

# Parliament of Victoria

## Crimes Amendment (Non-fatal Strangulation) Bill 2023

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Bill Brief

Parliamentary Library & Information Service

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## Bill information

**Introduced:** 18 October 2023

**House:** Legislative Assembly

**Second Reading:** 19 October 2023

**Commencement:** This Act comes into operation on a day or days to be proclaimed. If a provision of this Act does not come into operation before 13 October 2024, it comes into operation on that day.

Links to key documents including the Bill, Explanatory Memorandum, Statement of Compatibility and Second reading Speech can be found at the [Library's Infoclink page for this Bill](#).

For further information on the progress of this Bill, please visit the [Victorian Legislation and Parliamentary documents website](#).

## Executive summary

This Bill Brief provides an overview of the Crimes Amendment (Non-fatal Strangulation) Bill 2023, including the wider context in which it was introduced, the proposed new offences of non-fatal strangulation, support for and against creating these types of offences and a jurisdictional comparison.

### What is strangulation?

Strangulation involves compression of the neck that stops or hinders a person's ability to breathe and/or the flow of blood to the brain. The act can also be referred to as choking, suffocation and grabbing the throat, and may involve the use of hands, limbs and/or ligatures.

Strangulation during sexual activity is reportedly prevalent among younger people, though many are unaware of the health risks involved. Strangulation is also a form of intimate partner violence used by perpetrators in coercive and controlling ways, and is a 'red flag' for future harm and death. A person who has been strangled by their intimate partner is six or seven times more likely than other victim-survivors of family violence to be killed, or to be very seriously harmed, in the weeks or months that follow.

### Background to the Bill

The *Family Violence Protection Act 2008* is the principal legislation on family violence and intimate partner violence in Victoria. It sets out the definitions of 'family violence' and 'family member' that inform sector responses in Victoria. While strangulation does not appear explicitly in this Act, some suggest it is captured under the definition of family violence already provided.

Following the Victorian Royal Commission into Family Violence in 2016—which touched upon strangulation but did not make any specific recommendations—the Family Violence Multi-Agency Risk Assessment and Management Framework was developed, identifying strangulation or choking as a serious risk factor and a common method used by perpetrators to kill victims.

The coronial inquest into the death of Joy Rowley in 2018 also considered strangulation and observed that a standalone offence could help to ensure the act is acknowledged for the risk it poses to victims. Following the inquest, Victoria Police voiced its support for a standalone offence, and the Liberal-National opposition committed to introducing one if elected. The Andrews government considered the issue as part of its ongoing family violence reform and in its 2019 Community Safety Statement committed to introduce a standalone offence.

### The Bill

The Crimes Amendment (Non-fatal Strangulation) Bill 2023 was introduced in October 2023 and seeks to insert two new non-fatal strangulation offences into the *Crimes Act 1958*. The Bill adopts the definitions of 'family member' and 'family violence' as given in the Family Violence Protection Act and makes use of an affirmative consent model.

The first offence, non-fatal strangulation intentionally causing injury, attracts a ten-year imprisonment maximum penalty. The second offence, non-fatal strangulation, attracts a five-year imprisonment maximum penalty, and a consent defence is available if the conduct constituting the offence takes place within the context of sexual activity. The Bill also seeks to make consequential amendments to the Family Violence Protection Act to recognise choking, strangling or suffocating of a family member (or threatening to do so) as a behaviour constituting family violence for the purposes of family violence intervention orders and safety notices, consideration of bail applications and protection for witnesses giving evidence in non-fatal strangulation proceedings.

## Responses to the Bill

Several groups have welcomed the Bill's introduction or have previously voiced support for a non-fatal strangulation offence. This includes Joy Rowley's children, Victoria Police, Safe and Equal, Emma House Domestic Violence Services and Safe Steps Family Violence Response Centre, among others.

Some groups, including researchers at the Monash Gender and Family Violence Prevention Centre and the Women's Legal Service Victoria, have questioned whether standalone strangulation offences actually improve victims' safety and point to systemic failures to make use of existing laws, policies and procedures. Others have highlighted research showing that imprisonment may not be the best method of rehabilitating an offender, and that the use of criminalisation as a strategy to respond to domestic violence is likely to have a disproportionate impact on Aboriginal and/or Torres Strait Islander peoples.

General feedback on non-fatal strangulation offences includes questions of whether a consent defence should be available at all and whether it's useful for standalone offences to be limited to intimate partners uniquely.

## Other jurisdictions

Victoria is the last Australian jurisdiction to introduce a standalone non-fatal strangulation offence. Legislation has been introduced across the country, starting with New South Wales in 2014 (with reform in 2018), the ACT in 2015, Queensland in 2016, South Australia, Western Australia and the Northern Territory in 2020, and Tasmania in 2022. Different types of offences exist, and penalties range from two years' imprisonment to 25 years' imprisonment, depending on the circumstances.

Several international jurisdictions have also introduced offences for non-fatal strangulation and non-fatal suffocation, among which are New Zealand (2018), Canada (2019), England and Wales (2021), Northern Ireland (2022), the Republic of Ireland (2023) and the United States (various).

**Content warning: This Brief contains information that some readers may find distressing as it refers to family, domestic and sexual violence.**

*If you or anyone you know needs support, these services can help:*

- *The national domestic, family and sexual violence counselling service: **1800RESPECT** (1800 737 732)*
- *Lifeline: **13 11 14***
- *Beyond Blue: **1300 224 636***
- *No to Violence—Men's Referral Service: **1300 766 491**.*

# Introduction

This Bill Brief provides an overview of the Crimes Amendment (Non-fatal Strangulation) Bill 2023 ('the Bill'), which establishes two offences for non-fatal strangulation. It offers some background to the Bill's introduction, considers the second reading speech delivered by the Minister and looks at the Bill in greater detail.

It also considers the arguments in favour of and against the introduction of a standalone offence for non-fatal strangulation, including areas for further research, and compares similar offences in Australian and selected overseas jurisdictions.

*Please note this paper should not be considered a complete guide to the subject.*

## What is strangulation?

Strangulation means 'stopping or hindering a person's breath or blood flow through neck compression'.<sup>1</sup> Other terms used to describe the action include 'choking', 'suffocation' and 'grabbing the throat'.<sup>2</sup> It may involve the use of one or both hands, limbs (such as forearms), and/or ligatures (such as a belt).<sup>3</sup>

Strangulation during sexual activity has reportedly been recently 'mainstreamed', especially among younger people.<sup>4</sup> A recent international study indicated that the behaviour is 'prevalent among young adults, disproportionately affects women, often begins in adolescence, and is frequently first learned about through pornography, social media, partners, and friends'.<sup>5</sup> Many young people remain unaware that medical experts believe there is no safe way to perform the act.<sup>6</sup> Sexual safety educator Maree Crabbe explains that 'There's a huge chasm between what young people are doing and what medical experts are saying'.<sup>7</sup>

In addition to taking place within the context of sexual activity, University of Melbourne law professor Heather Douglas highlights that strangulation is also a 'common and gendered' form of violence—reported by between 25 and 60 per cent of victim-survivors—and is recognised as a form of coercive control.<sup>8</sup> An incident of non-fatal strangulation significantly increases the likelihood of further harm in an intimate relationship and is a risk factor for the homicide of women.<sup>9</sup> As such, an act of strangulation is considered a 'red flag' within the context of intimate partner relationships and features in risk assessment tools used by those working in domestic violence prevention.<sup>10</sup>

A study published in the *Journal of Emergency Medicine* in 2008 revealed that a person who has been strangled by their intimate partner is six or seven times more likely than other

<sup>1</sup> H. Douglas (2023) 'A new bill would bring Victoria's strangulation laws in line with other states – but consent complicates matters', *The Conversation*, 18 October.

<sup>2</sup> Cited in K. Fitz-Gibbon, J. McCulloch, J. Maher & S. Walklate (2018) *Research Brief: Strangulation, risk and intimate partner violence*, Clayton, Monash Gender and Family Violence Prevention Centre, p. 1.

<sup>3</sup> D. Herbenick et al. (2022) 'Frequency, method, intensity, and health sequelae of sexual choking among U.S. undergraduate and graduate students', *Archives of Sexual Behaviour*, 51(6), July.

<sup>4</sup> W. Tuohy (2022) 'Strangulation during sex has been 'mainstreamed' but risks brain damage, experts warn', *Sydney Morning Herald*, 3 December.

<sup>5</sup> Herbenick et al. (2022) op. cit.

<sup>6</sup> See, for example: Victorian Institute of Forensic Medicine (VIFM) (undated) 'Non-fatal strangulation: It's never OK [video]', VIFM website, accessed 26 October 2023; C. Contos (2022) 'Sexual choking is now so common that many young people don't think it even requires consent. That's a problem', *The Guardian*, 8 December.

<sup>7</sup> Cited in Tuohy (2022) op. cit.

<sup>8</sup> Douglas (2023) op. cit.; for further information on coercive control, please see the Parliamentary Library publication, *What is coercive control?* (2022).

<sup>9</sup> Fitz-Gibbon et al. (2018) *Research Brief: Strangulation, risk and intimate partner violence*, op. cit., p. 1; N. Glass, K. Laughon, J. Campbell, C. R. Block, G. Hanson, P. W. Sharps & E. Taliaferro (2008) 'Non-fatal strangulation is an important risk factor for homicide of women', *Journal of Emergency Medicine*, 35(3).

<sup>10</sup> H. Douglas & R. Fitzgerald (2014) 'Strangulation, Domestic Violence and the Legal Response', *Sydney Law Review*, 36(2), p. 231.

victim-survivors of family violence to be killed or very seriously harmed in the weeks or months that follow.<sup>11</sup> Researchers at the Monash Gender and Family Violence Prevention Centre indicate that strangulation 'is a leading cause of death among women killed by a current or former male intimate partner'.<sup>12</sup> The Centre also reported that over ten years in Australia, an act of strangulation/suffocation was identified as the cause of death in male-perpetrated intimate partner homicides 14–16 per cent of the time.<sup>13</sup>

For those who experience non-fatal strangulation, ongoing harms can include brain injury, memory loss and delayed stroke, as well as wide-ranging psychological and emotional impacts on health and wellbeing.<sup>14</sup> Victim-survivors often report loss of consciousness, paralysis, loss of sensation, changes in vision, anxiety and PTSD; some have experienced miscarriage post-strangulation, while others have reported airway obstruction and long-term vocal damage/dysfunction due to swelling of the neck tissues.<sup>15</sup>

A 2021 study from the Australian Institute of Criminology looking at the experiences of coercive control among Australian women indicated that, of those women who experienced physical forms of violence, 27 per cent of respondents reported that they had been strangled or choked by their partner or had been grabbed around the throat.<sup>16</sup> However, it is believed that only a small number of victim-survivors present for medical attention after a non-fatal strangulation event, meaning that the true prevalence and rates of injury are unknown.<sup>17</sup> Identifying those who have been severely injured is also made more challenging by the fact that victim-survivors may have no visible external signs of strangulation, and/or may have limited injuries.<sup>18</sup>

Though offences for strangulation exist in other Australian jurisdictions, there is currently no standalone offence in Victoria. As a result, a perpetrator is often charged with assault—which not only obscures the act's frequency, but also 'does not reflect the seriousness of the offence'.<sup>19</sup>

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<sup>11</sup> Glass et al. (2008) op. cit.; Douglas (2023) op. cit.

<sup>12</sup> Fitz-Gibbon et al. (2018) *Research Brief: Strangulation, risk and intimate partner violence*, op. cit., p. 1.

<sup>13</sup> *ibid.*

<sup>14</sup> Tuohy (2022) op. cit.

<sup>15</sup> Douglas & Fitzgerald (2014) op. cit., pp. 232–233.

<sup>16</sup> H. Boxall & A. Morgan (2021) *Experiences of coercive control among Australian women*, Statistical Bulletin 30, Canberra, Australian Institute of Criminology, p. 9.

<sup>17</sup> J. De Boos (2019) 'Review article: Non-fatal strangulation: Hidden injuries, hidden risks', *Emergency Medicine Australasia*, 31(3).

<sup>18</sup> *ibid.*

<sup>19</sup> Douglas (2023) op. cit.

# 1 | Background

## Family Violence Protection Act 2008 (Vic)

The *Family Violence Protection Act 2008* ('the FVP Act') is the principal legislation in Victoria on family violence and domestic violence (also known as intimate partner violence). The FVP Act came to fruition following the then-Attorney-General's referral of the *Crimes (Family Violence) Act 1987* to the Victorian Law Reform Commission (VLRC) in November 2002.<sup>20</sup>

The VLRC was tasked with reviewing and reporting on the laws and systems relating to family violence in the state, and released its final report in March 2006.<sup>21</sup> The report made a number of key recommendations, including that the definition of 'family violence' be broad enough to cover physical and non-physical forms of violence (including emotional and economic abuse), and that a broad definition of 'family' also be implemented in recognition of the modern notions of family, including carers of dependents.<sup>22</sup>

Strangulation does not specifically appear in the FVP Act.

### Definitions

The FVP Act defines '**family violence**' as:

- (a) behaviour by a person towards a family member of that person if that behaviour—
  - (i) is physically or sexually abusive; or
  - (ii) is emotionally or psychologically abusive; or
  - (iii) is economically abusive; or
  - (iv) is threatening; or
  - (v) is coercive; or
  - (vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or
- (b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).<sup>23</sup>

The FVP Act defines '**family member**', in relation to a relevant person, as:

- (a) a person who is, or has been, the relevant person's spouse or domestic partner; or
- (b) a person who has, or has had, an intimate personal relationship with the relevant person; or
- (c) a person who is, or has been, a relative of the relevant person; or
- (d) a child who normally or regularly resides with the relevant person or has previously resided with the relevant person on a normal or regular basis; or
- (e) a child of a person who has, or has had, an intimate personal relationship with the relevant person.<sup>24</sup>

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<sup>20</sup> R. Hulls, Attorney-General (2008) '[Second reading speech: Family Violence Protection Bill 2008](#)', *Debates*, Victoria, Legislative Assembly, 26 June, p. 2644.

<sup>21</sup> Victorian Law Reform Commission (VLRC) (undated) '[Family Violence](#)', VLRC website.

<sup>22</sup> *ibid.*

<sup>23</sup> [Family Violence Protection Act 2008](#), s 5. For further information on this Act, and on family and domestic violence legislation in Australia more generally, please see the Parliamentary Library publication, [Chronology of current family and domestic violence legislation in Australia](#) (2021).

<sup>24</sup> [Family Violence Protection Act 2008](#), s 8(1).

The Act also acknowledges that a relationship may be considered an intimate personal relationship whether or not it is sexual in nature, and that ‘family member’ also includes ‘any other person whom the relevant person regards or regarded as being like a family member if it is or was reasonable to regard the other person as being like a family member having regard to the circumstances of the relationship’.<sup>25</sup>

## Royal Commission into Family Violence (2015–16)

The Victorian Royal Commission into Family Violence was established in 2015 and was tasked with inquiring into and reporting on how the state’s response to family violence could be improved—including through practical recommendations to stop family violence.<sup>26</sup>

In March 2016, the royal commission provided its final report and 227 recommendations to the Victorian Government.<sup>27</sup> The report touched upon the topic of strangulation, including in a discussion of family violence risk factors, acknowledging that male perpetrators commonly use strangulation or choking to kill female victims.<sup>28</sup> The commission considered evidence showing that police did not always recognise strangulation as a danger sign when completing an L17 form,<sup>29</sup> which is the Risk Assessment and Management Report they are required to complete after they’ve attended a family violence incident.<sup>30</sup> The commission also received testimonies from victim-survivors about their experience of family violence, including strangulation/choking.<sup>31</sup>

Additionally, the royal commission heard from Professor Heather Douglas who—informed by her research showing strangulation within the context of intimate partner relationships often led to ‘serious abuse and death’—suggested that the commission should consider recommending the introduction of a specific offence of strangulation.<sup>32</sup>

## MARAM Framework (2017–18)

The Family Violence Multi-Agency Risk Assessment and Management (MARAM) Framework was established by the *Family Violence Protection Amendment (Information Sharing) Act 2017* (the ‘Amendment Act’). The purpose of this Amendment Act was to ‘enable specified entities to share family violence information in a timely and effective manner such that it prevents or reduces family violence’, and to ‘provide for a framework for achieving consistency in family violence risk assessment and family violence risk management’.<sup>33</sup> Most provisions of the Amendment Act came into operation in 2018.<sup>34</sup>

The MARAM Framework was developed in response to the first three recommendations from the Royal Commission into Family Violence. It guides services in assessing and managing the risk of family violence and is embedded in law and policy to provide ‘a system-wide

<sup>25</sup> *ibid.*, s 8(2)–(3).

<sup>26</sup> A. Chernov, Governor of Victoria (2015) ‘Terms of Reference: Royal Commission into Family violence’, Royal Commission into Family Violence website.

<sup>27</sup> Victorian Government (2023) ‘About the Royal Commission into Family Violence’, Victorian Government website.

<sup>28</sup> State of Victoria (2016) *Royal Commission into Family Violence: Report and recommendations*, Volume I, Parliamentary Paper no. 132, March, p. 103.

<sup>29</sup> State of Victoria (2016) *Royal Commission into Family Violence: Report and recommendations*, Volume III, Parliamentary Paper no. 132, March, p. 15.

<sup>30</sup> Crime Statistics Agency (CSA) (2022) ‘Explanatory notes and definitions’, CSA website.

<sup>31</sup> State of Victoria (2016) *Royal Commission into Family Violence: Report and recommendations*, Volume I, *op. cit.*, see for example pp. 38, 254.

<sup>32</sup> State of Victoria (2016) *Royal Commission into Family Violence: Report and recommendations*, Volume III, *op. cit.*, p. 212.

<sup>33</sup> *Family Violence Protection Amendment (Information Sharing) Act 2017* (Vic), s 1; Victorian Government (2023) ‘Family Violence Multi-Agency Risk Assessment and Management Framework’, Victorian Government website.

<sup>34</sup> Victorian Government (2018) *Victorian Government Gazette*, no. s 40, p. 1.

approach to and shared responsibility for family violence risk'.<sup>35</sup> According to the MARAM *Foundation Knowledge Guide*—which provides guidance for professionals working with child or adult victim-survivors, and adults using family violence—there are a range of risk factors identified that reflect the current and emerging evidence base around family violence risk.<sup>36</sup>

Under these guidelines, strangulation or choking is considered a serious risk factor and is recognised as a 'common method used by perpetrators to kill victims ... linked to a general increased lethality risk to a current or former partner'.<sup>37</sup> The knowledge guide also draws attention to the use of choking/strangulation as a coercive and controlling behaviour.<sup>38</sup>

## Coronial inquest into the death of Joy Maree Rowley (2018)

In 2011, Joy Maree Rowley—a mother, friend and active member of her local community in Rye—was strangled/suffocated to death by a man who had previously been an intimate partner. Their relationship conformed to the definition of 'family member' in the FVP Act, and Ms Rowley's experience fell under the Act's definition of 'family violence', due to the physical, emotional and psychological abuse she was subjected to by her perpetrator leading up to and at the time of her murder.<sup>39</sup>

Ms Rowley's death was notified to the Court, at which time the then-State Coroner determined it to be a 'reportable death' and commenced a coronial investigation. In 2015, the investigation determined that an inquest was not required.<sup>40</sup> However, following a formal request from Ms Rowley's children and in light of the release of the Royal Commission into Family Violence's report and recommendations, in December 2017 the new State Coroner Judge Sarah Hinchey communicated her intention to hold an inquest into the matter.<sup>41</sup>

The inquest heard that there were at least eight times in the lead-up to Ms Rowley's murder by strangulation that Victoria Police could have acted to change the course of events leading to her death.<sup>42</sup> In the inquest report and findings published in July 2018, Coroner Hinchey called for Victoria Police to conduct systemic reviews of all cases of family-violence-related deaths where there was a known history of family violence between the deceased person and the perpetrator.<sup>43</sup>

While Coroner Hinchey did not directly recommend that an offence for strangulation be introduced, she made the comment that:

The introduction of a stand-alone offence for strangulation, suffocation or choking in Victoria may significantly help to ensure strangulation is treated commensurate with the risk it poses to victims, and remove the need to prove particular bodily harm or intent to cause injury. Such an offence will more effectively hold perpetrators to account for serious offending. Further, the new offence may build further awareness of the dangers and potential lethality of strangulation among police members, courts and community services practitioners.<sup>44</sup>

<sup>35</sup> Victorian Government (2023) '[Frequently asked questions about information sharing and MARAM: What is MARAM?](#)', Victorian Government website.

<sup>36</sup> Family Safety Victoria (2021) *Maram Practice Guides: Foundation Knowledge Guide*, Melbourne, Victorian Government, p. 27.

<sup>37</sup> *ibid.*, p. 29.

<sup>38</sup> *ibid.*, p. 27.

<sup>39</sup> Judge S. Hinchey, State Coroner of Victoria (2018) *Finding into death with inquest: Joy Maree Rowley*, Southbank, Coroners Court of Victoria, p. 14.

<sup>40</sup> *ibid.*, p. 17.

<sup>41</sup> *ibid.*, pp. 16–19.

<sup>42</sup> T. Mills (2018) '[Could police have saved Joy from being strangled to death?](#)', *The Age*, 21 May.

<sup>43</sup> Hinchey (2018) *op. cit.*, p. 37; S. Farnsworth (2018) '[Joy Rowley's murder leads coroner to call for widespread review of family violence-related deaths](#)', *ABC News*, 2 August.

<sup>44</sup> Hinchey (2018) *op. cit.*, p. 35.

In August 2018, the month following the Coroner’s finding with inquest, the Liberal-National opposition announced that it would seek to implement non-fatal strangulation laws carrying a ten-year maximum jail term if it were successfully elected in November.<sup>45</sup> Shadow Minister for the Prevention of Family Violence Georgie Crozier stated, ‘We need measures that will save women’s lives. A stand-alone offence will send a strong message to perpetrators that controlling, violent behaviour is not only unacceptable but will feel the full force of the law’.<sup>46</sup>

In its response to the coronial inquest, the Victorian Government noted in September 2018 the report’s reference to a standalone offence of strangulation, with then-Premier Daniel Andrews indicating that ‘This issue will be given further consideration as part of our government’s ongoing commitment to family violence reform’.<sup>47</sup> The Premier also acknowledged Victoria Police’s ongoing work in the space.<sup>48</sup>

In Victoria Police’s response to the State Coroner’s recommendations in November 2018, then-Chief Commissioner Graham Ashton highlighted that Victoria Police’s Assistant Commissioner, Family Violence Command, Dean McWhirter, had ‘proposed a stand-alone indictable offence for choking, suffocation or strangulation’.<sup>49</sup> Commissioner Ashton also confirmed Victoria Police’s commitment to implementing the Coroner’s recommendation relating to reviews of family-violence-related deaths.<sup>50</sup>

## Community Safety Statement—Government commitment to introduce strangulation offence (2019)

In June 2019, the Victorian Government released its third Community Safety Statement, which included a commitment to implementing a standalone offence of strangulation in 2019–20.<sup>51</sup> The statement acknowledged that strangulation was the leading cause of death among women killed by a current or former intimate partner; further, the statement recognises that strangulation is rarely an isolated event and ‘often reveals an ongoing and escalating pattern of coercive and controlling behaviour’.<sup>52</sup>

In a media release following the statement’s publication, the then-Minister for Police and Emergency Services, the Hon. Lisa Neville, indicated that a standalone strangulation offence would ‘address the seriousness of this type of violence in all contexts and better protect victim survivors of family violence’.<sup>53</sup>

The Community Safety Statement also indicated that, although strangulation is most common within the context of family violence, it also occurs outside this context and is a type of violence often perpetrated in sexual assaults. For this reason, the statement highlighted the government’s intention that ‘The new offence will therefore also apply to acts outside of the family violence context’.<sup>54</sup>

<sup>45</sup> A. Carey (2018) ‘Family violence: Guy pledges 10 years jail for non-fatal strangulation’, *The Age*, 26 August.

<sup>46</sup> M. Guy, Leader of the Opposition, G. Crozier, Shadow Minister for the Prevention of Family Violence & J. Pesutto, Shadow Attorney-General (2018) *Family violence strangulation laws*, media release, 26 August.

<sup>47</sup> D. Andrews, Premier of Victoria (2018) *Victorian Government Response to Findings into the Death of Ms Rowley*, Melbourne, Victorian Government, 18 September.

<sup>48</sup> *ibid.*

<sup>49</sup> G. Ashton, Chief Commissioner of Police (2018) *Victoria Police response to recommendations arising from the Investigation into the death of Joy Maree Rowley*, Docklands, Victoria Police, 1 November.

<sup>50</sup> *ibid.*

<sup>51</sup> Victorian Government (2019) *Community Safety Statement 2019–20*, Melbourne, Victorian Government, June, p. 29.

<sup>52</sup> *ibid.*

<sup>53</sup> L. Neville, Minister for Police and Emergency Services (2019) *Backing our police to keep the community safe*, media release, 1 July.

<sup>54</sup> Victorian Government (2019) *Community Safety Statement 2019–20*, *op. cit.*, p. 29.

## Gender Equality Strategy and Action Plan (2023)

In August 2023, the Victorian Government released its gender equality strategy and action plan for 2023–27. Entitled *Our equal state*, the plan sets out five focus areas for targeted action to achieve gender equality in Victoria.<sup>55</sup>

Under the focus area ‘Safety and respect’, action item number 80 states that the government will ‘Explore options to introduce a standalone non-fatal strangulation offence, to address this serious and insidious form of offending that occurs particularly in the context of family violence’.<sup>56</sup>

## Bill introduced

On 18 October 2023, the Minister for Police and for Crime Prevention, the Hon. Anthony Carbines, introduced the Crimes Amendment (Non-fatal Strangulation) Bill 2023 to the Legislative Assembly.<sup>57</sup>

In a media release accompanying the Bill’s introduction, Attorney-General the Hon. Jaclyn Symes explained that the proposed reforms:

... have been developed to better protect victim-survivors, including those who may not sustain any visible injuries, and to hold perpetrators to account who use strangulation to exert power and control over their family member. Establishing non-fatal strangulation as a standalone offence provides a clear indication to the Victorian community of the severity of this conduct in family violence contexts.<sup>58</sup>

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<sup>55</sup> Department of Families, Fairness and Housing (2023) *Our equal state: Victoria’s gender equality strategy and action plan 2023–2027*, Melbourne, Victorian Government, August, p. 64.

<sup>56</sup> *ibid.*, p. 73.

<sup>57</sup> A. Carbines, Minister for Police & Minister for Crime Prevention (2023) ‘Introduction and first reading: Crimes Amendment (Non-fatal Strangulation) Bill 2023’, *Debates*, Victoria, Legislative Assembly, 18 October, p. 3795.

<sup>58</sup> J. Symes, Attorney-General (2023) *Non-fatal strangulation to become stand-alone offence*, media release, 18 October.

## 2 | Second reading speech

The Crimes Amendment (Non-fatal Strangulation) Bill 2023 was second read on 19 October 2023 by Minister Carbines, who stated that the Bill ‘delivers on Victorian Government commitments, including in the 2023–2027 Gender Equality Strategy and Action Plan, to introduce a stand-alone offence of non-fatal strangulation’.<sup>59</sup>

The second reading speech highlighted that the ‘highly dangerous and easily fatal form of violence’ can have significant impacts on the physical and mental health of victim-survivors, in both the short and long term; the speech also pointed to its use as ‘a particularly dangerous and insidious form of family violence’, often linked to coercive and controlling behaviour.<sup>60</sup>

The Minister elaborated:

The offences introduced by this Bill will more effectively hold offenders to account and will also provide clearer indications to police and community service practitioners of escalating violence and control in family violence contexts. Additionally, the Bill aims to improve understanding of the dangers and potential lethality of non-fatal strangulation among police, courts and community service practitioners and help drive more effective medical, legal and law enforcement responses.<sup>61</sup>

The speech also acknowledged that the absence of a standalone offence in Victoria had served as ‘a barrier to appropriately responding to the serious and unique risk profile posed by family violence offenders who use non-fatal strangulation as a means of terror and control’, and drew attention to Joy Rowley’s family for their ‘powerful advocacy’ on the issue.<sup>62</sup>

Minister Carbines noted that introducing the proposed offences would align Victoria with other Australian jurisdictions that had already enacted standalone offences. He concluded:

This Bill is an important piece of legislation that will ensure appropriately serious penalties are available for this very serious form of offending. It will also provide better protection for victim-survivors, particularly in the context of family violence, and provide vital information to police and community service providers in how they understand, identify and assess family violence risk.<sup>63</sup>

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<sup>59</sup> A. Carbines, Minister for Police & Minister for Crime Prevention (2023) ‘[Second reading speech: Crimes Amendment \(Non-fatal Strangulation\) Bill 2023](#)’, *Debates*, Victoria, Legislative Assembly, 19 October, p. 3931.

<sup>60</sup> *ibid.*

<sup>61</sup> *ibid.*

<sup>62</sup> *ibid.*

<sup>63</sup> *ibid.*, p. 3933.

## 3 | The Bill

The Bill seeks to amend the *Crimes Act 1958* to insert two non-fatal strangulation offences. It also seeks to make consequential amendments to the FVP Act.

The Bill offers ‘guiding principles’, noting that the courts should consider the following when interpreting the legislation:

- non-fatal strangulation by a current or former intimate partner indicates that a person is, statistically, significantly more likely to be killed by the current or former intimate partner
- within the context of family violence, non-fatal strangulation can indicate an ongoing and escalating pattern of coercive and controlling behaviour by a perpetrator
- an atmosphere of fear and compliance can be created by even very short or individual instances of non-fatal strangulation and can demonstrate the perpetrator’s physical dominance and control over the victim
- non-fatal strangulation does not always leave physical signs/injuries and can result in physical signs/injuries that appear after weeks or months have passed.<sup>64</sup>

## Definitions

### Non-fatal strangulation

The Bill’s proposed changes to the Crimes Act include inserting new subdivision 4A titled ‘Non-fatal strangulation’. Under this subdivision, **‘chokes, strangles or suffocates’** is defined as doing any of the following things:

- applying pressure to the front or sides of a person’s neck;
- obstructing any part of, or interfering with the operation of, a person’s respiratory system or accessory systems of respiration;
- impeding a person’s respiration ...<sup>65</sup>

This non-exhaustive definition is intended to capture a broad range of conduct. Minister Carbinés explained that the lack of a clear definition around these terms in some Australian jurisdictions where standalone offences exist has led to narrow interpretations by the courts, which has in turn ‘imposed inappropriately high evidentiary burdens on the prosecution and may serve to further traumatise victim-survivors’.<sup>66</sup> The minister explained that the broad definition put forward in this Bill aims to avoid this issue.<sup>67</sup>

### Family member

For the purposes of the Bill, the non-fatal strangulation offences are said to occur between a person (A) and another person (B), where A is a family member of B. The term ‘family member’ here has the meaning given in the FVP Act (see p. 6).<sup>68</sup> As such, the proposed offences would not capture non-fatal strangulation that occurs outside of the family context—such as in some sexual assault cases. This is in contrast to the intention originally put forward by the Victorian Government in its Community Safety Statement in 2019.

In his second reading speech, the minister confirmed that non-fatal strangulation that falls outside the scope of the Bill would continue to be captured by existing offences, including causing injury offences and assault. He added that the Bill’s focus on non-fatal strangulation of family members is ‘not intended in any way to minimise the seriousness of

<sup>64</sup> [Crimes Amendment \(Non-fatal Strangulation\) Bill 2023](#), cl 3, proposed section 34AC.

<sup>65</sup> [Crimes Amendment \(Non-fatal Strangulation\) Bill 2023](#), cl 3, proposed section 34AB(1).

<sup>66</sup> Carbinés (2023) ‘Second reading speech: Crimes Amendment (Non-fatal Strangulation) Bill 2023’, op. cit., p. 3931.

<sup>67</sup> *ibid.*

<sup>68</sup> [Crimes Amendment \(Non-fatal Strangulation\) Bill 2023](#), cl 3, proposed section 34AB(1).

non-fatal strangulation in other contexts’, with the government hoping the Bill will increase awareness of the risks and consequences of the conduct more generally.<sup>69</sup>

Minister Carbinés clarified that the offences will only apply to conduct between family members, ensuring that conduct ‘outside the scope of the intended reforms’ is not inadvertently captured and that community groups already over-represented in the criminal justice system aren’t disproportionately affected.<sup>70</sup> He added that the focus remains on the main policy rationale of the reforms: ‘to appropriately respond to the serious and unique risk profile posed by family violence offenders who use non-fatal strangulation as a means of terror and control’.<sup>71</sup>

## Consent

The Bill covers the idea of consenting to non-fatal strangulation that occurs within the context of sexual relationships, and requires that an **affirmative consent model** be in place. As the minister explained in the second reading speech, this is in line with sexual offence reforms passed by the Victorian Parliament in 2022, wherein consent is understood as ‘free and voluntary agreement and must be communicated’.<sup>72</sup>

Under an affirmative consent model, a lack of resistance from an intimate partner, whether verbal or physical, is not adequate to establish consent. Further, consent cannot be assumed even if a person has previously consented to the same sexual activity with a different person or with the same person at a different time or place, or to a different sexual activity with the same or a different person.<sup>73</sup>

The minister contended that using the affirmative consent model ‘provides victim-survivors with stronger protections and recognises that sexual non-fatal strangulation is an increasingly common practice, particularly amongst young Victorians’.<sup>74</sup>

Additionally, the Bill highlights a number of circumstances in which a person does not consent, including but not limited to:

- not saying or doing anything to indicate their consent
- submitting to the conduct because of force (or a fear of force), or because of harm of any type (or a fear of harm of any type), whether to that person or someone else
- submitting to the conduct because of coercion or intimidation
- being asleep or unconscious
- being so affected by alcohol or another drug as to be incapable of consenting to the conduct (or incapable of withdrawing consent to the conduct), or
- when consent for the conduct has been withdrawn.<sup>75</sup>

## Non-fatal strangulation offences

Clause 3 of the Bill seeks to introduce the following two offences.

### Non-fatal strangulation intentionally causing injury (10-year maximum penalty)

The first offence, ‘non-fatal strangulation intentionally causing injury’, appears in the proposed new section 34AD and carries a maximum penalty of ten years’ imprisonment. A person commits this offence if they intentionally and without lawful excuse choke, strangle or suffocate another person, intend to cause injury to that person, and do cause an injury to

<sup>69</sup> Carbinés (2023) ‘Second reading speech: Crimes Amendment (Non-fatal Strangulation) Bill 2023’, op. cit., p. 3932.

<sup>70</sup> *ibid.*, p. 3931.

<sup>71</sup> *ibid.*

<sup>72</sup> *ibid.*, p. 3932.

<sup>73</sup> Crimes Amendment (Non-fatal Strangulation) Bill 2023, cl 3, proposed section 34AG.

<sup>74</sup> Carbinés (2023) ‘Second reading speech: Crimes Amendment (Non-fatal Strangulation) Bill 2023’, op. cit., p. 3932.

<sup>75</sup> Crimes Amendment (Non-fatal Strangulation) Bill 2023, *ibid.*, cl 3, proposed section 34AH.

that person. The person must be a family member of the other person, as defined by the FVP Act.<sup>76</sup>

Minister Carbines explained that ‘injury’ includes both physical injury and harm to mental health, and that a higher level of culpability is attached to this offence due to the element of intentional injury. He argued that the offence is comparable with existing offences that also have ten-year penalties, such as conduct endangering life and intentionally causing injury, with the offence intended to capture ‘the most egregious forms’ of non-fatal strangulation.<sup>77</sup>

Under the proposed changes, having a person’s consent to the conduct constituting the offence is not recognised as a lawful excuse.<sup>78</sup> The Minister explained that consent has been excluded as a defence in recognition that non-fatal strangulation with the intention to cause injury ‘cannot be done safely’.<sup>79</sup> Though he admits this is a departure from the general position for other criminal offences in Victoria, the position is ‘justified’ through its application to conduct that occurs uniquely between family members and in recognition of the ‘very serious risks posed’ by that conduct.<sup>80</sup>

Similarly, a defence is not available for the conduct if the person held a ‘mistaken but honest and reasonable belief’ that they were not a family member of the other person.<sup>81</sup>

However, an offence is not committed if the conduct occurs ‘in the course of a procedure carried out in good faith for medical or body modification purposes’—for example, when tattooing or piercing someone’s neck.<sup>82</sup> Existing common law and statutory defences—such as self-defence, duress or sudden and extraordinary circumstances—continue to be available.<sup>83</sup>

## Non-fatal strangulation (5-year maximum penalty)

The second offence, ‘non-fatal strangulation’, appears in proposed new section 34AE and carries a maximum penalty of five years’ imprisonment. A person commits this offence if they intentionally and without lawful excuse choke, strangle or suffocate another person, and that person is a family member as defined by the FVP Act.<sup>84</sup>

Minister Carbines explained that it has historically been difficult to prosecute non-fatal strangulation, as often there are no visible signs of physical injury (or these injuries may only appear weeks or months later). As such, prosecutors have sought to charge offenders with common assault in order to get a conviction, which has a maximum penalty of only three months’ imprisonment and ‘is inadequate for such serious offending’.<sup>85</sup> The minister argued that this new offence responds to this situation by imposing an ‘appropriately high’ maximum penalty that only requires that the behaviour occurred (whether it caused injury or not).<sup>86</sup>

Similar to the first offence of non-fatal strangulation intentionally causing injury, no defence is available to this offence if the person held a ‘mistaken but honest and reasonable belief’ that they were not a family member of the other person.<sup>87</sup>

<sup>76</sup> *ibid.*, cl 3, proposed section 34AD(1).

<sup>77</sup> Carbines (2023) ‘[Second reading speech: Crimes Amendment \(Non-fatal Strangulation\) Bill 2023](#)’, *op. cit.*, p. 3932.

<sup>78</sup> [Crimes Amendment \(Non-fatal Strangulation\) Bill 2023](#), cl 3, proposed section 34AD(2)

<sup>79</sup> Carbines (2023) ‘[Second reading speech: Crimes Amendment \(Non-fatal Strangulation\) Bill 2023](#)’, *op. cit.*, p. 3932.

<sup>80</sup> *ibid.*

<sup>81</sup> [Crimes Amendment \(Non-fatal Strangulation\) Bill 2023](#), cl 3, proposed section 34AK.

<sup>82</sup> *ibid.*, cl 3, proposed section 34AD(3).

<sup>83</sup> Carbines (2023) ‘[Second reading speech: Crimes Amendment \(Non-fatal Strangulation\) Bill 2023](#)’, *op. cit.*, p. 3932.

<sup>84</sup> [Crimes Amendment \(Non-fatal Strangulation\) Bill 2023](#), *ibid.*, cl 3, proposed section 34AE.

<sup>85</sup> Carbines (2023) ‘[Second reading speech: Crimes Amendment \(Non-fatal Strangulation\) Bill 2023](#)’, *op. cit.*, p. 3932.

<sup>86</sup> *ibid.*

<sup>87</sup> [Crimes Amendment \(Non-fatal Strangulation\) Bill 2023](#), cl 3, proposed section 34AK.

However, in contrast to the first offence, a consent defence is available for non-fatal strangulation. For the defence to apply, the conduct constituting the offence must take place within the context of sexual activity and either must be consented to—as detailed in proposed sections 34AG and 34AH (see p. 13)—or the person must have a reasonable belief that the conduct is consented to.<sup>88</sup>

As described in proposed new section 34AI, whether or not a person reasonably believes that another person consents to the conduct ‘depends on the circumstances’, with the proposed section acknowledging that a cognitive impairment or mental illness may be a substantial cause as to why a person may not say or do anything to determine whether a person is consenting.<sup>89</sup> Under the sexual activity and consent defence, the Bill makes provision for the effect of intoxication on the standard to be applied in determining reasonable belief, with different settings relating to whether person A’s intoxication was self-induced.<sup>90</sup>

Additionally, a defence also exists to the non-fatal strangulation offence if the person consenting to the conduct does so when that conduct is not a sexual activity.<sup>91</sup> The minister highlighted that the lawful excuse of consent will ensure that the five-year offence does not capture medical procedures or body modifications.<sup>92</sup>

## Amendments to the Family Violence Protection Act 2008

The Bill also seeks to amend the FVP Act to recognise choking, strangling or suffocating a family member (or threatening to do so) as behaviour constituting family violence.<sup>93</sup> It does this by updating section 5 of the FVP Act to add the meaning of ‘choking, strangling or suffocating’ as introduced by this Bill through the proposed new section 34AB(1) to the Crimes Act.<sup>94</sup>

The effect of this amendment will mean non-fatal strangulation is recognised as an act of family violence for the purposes of family violence intervention orders and safety notices. It will also inform the consideration of bail applications, in that bail decision-makers for those charged with either of the proposed non-fatal strangulation offences will be required to consider whether a risk of further family violence exists and whether that risk could be mitigated.<sup>95</sup>

Additionally, the proposed changes to the FVP Act would also apply to witnesses giving evidence in non-fatal strangulation proceedings, due to the protections afforded to family violence complainants under the *Criminal Procedure Act 2009* (Vic).<sup>96</sup>

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<sup>88</sup> *ibid.*, cl 3, proposed section 34AF(1)–(2).

<sup>89</sup> *ibid.*, cl 3, proposed section 34AI(1)–(3).

<sup>90</sup> *ibid.*, cl 3, proposed section 34AJ.

<sup>91</sup> *ibid.*, cl 3, proposed section 34AE(3)–(4).

<sup>92</sup> Carbines (2023) ‘[Second reading speech: Crimes Amendment \(Non-fatal Strangulation\) Bill 2023](#)’, *op. cit.*, p. 3932.

<sup>93</sup> [Crimes Amendment \(Non-fatal Strangulation\) Bill 2023](#), cl 5.

<sup>94</sup> *ibid.*

<sup>95</sup> Carbines (2023) ‘[Second reading speech: Crimes Amendment \(Non-fatal Strangulation\) Bill 2023](#)’, *op. cit.*, p. 3934.

<sup>96</sup> *ibid.* See: [Criminal Procedure Act 2009](#), Part 8.2, s 353(1)(b).

## 4 | Responses to the Bill

In its response to the Bill's introduction, Safe and Equal—a peak body for specialist family violence services in Victoria—stated that it welcomed initiatives to bring attention to non-fatal strangulation, acknowledging that the act is ‘deeply connected to family violence risk, serious injury, and significant harm to victim survivors’ psychological and physical wellbeing’.<sup>97</sup> However, the organisation highlighted that, more than just a legislative/justice approach, an ‘holistic approach’ was needed in order to be effective, recommending that the Victorian Government also invest in upskilling relevant workforces, as well as awareness-raising and education initiatives.<sup>98</sup>

Helen Bolton, the CEO of Emma House Domestic Violence Services in Warrnambool, welcomed the Bill's introduction. Recognising the Bill as an important step that acknowledges the risk that strangulation poses to victims, Ms Bolton said, ‘We hope this will provide increased protection for victim-survivors and hold persons who use violence to account’.<sup>99</sup>

In its examination of the Crimes Amendment (Non-fatal Strangulation) Bill, the Victorian Parliament's Scrutiny of Acts and Regulations Committee (SARC) indicated that it would seek further information from the Attorney-General in some areas. Firstly, SARC questioned whether the use of a narrower definition of ‘injury’ would be a ‘less restrictive means’ to achieve the intention of clause 3.<sup>100</sup> Second, it indicated that it would be seeking clarification on whether the proposed changes to the FVP Act were compatible with the right to privacy in the *Charter of Human Rights and Responsibilities Act 2006*.<sup>101</sup>

Additionally, SARC indicated that it would also be seeking information from the Attorney-General as to whether or not the courts must consider the facts listed in the proposed ‘Guiding principles’ (proposed new section 34AC) ‘when determining factual disputes in criminal proceedings on charges of non-fatal strangulation’, and whether new section 34AC is compatible with the Charter's rights of criminal defendants to ‘have their charge determined by an independent court after a fair hearing’.<sup>102</sup>

### General arguments for a standalone offence

While not in direct response to the Bill, arguments exist about the benefit of a non-fatal strangulation offence in general. For example, advocates contend that a non-fatal strangulation offence recognises the seriousness of strangulation for victims—that it is dangerous and that it is a risk factor for future harm and death.<sup>103</sup>

This sentiment is echoed by Victoria Police, who advocated for the introduction of a standalone offence at the time of Ms Rowley's coronial investigation. Then-Assistant Commissioner Dean McWhirter stated, ‘If there was a specific charge of strangulation, it would automatically flag the seriousness of offence ... This is an opportunity for us as a community to start to recognise the seriousness of this type of criminality in the context of family violence and sexual offending’.<sup>104</sup>

Similarly, Joy Rowley's children have continued to be strong advocates for the introduction of a standalone offence. Speaking in 2021 about the government's delay implementing

<sup>97</sup> Safe and Equal (2023) *Safe and Equal responds to the introduction of standalone non-fatal strangulation offences in Victoria*, media release, 19 October.

<sup>98</sup> *ibid.*

<sup>99</sup> Cited in L. Altman (2023) ‘Offenders could face 10 years’ jail for choking’, *Warrnambool Standard*, 31 October.

<sup>100</sup> Scrutiny of Acts and Regulations Committee (SARC) (2023) *Alert Digest No. 13 of 2023*, Melbourne, SARC, p. 7.

<sup>101</sup> *ibid.*

<sup>102</sup> *ibid.*, p. 8.

<sup>103</sup> H. Douglas & R. Fitzgerald (2022) *The Australian legal response to non-fatal strangulation: Policy recommendations*, Leeds, Emerald Publishing, p. 3.

<sup>104</sup> Cited in T. Mills (2018) ‘Strangulation - a red flag for murder - so does Victoria need new law?’, *The Age*, 26 May.

changes to the law since the coroner’s findings, they argued that their mother could have been protected had a specific law already been in place at the time that she was experiencing intimate partner violence.<sup>105</sup>

Elsewhere, Safe Steps Family Violence Response Centre—the state’s family violence crisis service—has previously voiced its support for the policy change. Then-chief executive, Annette Gillespie explained, ‘It’s absolutely critical that we change the laws so that strangulation is recognised as a criminal offence in its own right and that perpetrators of such violence are held accountable for a very long time’.<sup>106</sup>

## General arguments against a standalone offence

Others have raised general concerns about a standalone offence. For example, in a 2018 article, academics from the Monash Gender and Family Violence Prevention Centre reported that, despite the development and implementation of standalone strangulation offences in Australia, ‘there is no reliable evidence that this has improved safety for victims’.<sup>107</sup> They shared concerns that the introduction of new offences ‘may distract attention from systemic failures to properly utilise existing laws, and from police failure to comply with operational policies and procedures related to family violence’.<sup>108</sup>

This view was echoed by the Women’s Legal Service Victoria, who observed that the new laws would not remedy existing gaps in police practice that fall short of protecting women.<sup>109</sup>

Law expert Professor Douglas has pointed to other issues that emerge in this debate, including that imprisonment may not be the best method of rehabilitating an offender, with more resources needed to support perpetrator interventions and behavioural change.<sup>110</sup> Douglas also highlighted the disproportionate impact that the use of criminalisation as a strategy to respond to domestic violence is likely to have on Aboriginal and/or Torres Strait Islander peoples.<sup>111</sup>

## Feedback and areas for further development

Experts have analysed non-fatal strangulation charges in Queensland and provided a number of recommendations and areas for further development, including in relation to Aboriginal and Torres Strait Islander courts being expanded to hear non-fatal strangulation cases and the importance of cultural considerations in bail hearings.<sup>112</sup> They also identified that children are ‘insufficiently supported’ as victim-survivors and witnesses of non-fatal strangulation and that more research is needed to determine how best to support children and their families after a non-fatal strangulation event.<sup>113</sup>

Other feedback relating to standalone offences includes whether or not they should be limited to intimate partners only, and whether or not a consent defence should exist. Researchers have highlighted that, although strangulation or suffocation represents a particular risk within the context of family violence, ‘the act of strangulation or suffocation

<sup>105</sup> Cited in T. Mills (2021) ‘Strangulation, a red flag for murder, but law yet to be implemented’, *The Age*, 17 November.

<sup>106</sup> Cited in Carey (2018) op. cit.

<sup>107</sup> K. Fitz-Gibbon, J. Maher, J. McCulloch & S Walklate (2018) ‘Victorian government should be wary of introducing a stand-alone offence of non-fatal strangulation’, *The Conversation*, 3 August.

<sup>108</sup> *ibid.*

<sup>109</sup> Cited in Mills (2018) ‘Strangulation - a red flag for murder - so does Victoria need new law?’, op. cit.

<sup>110</sup> H. Douglas (2019) ‘Victoria’s commitment to a non-fatal strangulation offence will make a difference to vulnerable women’, *The Conversation*, 3 July.

<sup>111</sup> *ibid.*

<sup>112</sup> Douglas & Fitzgerald (2022) op. cit., p. 4.

<sup>113</sup> *ibid.*, p. 5.

can cause serious adverse health outcomes for a victim, regardless of whether they are in a family relationship with the offender'.<sup>114</sup>

In terms of consent, some specialists working in this space have questioned whether the availability of a consent defence enables the accused person to claim that the victim consented, leading to challenges to the victim-survivor's credibility and the revival of the 'she asked for it' trope historically employed in rape and sexual assault cases.<sup>115</sup> Further, speaking of domestic relationships, academics have highlighted that 'In a context where the victim is in a violent relationship with her perpetrator and is coercively controlled by him, her ability to give informed consent is likely to be highly constrained'.<sup>116</sup>

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<sup>114</sup> V. Bettinson (2022) 'A Comparative Analysis of Non-Fatal Strangulation Offences: Will the Proposed s. 75A Serious Crime Act 2015 Work for Victims of Domestic Violence and Abuse?', *Journal of Criminal Law*, 86(2).

<sup>115</sup> Douglas (2023) op. cit.

<sup>116</sup> S. SM. Edwards & H. Douglas (2021) 'The criminalisation of a dangerous form of coercive control: non-fatal strangulation in England and Wales and Australia', *Journal of International and Comparative Law*, 8(1), p. 107.

## 5 | Other jurisdictions

### Australian

The following table provides a summary of the current legislation relating to non-fatal strangulation in other Australian jurisdictions.<sup>117</sup>

**Table 1: Non-fatal strangulation legislation in Australian jurisdictions**

	Relevant legislation	Year introduced	Detail
<b>ACT</b>	<i>Crimes Act 1900</i>	2015	<p><b>Section 27 - Acts endangering life etc</b></p> <p>‘Choke’ or ‘strangle’ a person includes ‘apply pressure, to any extent, to the person’s neck’. ‘Suffocate’ a person includes the following:</p> <ul style="list-style-type: none"> <li>(a) obstruct, to any extent, any part of the person’s— <ul style="list-style-type: none"> <li>(i) respiratory system; or</li> <li>(ii) accessory systems of respiration;</li> </ul> </li> <li>(b) interfere, to any extent, with the operation of the person’s— <ul style="list-style-type: none"> <li>(i) respiratory system; or</li> <li>(ii) accessory systems of respiration;</li> </ul> </li> <li>(c) impede, to any extent, the person’s respiration.</li> </ul> <p>Under this section, a person who intentionally and unlawfully ‘chokes, suffocates or strangles another person so as to render that person insensible or unconscious or, by any other means, renders another person insensible or unconscious’ is guilty of an offence.</p> <p>Penalty: Aggravated offence (involving family violence)—13 years’ imprisonment; in any other case—ten years’ imprisonment.</p>

<sup>117</sup> This section is informed by a [digital summary document](#) held at University of Melbourne Law School, provided by Professor Heather Douglas in her recent article: Douglas (2023) ‘A new bill would bring Victoria’s strangulation laws in line with other states – but consent complicates matters’, op. cit.

			<p><b>Section 28 – Acts endangering health etc</b></p> <p>‘Choke’, ‘strangle’ and ‘suffocate’ have the same meaning as in section 27.</p> <p>Under this section, a person who intentionally and unlawfully ‘chokes, suffocates or strangles another person’ is guilty of an offence. Penalty: Aggravated offence (involving family violence)—seven years’ imprisonment; in any other case—five years’ imprisonment.</p>
<p><b>NSW</b></p>	<p><i>Crimes Act 1900</i></p>	<p>2014 (reform: 2018)</p>	<p><b>Section 37 – Choking, suffocation and strangulation</b></p> <p>(1A) A person is guilty of an offence if the person ‘intentionally chokes, suffocates or strangles another person without the other person’s consent’. Penalty: five years’ imprisonment.</p> <p>(1) A person is guilty of an offence if the person—</p> <ul style="list-style-type: none"> <li>(a) intentionally chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance, and</li> <li>(b) is reckless as to rendering the other person unconscious, insensible or incapable of resistance.</li> </ul> <p>Penalty: ten year’s imprisonment.</p> <p>(2) A person is guilty of an offence if the person—</p> <ul style="list-style-type: none"> <li>(a) chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance, and</li> <li>(b) does so with the intention of enabling himself or herself to commit, or assisting any other person to commit, another indictable offence.</li> </ul> <p>Penalty: 25 years’ imprisonment.</p>
<p><b>NT</b></p>	<p><i>Criminal Code Act 1983</i></p>	<p>2020</p>	<p><b>Section 186AA - Choking, strangling or suffocating in a domestic relationship</b></p> <p>‘Chokes’, ‘strangles’ or ‘suffocates’ a person includes the following:</p>

			<ul style="list-style-type: none"> <li>(a) applies pressure, to any extent, to the person's neck;</li> <li>(b) obstructs, to any extent, any part of the person's:             <ul style="list-style-type: none"> <li>(i) respiratory system; or</li> <li>(ii) accessory systems of respiration;</li> </ul> </li> <li>(c) interferes, to any extent, with the operation of the person's:             <ul style="list-style-type: none"> <li>(i) respiratory system; or</li> <li>(ii) accessory systems of respiration;</li> </ul> </li> <li>(d) impedes, to any extent, the person's respiration.</li> </ul> <p>Under this section, a person commits an offence if</p> <ul style="list-style-type: none"> <li>(a) the person is in a domestic relationship with another person; and</li> <li>(b) the person intentionally chokes, strangles or suffocates the other person; and</li> <li>(c) the other person does not consent to the choking, strangling or suffocating and the person is reckless in relation to that circumstance.</li> </ul> <p>Penalty: five years' imprisonment.</p>
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<p><b>Qld</b></p>	<p><i>Criminal Code Act 1899</i></p>	<p>2016</p>	<p><b>Section 315A - Choking, suffocation or strangulation in a domestic setting</b></p> <p>Under this section, a person commits a crime if:</p> <ul style="list-style-type: none"> <li>(a) the person unlawfully chokes, suffocates or strangles another person, without the other person's consent; and</li> <li>(b) either—             <ul style="list-style-type: none"> <li>(i) the person is in a domestic relationship with the other person; or</li> <li>(ii) the choking, suffocation or strangulation is associated domestic violence under the <i>Domestic and Family Violence Protection Act 2012</i>.</li> </ul> </li> </ul> <p>Penalty: seven years' imprisonment.</p>
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<p><b>SA</b></p>	<p><i>Criminal Law Consolidation Act 1935</i></p>	<p>2020</p>	<p><b>Section 20A - Choking, suffocation or strangulation in a domestic setting</b></p> <p>Under this section, a person is guilty of an offence if that person ‘is, or has been, in a relationship with another person and chokes, suffocates or strangles that other person, without that other person’s consent’. Penalty: seven years’ imprisonment.</p>
<p><b>Tas</b></p>	<p><i>Criminal Code Act 1924</i></p>	<p>2022</p>	<p><b>Section 170B – Strangulation, &amp;c.</b></p> <p>Under this section, a person is guilty of an offence if that person ‘intentionally and unlawfully chokes, suffocates or strangles another person’.</p> <p>According to <b>section 334AA – Strangulation</b>, upon an indictment for strangulation ‘the accused person may be convicted of assault’.</p>
<p><b>WA</b></p>	<p><i>Criminal Code Act Compilation Act 1913</i></p>	<p>2020</p>	<p><b>Section 298 – Suffocation and strangulation</b></p> <p>Under this section, a person commits a crime if that person ‘unlawfully impedes another person’s normal breathing, blood circulation, or both, by manually, or by using any other aid —</p> <ul style="list-style-type: none"> <li>(a) blocking (completely or partially) another person’s nose, mouth, or both; or</li> <li>(b) applying pressure on, or to, another person’s neck’.</li> </ul> <p>Penalty: Aggravated offence—seven years’ imprisonment; in any other case—five years’ imprisonment.</p> <p>Summary conviction penalty: In circumstances of aggravation—three years’ imprisonment and a fine of \$36,000; in any other case—two years’ imprisonment and a fine of \$24,000.</p>

## Charges

Data on the number of charges laid in Australian jurisdictions are becoming available. For example, in 2019, it was reported that close to 900 charges had been laid in NSW under the updated choking, suffocation and strangulation laws. This figure was close to 50 per cent higher than the total number of charges under the previous legislation between 2014 and 2018, when around 600 charges were laid.<sup>118</sup>

In Queensland, over 2,100 offences of non-fatal strangulation were lodged at the magistrates' courts for the period from 2017–18 to 2019–20.<sup>119</sup> In South Australia, more than 1,000 people were charged with a strangulation offence in the period between January 2019 and April 2022.<sup>120</sup>

## International

This section provides examples of non-fatal strangulation legislation in selected international jurisdictions. *Please note that this list is not exhaustive.*

### Canada

In Canada, the Criminal Code was amended in 2019 to recognise non-fatal strangulation.<sup>121</sup> Section 267, '**Assault with a weapon or causing bodily harm**', provides that a person is guilty of an offence if, in committing an assault, that person:

- (a) carries, uses or threatens to use a weapon or an imitation thereof,
- (b) causes bodily harm to the complainant, or
- (c) chokes, suffocates or strangles the complainant.<sup>122</sup>

A person who commits an indictable offence under section 267 is liable to a maximum of ten years' imprisonment.<sup>123</sup>

Additionally, section 272 of the Criminal Code—which relates to sexual assault with a weapon, threats to a third party or causing bodily harm—also makes provision for strangulation. It states that an offence occurs if, in committing a sexual assault, a person:

- (a) carries, uses or threatens to use a weapon or an imitation of a weapon;
- (b) threatens to cause bodily harm to a person other than the complainant;
- (c) causes bodily harm to the complainant;
- (c.1) chokes, suffocates or strangles the complainant; or
- (d) is a party to the offence with any other person.<sup>124</sup>

A person who commits an offence under section 272 is guilty of an indictable offence and is liable to five years' imprisonment for a first offence, seven years' imprisonment for a second or subsequent offence, and up to 14 years' imprisonment if a firearm is used.<sup>125</sup>

<sup>118</sup> L. Cormack (2019) '[Nearly 1000 strangulation charges laid within first 12 months of new laws](#)', *Sydney Morning Herald*, 15 December.

<sup>119</sup> H. Douglas & R. Fitzgerald (2021) '[Proving non-fatal strangulation in family violence cases: A case study on the criminalisation of family violence](#)', *International Journal of Evidence & Proof*, 25(4).

<sup>120</sup> L. Novak (2023) '["Send a message": Strangulation definition review to protect domestic violence victims](#)', *The Advertiser*, 14 May.

<sup>121</sup> H. Ghonaim (2021) '[New strangulation law targets domestic violence, with more than 200 charges laid in Waterloo area](#)', *CBC News*, 24 November.

<sup>122</sup> *Criminal Code* (CA), s 267.

<sup>123</sup> *ibid.*

<sup>124</sup> *ibid.*, s 272.

<sup>125</sup> *ibid.*, s 272(2).

## England & Wales

In England and Wales, section 70 of the *Domestic Abuse Act 2021* introduced the offence of non-fatal strangulation and non-fatal suffocation to the *Serious Crime Act 2015*. New section 75A, '**Strangulation or suffocation**', provides that a person (A) commits an offence if:

- (a) A intentionally strangles another person ("B"), or
- (b) A does any other act to B that—
  - (i) affects B's ability to breathe, and
  - (ii) constitutes battery of B.<sup>126</sup>

The legislation provides no definition of 'strangulation', or 'suffocation', though the Crown Prosecution Service advises that each word 'should be given its ordinary meaning'.<sup>127</sup>

A consent defence is available to the offence, but not if person B suffers 'serious harm', and person A intended to cause that harm or was reckless as to whether B would suffer serious harm.<sup>128</sup> A person found guilty of an offence under section 75A is subject to a maximum penalty of five years' imprisonment.<sup>129</sup>

The offence came into operation in June 2022. It applies in England and Wales, as well as where a suffocation or strangulation is committed abroad by a British national—or by a person who habitually resides in these countries—as if the offence had occurred in England and Wales.<sup>130</sup>

Following the introduction of the standalone offence, the Institute for Addressing Strangulation was established in 2022 and is funded by the Home Office. The institute, which works to increase awareness of the risks associated with strangulation, 'will lead on guiding professionals through the best practice in supporting victims/ survivors of strangulation through a medical and forensic lens'.<sup>131</sup>

## New Zealand

In New Zealand, the *Family Violence Amendments Act 2018* introduced a standalone non-fatal strangulation offence into the *Crimes Act 1961*. The offence was introduced following a recommendation of the New Zealand Law Commission.<sup>132</sup>

New section 189A, '**Strangulation or suffocation**', provides that an offence is committed if a person:

intentionally or recklessly impedes another person's normal breathing, blood circulation, or both, by doing (manually, or using any aid) all or any of the following:

- (a) blocking that other person's nose, mouth, or both
- (b) applying pressure on, or to, that other person's throat, neck, or both.<sup>133</sup>

The offence came into operation in December 2018 and carries a maximum penalty of seven years' imprisonment.<sup>134</sup>

<sup>126</sup> [Serious Crime Act 2015](#) (E&W), s 75A(1).

<sup>127</sup> Crown Prosecution Service (CPS) (2023) '[Non-fatal strangulation or non-fatal suffocation](#)', CPS website.

<sup>128</sup> [Serious Crime Act 2015](#) (E&W), ss 75A(2)–(3).

<sup>129</sup> *ibid.*, s 75A(5).

<sup>130</sup> UK Ministry of Justice & V. Atkins MP (2022) '[New non-fatal strangulation offence comes into force](#)', media release, 7 June.

<sup>131</sup> Institute for Addressing Strangulation (IAS) (2023) '[About us](#)', IAS website.

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<sup>134</sup> New Zealand Law Commission (2019) *op. cit.*

## Northern Ireland

In Northern Ireland, the *Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022* introduced a standalone offence of non-fatal strangulation. Section 28, ‘**Offence of non-fatal strangulation or asphyxiation**’, provides that a person (A) commits an offence if two conditions are met:

The first condition is that A intentionally—

- (a) applies pressure on or to the throat or neck of another person (B), or
- (b) does something to B, of any other sort, amounting to battery of B.

The second condition is that A—

- (a) intends A’s act to affect B’s ability to breathe or the flow of blood to B’s brain, or
- (b) is reckless as to whether A’s act would affect B’s ability to breathe or the flow of blood to B’s brain.<sup>135</sup>

The section specifies that an offence is committed whether or not A’s act affects B’s ability to breathe or the flow of blood to B’s brain.<sup>136</sup>

A consent defence is available to the offence, but not if person B suffers ‘serious harm’ as a result of person A’s act and A intended to cause serious harm or was reckless to whether the act would cause serious harm.<sup>137</sup>

The offence also applies to UK nationals or those habitually resident in Northern Ireland if the act is done in a country or territory outside the UK, as if the act were done in Northern Ireland.<sup>138</sup>

The offence came into operation in June 2023 and attracts a maximum penalty of 14 years’ imprisonment.<sup>139</sup>

## Republic of Ireland

In the Republic of Ireland, the recent *Criminal Justice (Miscellaneous Provisions) Act 2023* amends the *Non-Fatal Offences Against the Person Act 1997* to insert two new standalone offences relating to non-fatal strangulation.

New section 3A, ‘**Non-fatal strangulation or non-fatal suffocation**’, provides that a person shall be found guilty of an offence if that person, intentionally or recklessly:

- (a) strangles or suffocates another, or
- (b) causes another to believe on reasonable grounds that he or she is likely immediately to be subjected to suffocation or strangulation.<sup>140</sup>

Under this section, ‘strangle’ is defined as ‘applying, directly or indirectly, force to the neck of another so as to impede breathing or the circulation of blood’, while ‘suffocate’ is defined as including:

- (a) asphyxiating another, and
- (b) impeding the breathing of another, including by—
  - (i) covering the mouth or nose,

<sup>135</sup> [Justice \(Sexual Offences and Trafficking Victims\) Act \(Northern Ireland\) 2022](#) (NI), ss 28(1)–(3).

<sup>136</sup> *ibid.*, s 28(4).

<sup>137</sup> *ibid.*, s 28(6).

<sup>138</sup> [Justice \(Sexual Offences and Trafficking Victims\) Act \(Northern Ireland\) 2022](#) (NI), s 28(9).

<sup>139</sup> Northern Ireland Department of Justice (2023) [New non-fatal strangulation offence comes into force](#), media release, 26 June.

<sup>140</sup> [Criminal Justice \(Miscellaneous Provisions\) Act 2023](#) (IR), new section 3A(1).

- (ii) constricting the chest, or
- (iii) blocking, by means of a foreign object, the airways, of the other.<sup>141</sup>

A person found guilty of an indictable offence under this section is liable to ten years' imprisonment.<sup>142</sup> New section 3A(2) also provides for a consent defence.<sup>143</sup>

New section 4A, '**Non-fatal strangulation or non-fatal suffocation causing serious harm**', provides that a person 'who intentionally or recklessly causes serious harm to another by suffocating or strangling the other' shall be guilty of an offence.<sup>144</sup>

'Strangle' and 'suffocate' have the same meaning as in new section 3A above. A person found guilty of an indictable offence under this section is liable to life imprisonment.<sup>145</sup>

The offences came into operation in November 2023.<sup>146</sup>

## United States of America

The National District Attorneys Association reports that 'Forty-four states, the District of Columbia, the Federal government and two territories have some form of criminal strangulation or impeding breathing statute'.<sup>147</sup> CNN reported in 2020 that, while almost all states consider choking someone as a felony, some jurisdictions still treat the act as a misdemeanour, including in Maryland, Washington D.C., Ohio and South Carolina.<sup>148</sup>

The Training Institute on Strangulation Prevention, which launched in October 2011 in response to the increasing demand for training and technical assistance on intimate partner violence strangulation crimes,<sup>149</sup> maintains a map of the relevant non-fatal strangulation legislation in US states and territories.<sup>150</sup>

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<sup>141</sup> *ibid.*, new s 3A(5).

<sup>142</sup> *ibid.*, new s 3A(3).

<sup>143</sup> *ibid.*, new s 3A(2).

<sup>144</sup> *ibid.*, new s 4A(1).

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- [Crimes Amendment \(Non-fatal Strangulation\) Bill 2023](#) (Vic)
- [Criminal Code Act 1899](#) (Qld)
- [Criminal Code Act 1924](#) (Tas)
- [Criminal Code Act 1983](#) (NT)
- [Criminal Code Act Compilation Act 1913](#) (WA)
- [Criminal Law Consolidation Act 1935](#) (SA)
- [Criminal Procedure Act 2009](#) (Vic)
- [Family Violence Protection Act 2008](#) (Vic)
- [Family Violence Protection Amendment \(Information Sharing\) Act 2017](#) (Vic)

### International jurisdictions

- [Crimes Act 1961](#) (NZ)
- [Criminal Code](#) (CA)
- [Criminal Justice \(Miscellaneous Provisions\) Act 2023](#) (IR)
- [Domestic Abuse Act 2021](#) (E&W)
- [Family Violence Amendments Act 2018](#) (NZ)
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