64.	Legal Aid Queensland	Mt Isa
65.	Spark Lawyers	Mt Isa
66.	James Cook University Health	Cloncurry
67.	Queensland Police Service	Cloncurry
68.	Gold Coast Hospital and Health Service	Southport
69.	Women's Legal Services Queensland	Southport
70.	Barrister	Southport
71.	DFV Lawyer	Southport
72.	Settlement Services International	Beenleigh
73.	Bangle Foundation	Beenleigh

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	Stakeholder	Consultation location
74.	Legal Aid Queensland	Beenleigh
75.	Office of the Director of Public Prosecutions	Beenleigh
76.	Queensland Police Service	Brisbane
77.	Queensland Police Union	Brisbane
78.	Queensland Corrective Services	Brisbane
79.	Youth Justice Policy and Legislation	Brisbane
80.	Australian Security Industry Association Limited	Brisbane
81.	Asset College	Brisbane
82.	Department of Women, Aboriginal and Torres Strait Islander Partnerships and Multiculturalism	Mackay
83.	Yuwi Aboriginal Corporation	Mackay
84.	Mackay Local Decision Making Body	Mackay
85.	Pioneer Murri Court	Mackay
86.	Binga Birry Justice Group	Mackay
87.	Marabisda	Mackay
88.	Aboriginal Torres Strait Islander Health Service	Mackay
89.	The Neighbourhood Hub	Mackay
90.	Mackay Women's Service	Mackay
91.	The Salvation Army	Mackay
92.	Mackay Hospital and Health Service	Mackay
93.	Mackay Regional Community Legal Centre	Mackay

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	Stakeholder	Consultation location
94.	Legal Aid Queensland	Mackay
95.	Aboriginal and Torres Strait Islander Legal Service	Mackay
96.	Family Relationship Centre (CatholicCare)	Mackay
97.	Queensland Police Service	Mackay
98.	Yoombooda gNujeena Community Justice Group	Rockhampton
99.	Helem Yumba Central Queensland Healing Centre	Rockhampton
100.	Murri Court Elders	Rockhampton
101.	Department of Women, Aboriginal and Torres Strait Islander Partnerships and Multiculturalism	Rockhampton
102.	Rockhampton Local Decision Making Body	Rockhampton
103.	Darumbal Youth Service	Rockhampton
104.	Central Queensland Indigenous Development	Rockhampton
105.	Victim-survivors	Brisbane
106.	Victim-survivors	Brisbane
107.	Queensland Police Service	Rockhampton
108.	Central Queensland Hospital and Health Service	Woorabinda
109.	Woorabinda Community Justice Group	Woorabinda
110.	Queensland Police Service	Woorabinda
111.	Judo Queensland	Brisbane
112.	Krav Maga Training Academy	Brisbane
113.	Queensland Human Rights Commission	Brisbane

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	Stakeholder	Consultation location
114.	Women's Health Information and Referral Service Central Queensland	Rockhampton
115.	Strong Communities	Rockhampton
116.	Central Queensland Health Families	Rockhampton
117.	Catholic Care	Rockhampton
118.	Women's Safety and Violence Prevention	Rockhampton
119.	Act for Kids	Rockhampton
120.	Rockhampton Women's Shelter	Rockhampton
121.	Central Queensland Hospital and Health Service	Rockhampton
122.	Legal Aid Queensland	Rockhampton
123.	Assistant Professor at Bond University (Faculty of Law)	Brisbane
124.	Academic at Queensland University of Technology (Faculty of Law)	Brisbane
125.	Barrister KC	Brisbane
126.	Queensland Law Society	Brisbane
127.	Legal Aid Queensland	Brisbane
128.	First Nations Women's Legal Services Queensland	Brisbane
129.	Barristers	Brisbane
130.	Youth Advocacy Centre	Brisbane
131.	Fisher Dore Lawyers	Brisbane
132.	Aboriginal and Torres Strait Islander Legal Service	Brisbane

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	Stakeholder	Consultation location
133.	Queensland Police Service	Brisbane
134.	Office of the Director of Public Prosecutions	Brisbane
135.	Women Legal Service Queensland	Brisbane
136.	Aboriginal and Torres Strait Islander Legal Service	Brisbane
137.	Bell Criminal Lawyers	Brisbane
138.	Legal Aid Queensland	Brisbane
139.	Care Goondiwindi	Goondiwindi
140.	Goondiwindi Community Justice Group	Goondiwindi
141.	Queensland Police Service	Goondiwindi
142.	Queensland Police Service	Toowoomba
143.	Darling Downs Hospital and Health Service	Toowoomba
144.	Youth Justice	Toowoomba
145.	Carbal Medical Service	Toowoomba
146.	Bouchier Khan	Toowoomba
147.	Barrister	Toowoomba
148.	Micah projects	Brisbane
149.	Office of the Public Advocate	Brisbane
150.	West Moreton Health	Ipswich
151.	Ipswich Community Youth Service	Ipswich
152.	Women's Crisis Support Service	Ipswich

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	Stakeholder	Consultation location
153.	Domestic Violence Action Centre	Ipswich
154.	Mission Australia	Ipswich
155.	Kambu Health	Ipswich
156.	UnitingCare	Ipswich
157.	Murri Court Elders	Ipswich
158.	Legal Aid Queensland	Ipswich
159.	Barrister	Ipswich
160.	Office of the Director of Public Prosecutions	Ipswich
161.	Metro South Hospital and Health Service	Brisbane
162.	Respect Inc	Brisbane
163.	Mater Health Service	Brisbane
164.	Metro Hospital and Health Service	Brisbane
165.	Sunshine Coast Hospital and Health Service	Brisbane
166.	Queensland Health System Policy	Brisbane
167.	Queensland Ambulance Service	Brisbane
168.	Australian Institute of Sport	Brisbane
169.	Clinical Forensic Medical Services (Canberra Health Services)	Brisbane
170.	Warringu Aboriginal and Torres Strait Islander Corporation	Cairns
171.	Yarrabah Women's Shelter	Cairns
172.	Queensland Police Service	Cairns

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	Stakeholder	Consultation location
173.	North Queensland Women's Legal Service	Cairns
174.	Barristers	Cairns
175.	Office of the Director of Public Prosecutions	Cairns
176.	Aboriginal and Torres Strait Islander Legal Service	Cairns
177.	Legal Aid Queensland	Cairns
178.	Queensland Indigenous Family Violence Legal Service	Cairns
179.	Youth Empowered Towards Independence	Cairns
180.	Amaroo Aboriginal & Torres Strait Islander Elders Justice Group	Cairns
181.	Gurriny Yealamucka Health Services Aboriginal Corporation	Yarrabah
182.	Gindaja Treatment and Healing Indigenous Corporation	Yarrabah
183.	Yarrabah Community Justice Group	Yarrabah
184.	Yarrabah Leadership Forum	Yarrabah
185.	DVNQ	Townsville
186.	Palm Island Community Company	Townsville
187.	Townsville Community Justice Group	Townsville
188.	Aboriginal and Torres Strait Islander Legal Service	Townsville
189.	Connelly Suthers	Townsville
190.	Queensland Police Prosecution	Townsville
191.	Lena Passi Women's Shelter	Thursday Island

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	Stakeholder	Consultation location
192.	Tagai State College	Thursday Island
193.	Thursday Island Community Justice Group	Thursday Island
194.	Torres Strait Regional Authority	Thursday Island
195.	Northern Peninsula Area (NPA) Women's Shelter	Bamaga
196.	Northern Peninsula Area (NPA) Justice Services	Bamaga
197.	Queensland Police Services (First Nations Division)	Bamaga
198.	Queensland Indigenous Family Violence Legal Service	Bamaga
199.	Community members	Badu Island
200.	Magistrate	Badu Island
201.	Mura Kosker Sorority	Thursday Island
202.	Academic at University of Queensland (School of Psychology)	Brisbane
203.	Assistant Professor at Bond University (Faculty of Law)	Brisbane
204.	Academic at Griffith University (School of Criminology and Criminal Justice)	Brisbane
205.	Academic at University of Southern Queensland (School of Psychology and Wellbeing)	Brisbane
206.	Professor at University of Southern Queensland (School of Humanities and Communication)	Brisbane
207.	Academic at University of Western Australia (Law School)	Brisbane
208.	Academic at Central Queensland University (College of Law, Criminology & Justice)	Brisbane
209.	Academic at Central Queensland University (School of Nursing and Midwifery and Social Sciences)	Brisbane

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	Stakeholder	Consultation location
210.	Associate Professor at Griffith University (Law School)	Brisbane
211.	Barambah Local Justice Group	Cherbourg
212.	Cherbourg Regional Aboriginal and Islander Community Controlled Health Service	Cherbourg
213.	Sit, Talk and Yarn (STaY) (Darling Downs Indigenous Health)	Cherbourg
214.	Cherbourg Aboriginal Shire Council	Cherbourg
215.	Cherbourg Elders Advisory Group	Cherbourg
216.	Queensland Police Service	Murgon
217.	Rosegold legal	Murgon
218.	South Burnett Contributing to Community	Cherbourg
219.	UnitingCare	Cherbourg
220.	Queensland Police Service	Kingaroy
221.	Darling Downs Health (Cherbourg Hospital)	Murgon
222.	Sit, Talk and Yarn (STaY) (Darling Downs Indigenous Health)	Murgon
223.	Graham House Community Centre	Murgon
224.	South Burnett Contributing to Community	Murgon
225.	Centacare	Murgon
226.	Laurel Place	Murgon
227.	Department of Child Safety, Youth and Women	Murgon
228.	Wide Bay Hospital and Health Service	Bundaberg

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	Stakeholder	Consultation location
229.	Legal Aid Queensland	Bundaberg
230.	Aboriginal and Torres Strait Islander Legal Service	Bundaberg
231.	Edon Place	Bundaberg
232.	Central Queensland Indigenous Development	Hervey Bay
233.	Wide Bay Burnett Community Legal Service	Hervey Bay
234.	Queensland Police Service	Hervey Bay
235.	Refocus	Gympie
236.	Sunshine Coast Hospital and Health Service	Gympie
237.	Gympie Women's Health Centre	Gympie
238.	Jeffery Cuddihy & Joyce	Gympie
239.	Masters & Brown Lawyers	Gympie
240.	Nightingale Law	Gympie
241.	Victim-survivors	Brisbane
242.	Queensland Police Service	Brisbane
243.	General practitioners	Brisbane
244.	Cairns and Hinterland Hospital and Health Service	Brisbane
245.	Torres and Cape Hospital and Health Service	Brisbane
246.	Hub Community Legal	Brisbane
247.	E&H Law	Brisbane
248.	Victim-survivor	Brisbane

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	<b>Stakeholder</b>	<b>Consultation location</b>
249.	Office of the Director of Public Prosecution's Women Safety Justice Taskforce	Brisbane
250.	The Red Rose Foundation	Brisbane
251.	Department of Youth Justice and Victim Support	Brisbane

## Appendix F: List of submissions

1. Name withheld
2. Arya Banerjee
3. Yumba-Meta Limited ('Yumba-Meta')
4. Royal Australian College of General Practitioners Queensland
5. Kimberley Bruce
6. Heather Douglas
7. North Queensland Women's Legal Service
8. Andrew Hemming
9. Gold Coast Centre Against Sexual Violence Inc
10. Confidential
11. Queensland Sexual Assault Network
12. Women's Legal Service
13. Red Rose Foundation
14. Asset College and Australian Security Industry Association Limited
15. Confidential
16. Domestic Violence Action Centre Inc
17. Clinical Excellence Queensland
18. Queensland Ambulance Service
19. Respect Inc
20. Bar Association of Queensland
21. Queensland Indigenous Family Violence Legal Service
22. Office of the Victims' Commissioner ('Victims' Commissioner')
23. Queensland Law Society
24. Legal Aid Queensland (Criminal Law Services)
25. Legal Aid Queensland (Family Law Services)
26. Queensland Corrective Services

# Appendix G: Relevant human rights

- G.1 As a public entity under the Human Rights Act 2019, we must consider human rights when making decisions, and act and make decisions compatible with human rights.<sup>1</sup> Our terms of reference specifically asked us to have regard to ‘the compatibility of recommended reforms with the Human Rights Act 2019 (including balancing the rights of victims and accused persons).’<sup>2</sup> Our third guiding principle (justice) also states that the non-fatal strangulation offence should protect human rights, including rights in criminal proceedings.<sup>3</sup>
- G.2 Table G.1 lists each of the rights that may be engaged by the recommendations made in this review. Following the table, we include a brief explanation of each of these rights.
- G.3 Where a recommendation potentially limits one or more human rights, we include a discussion of human rights in the relevant chapter. A right can be subject to limitations that are reasonable and demonstrably justifiable in the circumstances.<sup>4</sup> In conducting our analysis, we considered:
- the purpose of the limitation and whether it is consistent with a free and democratic society based on dignity, equality and freedom
  - the relationship between the limitation and its purpose and whether the limitation achieves the purpose
  - whether there are any less restrictive and reasonably available ways to achieve the purpose.
- G.4 If a recommendation potentially limited a right, we only made the recommendation if the limit was reasonable and demonstrably justifiable in the circumstances.
- G.5 In developing our recommendations, we considered the rights of victim-survivors, perpetrators and the broader community.

**Table G.1: Rights engaged by our recommendations**

Recommendation	Rights engaged under the Human Rights Act 2019
R1: Public education	Right to recognition and equality before the law Right to life Right to protection from torture and cruel, inhuman or degrading treatment Right to privacy and reputation Right to protection of families and children Right to liberty and security of person Right to education
R2: Reforming s 315A R3: An aggravated form of the offence	Right to recognition and equality before the law Right to life Right to protection from torture and cruel, inhuman or degrading treatment Right to privacy and reputation Right to protection of families and children Right to liberty and security of person Right to a fair hearing Rights in criminal proceedings

Appendix G. Relevant human rights

R4: Sporting carve-out	<p>Right to recognition and equality before the law</p> <p>Right to privacy and reputation</p>
R5: Excluded defences	<p>Right to recognition and equality before the law</p> <p>Right to life</p> <p>Right to protection from torture and cruel, inhuman or degrading treatment</p> <p>Right to freedom of thought, conscience, religion and belief</p> <p>Right to privacy and reputation</p> <p>Right to protection of families and children</p> <p>Cultural rights</p> <p>Cultural rights of Aboriginal peoples and Torres Strait Islander peoples</p> <p>Right to liberty and security of person</p>
R6: Amend offence of sexual assault	<p>Right to recognition and equality before the law</p> <p>Right to life</p> <p>Right to protection from torture and cruel, inhuman or degrading treatment</p> <p>Right to privacy and reputation</p> <p>Right to liberty and security of person</p>
R7: Amend definition of bodily harm	<p>Right to recognition and equality before the law</p> <p>Right to life</p> <p>Right to protection from torture and cruel, inhuman or degrading treatment</p> <p>Right to privacy and reputation</p> <p>Right to liberty and security of person</p>
R8: Amend Penalties and Sentencing Act 1992	<p>Right to recognition and equality before the law</p> <p>Right to life</p> <p>Right to protection from torture and cruel, inhuman or degrading treatment</p> <p>Right to privacy and reputation</p> <p>Right to liberty and security of person</p>
R9: Magistrates Court finalisation	<p>Right to recognition and equality before the law</p> <p>Right to protection from torture and cruel, inhuman or degrading treatment</p> <p>Right to privacy and reputation</p> <p>Cultural rights of Aboriginal peoples and Torres Strait Islander peoples</p> <p>Right to liberty and security of person</p> <p>Right to a fair hearing</p> <p>Rights in criminal proceedings</p>
R10: Fast-track process	<p>Right to recognition and equality before the law</p> <p>Right to protection from torture and cruel, inhuman or degrading treatment</p> <p>Right to privacy and reputation</p> <p>Right to liberty and security of person</p> <p>Right to a fair hearing</p> <p>Rights in criminal proceedings</p>

Appendix G. Relevant human rights

<p>R11: Training for criminal justice personnel</p>	<p>Right to recognition and equality before the law                      Right to life                      Right to protection from torture and cruel, inhuman or degrading treatment                      Right to privacy and reputation                      Right to protection of families and children                      Right to liberty and security of person                      Right to a fair hearing</p>
<p>R12: QPS non-fatal strangulation protocol</p>	<p>Right to recognition and equality before the law                      Right to life                      Right to protection from torture and cruel, inhuman or degrading treatment                      Right to privacy and reputation                      Right to protection of families and children                      Right to liberty and security of person                      Right to a fair hearing                      Rights in criminal proceedings</p>
<p>R13: Training and non-fatal strangulation protocol for health professionals</p>	<p>Right to recognition and equality before the law                      Right to life                      Right to protection from torture and cruel, inhuman or degrading treatment                      Right to privacy and reputation                      Right to protection of families and children                      Right to liberty and security of person</p>
<p>R14: Jury directions</p>	<p>Right to recognition and equality before the law                      Right to life                      Right to protection from torture and cruel, inhuman or degrading treatment                      Right to privacy and reputation                      Right to protection of families and children                      Right to liberty and security of person</p>
<p>R15: Strangulation health centres</p>	<p>Right to recognition and equality before the law                      Right to life                      Right to protection from torture and cruel, inhuman or degrading treatment                      Right to privacy and reputation                      Right to protection of families and children                      Right to liberty and security of person                      Right to health</p>
<p>R16: Victim advocate service</p>	<p>Right to recognition and equality before the law                      Right to life                      Right to protection from torture and cruel, inhuman or degrading treatment                      Right to privacy and reputation                      Right to protection of families and children                      Cultural rights                      Cultural rights of Aboriginal peoples and Torres Strait Islander peoples</p>

<p>R17: Restorative justice</p>	<p>Right to recognition and equality before the law                  Right to protection from torture and cruel, inhuman or degrading treatment                  Right to privacy and reputation                  Right to protection of families and children                  Cultural rights                  Cultural rights of Aboriginal peoples and Torres Strait Islander peoples                  Right to a fair hearing                  Rights in criminal proceedings</p>
<p>R18(a): Review 'relevant relationship'                  R18(b): Improve data collection                  R18(c): Monitor and evaluate reforms</p>	<p>Right to recognition and equality before the law                  Right to privacy and reputation                  Right to protection of families and children                  Cultural rights of Aboriginal peoples and Torres Strait Islander peoples</p>

## Right to recognition and equality before the law

- G.6 Section 15 of the Human Rights Act 2019 provides that every person is equal before the law and is entitled to equal and effective protection of the law without discrimination.
- G.7 Equality before the law is a procedural right that relates to 'the general application, administration and enforcement of the law and the equal treatment of all persons who come before the law, not its content'.<sup>5</sup> Every person has equal dignity and equal rights by virtue of being human and should be treated the same regardless of their personal characteristics.<sup>6</sup>
- G.8 The right to equality includes both formal and substantive equality. That is, equality of treatment and equality of results. It generally prohibits governments from making discriminatory laws and may require procedural adjustments be made to achieve equality.<sup>7</sup> This includes reasonable adjustments to policies and procedures to establish genuine equality for people whose situations are different and who may be disproportionately impacted.<sup>8</sup>
- G.9 The use of the word 'discrimination' is broad. It includes, but is not limited to, the meaning of 'direct or indirect discrimination' in the Anti-Discrimination Act 1991 which prohibits discrimination in relation to an extensive list of attributes, including sex, age, race and disability.<sup>9</sup>

## Right to life

- G.10 Section 16 of the Human Rights Act 2019 provides that every person has the right to life and the right not to be arbitrarily deprived of life. An 'arbitrary' deprivation of life is one that is unreasonable or disproportionate.<sup>10</sup> Not every act that results in a death will be arbitrary.<sup>11</sup>
- G.11 Section 16 imposes:<sup>12</sup>
  - positive obligations to implement 'laws that prohibit arbitrary killings, and other forms of preventable death such as malnutrition and infant mortality'
  - negative obligations to 'refrain from conduct that causes an arbitrary deprivation of life'.
- G.12 Part of the positive obligation on governments is to 'take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals

from enjoying their right to life with dignity'.<sup>13</sup> This can include high levels of criminal violence.<sup>14</sup> Governments should work to uphold the right to life by implementing campaigns that raise awareness of gender-based violence and harmful practices.<sup>15</sup>

## Right to protection from torture and cruel, inhuman or degrading treatment

- G.13 Section 17 of the Human Rights Act 2019 protects people from torture and cruel, inhuman or degrading treatment or punishment.
- G.14 This right seeks to protect people from acts that may cause physical or mental harm.<sup>16</sup> The Government should prevent and minimise the risk of deliberate acts that may cause such harm, even when the acts are committed in a private setting.<sup>17</sup>
- G.15 Torture is any act which 'intentionally inflicts severe physical or mental pain or suffering on a person for a prohibited reason', such as coercion.<sup>18</sup> Treatment less severe than torture but which seriously denies a person's most basic needs is generally regarded as cruel, inhuman or degrading treatment or punishment.<sup>19</sup>
- G.16 Whether conduct amounts to torture or other prohibited treatment is a question of degree and will depend on the particular circumstances, including the victim-survivor's characteristics.<sup>20</sup> It will also depend on the nature, purpose and severity of the treatment.<sup>21</sup> For example, the use of force by law enforcement may constitute cruel or inhuman treatment 'if it is grossly disproportionate to the purpose to be achieved and results in pain or suffering meeting a certain threshold'.<sup>22</sup>
- G.17 When protecting this right, governments should prioritise protecting groups who are more vulnerable to experiencing torture.<sup>23</sup> This includes taking a gendered approach and protecting women from all kinds of violence, including violence that occurs within a domestic setting.<sup>24</sup> International experts have gone as far as to suggest that governments who fail to punish private actors who commit acts of torture 'bear responsibility and ... should be considered as ... complicit or otherwise responsible'.<sup>25</sup>

## Right to freedom of thought, conscience, religion and belief

- G.18 Section 20 of the Human Rights Act 2019 protects the right to freedom of thought, conscience, religion or belief. This includes the right to hold a particular belief and to demonstrate it in particular ways, such as through worship, observance, practice or teaching.
- G.19 A person's right to demonstrate their religion or belief can be limited, including where the belief is outwardly practiced or observed in a way that negatively impacts others and is unreasonable and not demonstrably justifiable.<sup>26</sup> 'Manifestation of a religious belief, for instance, which involved subjecting others to torture or inhuman punishment would not qualify for protection.'<sup>27</sup>

## Right to privacy and reputation

- G.20 Section 25 of the Human Rights Act 2019 protects a person's right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. This right is broad in scope, covering a person's general private life, including their physical and mental integrity, thought and conscience, personal information, identity (including appearance) and home life.<sup>28</sup>

- G.21 The right to privacy is primarily about personal autonomy and human dignity.<sup>29</sup> Privacy means that people should have ‘an area of autonomous development’ and a ‘private sphere’ that is free from unwanted intervention from government or others.<sup>30</sup> The scope of the right is relative and depends on the context of the society in which it operates.<sup>31</sup> It may also depend on whether there is a ‘reasonable expectation of privacy’.<sup>32</sup>
- G.22 It is suggested that the right to privacy includes a person’s right to express their sexuality and that sexual conduct involving consenting adults in private should not be subject to arbitrary interference.<sup>33</sup>

## Right to protection of families and children

- G.23 Section 26 of the Human Rights Act 2019 provides protections to families as the fundamental group unit of society. The term ‘family’ is defined broadly to encompass different cultural traditions and understandings of family, including those with or without children.<sup>34</sup>
- G.24 The right also recognises the particular vulnerability of children and affords them special protections.<sup>35</sup> Where the right to the protection of families conflicts with the right to the protection of children, the child’s rights are paramount and will prevail.<sup>36</sup>
- G.25 The right to protection of families and children is supported by the right to privacy in s 25 of the Human Rights Act 2019.
- G.26 This right is relevant to laws, policies, acts or decisions that relate to DFV.<sup>37</sup> For example, the right has been raised in cases where children have been removed from their family in circumstances of abuse and neglect, and where children have been called as witnesses in cases of alleged DFV.<sup>38</sup> It is understood to impose ‘a comprehensive duty on governments to adopt special measures to protect families and children’.<sup>39</sup> This may include funding community organisations to provide support to victim-survivors of DFV.<sup>40</sup>

## Cultural rights

- G.27 Section 27 of the Human Rights Act 2019 states that all people have a right to enjoy their culture, declare and practice their religion and use their language with other people of that background.<sup>41</sup> The right includes all people with ‘a particular cultural, religious, racial or linguistic background’ and is not limited to minority groups.<sup>42</sup>
- G.28 It protects individual rights as well as rights exercised in community with others to protect the ‘survival and continued development of cultural heritage’.<sup>43</sup> The concept of ‘culture’ has been interpreted broadly and is said to include things such as traditional dress, language, relationship with land and a right to participate in decision-making that affects a group of people.<sup>44</sup>

## Cultural rights of Aboriginal peoples and Torres Strait Islander peoples

- G.29 Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights. This includes rights to enjoy, maintain, control, protect and develop their identity, cultural heritage, language and kinship ties. It also includes the right not to be subjected to forced assimilation or destruction of their culture. Section 28 of the Human Rights Act 2019 protects these rights.
- G.30 Generally, this right seeks to ensure the continued survival and development of culture and may extend to engaging with the justice system, such as the court in which a person may have

their matter heard.<sup>45</sup> For example, options like the Murri Court may assist Aboriginal peoples and Torres Strait Islander peoples in the criminal justice system by having their identity and culture considered after being charged with criminal offences.<sup>46</sup>

## Right to liberty and security of person

- G.31 Section 29 of the Human Rights Act 2019 protects a person's right to liberty and security of person. This right protects people from arbitrary arrest or detention or any other unlawful deprivation of liberty. Certain other rights are provided to a person who is arrested or detained, including the right to be brought before a court without unreasonable delay.
- G.32 This right has been described as a 'fundamental value of freedom', the purpose of which 'is to protect people from unlawful and arbitrary interference with their physical liberty'.<sup>47</sup> It also extends to protect a person from injury or harm to their mind and applies to perpetrators, victim-survivors and the wider community.
- G.33 This right may require Government to take positive steps to protect an individual's security from known threats, including protecting against interference by third parties.<sup>48</sup>

## Right to a fair hearing

- G.34 Section 31 of the Human Rights Act 2019 provides that a person charged with a criminal offence or who is a party to a civil proceeding has the right to have their matter decided by a competent, independent and impartial court or tribunal after a fair and public hearing. A court or tribunal may exclude members of media organisations, other persons or the general public from all or part of a hearing if it is deemed to be in the public interest or in the interests of justice. All judgments or decisions made by a court or tribunal must be publicly available.
- G.35 This right relates to procedural fairness and not the perceived substantive fairness of a decision or judgement.<sup>49</sup>
- G.36 What is considered 'fair' will depend on the circumstances of a particular case, including consideration of what is in the public interest. Factors that are relevant to determining fairness include the nature and complexity of the issues involved, the competing demands on time and resources of the court or tribunal, and the potential consequences of an adverse decision.<sup>50</sup> While limitations on certain aspects of a fair hearing may be considered reasonable, the hearing as a whole must remain fair.<sup>51</sup>

## Rights in criminal proceedings

- G.37 Section 32 of the Human Rights Act 2019 is complementary to s 31 and protects several rights and minimum guarantees in criminal proceedings. This includes the fundamental right to be presumed innocent until proven guilty according to law.<sup>52</sup> A reversal of the onus of proof will engage this right but can be considered reasonable and demonstrably justifiable in some circumstances.<sup>53</sup>
- G.38 A person charged with a criminal offence is also entitled to be promptly informed of the nature and reasons for the charge, as well as to access a lawyer and have adequate time and facilities to prepare their defence. What would be considered 'adequate time' will depend on the circumstances of the case and their legal representation.<sup>54</sup> Further, the person charged is also entitled to examine witnesses against them and to have witnesses give evidence on their behalf.

## Right to education

- G.39 Section 36 of the Human Rights Act 2019 protects every child's right to access primary and secondary education that is appropriate to the child's needs. It also states that every person has the right to access, based on their abilities, further vocational education and training that is equally accessible to all.
- G.40 This right relates to the 'aspects of education service delivery for which the State is responsible'.<sup>55</sup> The right is limited to 'access' to education and requires the Government to ensure it is available to all students and is of a minimum standard that is appropriate to their needs.<sup>56</sup>
- G.41 International law has interpreted economic, social and cultural rights, such as the right to education, as rights that are not immediately realised but progressively realised, subject to resource availability.<sup>57</sup> This may be relevant when considering whether limits to this right are reasonable and demonstrably justifiable.

## Right to health

- G.42 Section 37 of the Human Rights Act 2019 protects every person's right to access health services without discrimination. It also states that a person must not be refused emergency medical treatment that is immediately necessary to save the person's life or to prevent serious impairment to the person. While not defined, 'health services' is likely to include 'the range of primary and secondary physical and mental health public services in Queensland'.<sup>58</sup>
- G.43 The right is understood to be narrow in scope. It does not include general resources necessary to maintain a person's health,<sup>59</sup> nor does it extend to the underlying determinants of health, such as food, water or housing.<sup>60</sup> Rather, the right explicitly relates to access to health services being without discrimination. It does not require certain healthcare to be provided but instead 'prohibits the refusal of it in certain circumstances'.<sup>61</sup> What is considered 'emergency medical treatment' is unclear, however the wording in s 37 suggests a narrow approach to interpretation will be considered appropriate.<sup>62</sup>
- G.44 The availability of government resources will be relevant when considering whether limits to this right are reasonable and demonstrably justifiable.

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