Criminal Code (Non-Fatal Strangulation) And Other Legislation Amendment Bill 2026

Explanatory Notes

Short title

The short title of the Bill is the *Criminal Code (Non-Fatal Strangulation) And Other Legislation Amendment Bill 2026.*

Policy objectives and the reasons for them

Domestic, family and sexual violence is a scourge on society and should not be tolerated in a modern Queensland. It takes many forms and has long been in the shadows.

The former Labor Government invested considerably to stamp out domestic, family and sexual violence. Yet, demand surges.

Strangulation in a domestic setting was made a criminal offence in 2016, in direct response to a recommendation made in the *Not now, not ever: Putting an end to domestic and family violence reform report.*

The Women's Safety and Justice Taskforce (the Taskforce) was then established to assess gaps in response and opportunities for reform. That Taskforce made more than 200 recommendations, however public reporting on the progress on their implementation have stalled since 2024 under the Crisafulli LNP Government. The Office of the Independent Implementation Supervisor, a role recommended by the Taskforce "*so the public will know the progress of the implementation of its proposed reforms*" was quietly scrapped by the Crisafulli LNP Government in early 2025.

In its review, the Taskforce identified that strangulation in a domestic setting can be difficult to prove due to the perceived lack of visible injuries, and that as with many aspects of the justice system, there is an overrepresentation of Aboriginal and Torres Strait Islander peoples in cases that are brought forward.

In 2022, the Queensland Audit Office expanded on this, when assessing prosecutions under s315A of the *Criminal Code Act 1899* (the Criminal Code) following the introduction of choking, suffocation and strangulation in a domestic setting as an offence. It found that a high proportion of non-fatal strangulation cases did not proceed, and only 51 per cent resulted in a conviction. Its recommendation was for the Department of Justice and Attorney-General to identify why so many prosecutions were unsuccessful.

Following this, the former Government tasked the Queensland Law Reform Commission (QLRC) with reviewing and recommending reform relating to the offence of non-fatal strangulation in a domestic setting.

The QLRC delivered its report *Education, accountability and support: Improving Queensland's response to non-fatal strangulation* (the QLRC report) in September 2025,

which makes a compelling case for change. This Bill is that change – and is a direct response to the recommendations in the QLRC report.

The objectives of the Bill are to:

- increase protections for victim-survivors of non-fatal strangulation in a domestic setting
- strengthen the legislative framework for non-fatal strangulation
- establish a new aggravated offence of non-fatal strangulation
- expands the application of grievous bodily harm relating to non-fatal strangulation in sexual or violent instances
- modify the way consent is relevant to strangulation offences
- better reflect the seriousness of conduct involving strangulation
- reduce judicial delays of matters relating to non-fatal strangulation
- improve informed decision making within the judicial system relating to non-fatal decision making
- clarify when defences should apply and carving out protections for socially acceptable conduct

Enhancing s 315A of the Criminal Code

Recommendation 2 of the QLRC report recommends improvements to s 315A of the Criminal Code to expand the relationships covered by the non-fatal strangulation offence and to make the offence easier to prosecute by clarifying conduct capable of restricting another person's breathing or blood flow including providing examples of conduct.

Recommendation 3 of the QLRC report recommends an aggravated offence with an increased maximum penalty to reflect the seriousness of the conduct.

Recommendation 4 of the QLRC report recommends including a reasonable defence carve out for strangulation where it occurs in a socially acceptable activity including in sporting events.

Recommendation 5 of the QLRC report recommends removal of defences that have been previously relied on or present barriers to investigating, charging or prosecuting non-fatal strangulation in a domestic setting.

Addressing non-fatal strangulation beyond s 315A of the Criminal Code

The report makes recommendations to clarify the application of non-fatal strangulation in sexual and violent contexts. Recommendation 6, in the sexual context, was deemed necessary given the QLRC found that strangulation, without consent, during sex is not usually charged as sexual assault on its own – rather it was usually found to be mentioned as facts of another offence. Similarly, in recommendation 7 relating to violent incidents, the current definition of

bodily harm does not reflect the seriousness and impact of strangulation even where there is no visible injury.

Recommendation 8 goes to sentencing, with the application of strangulation for any other offence as an aggravating factor and how convictions are recorded when involving strangulation. The QLRC found that this would ensure the danger of strangulation is reflected in sentences and provide visibility to police and other agencies about perpetrators of strangulation.

When expanding on the need for reforms per Recommendation 2, the QLRC also proposed that consideration should be given for similar reforms to s 315 of the Criminal Code (disabling to commit an indictable offence) "*to promote consistency between that offence and the amended non-fatal strangulation offence*."

Reducing delays for victims

Recommendation 9 of the QLRC report provides a pathway for faster sentencing through the Magistrates Court where an accused pleads guilty. This specifically spoke to delays in the judicial system increasing the risk of victims being retraumatised.

The proceeding of a matter through the Magistrates Court, rather than a "higher" court, does not reflect the seriousness of the offence or charge, but rather allows for faster access to justice for victim-survivors.

Improving evidence collection and decision making (jury directions)

Recommendation 14 of the QLRC report outlines the provision of jury directions by judges in matters involving non-fatal strangulation. This is consistent with other domestic violence offences. The recommendation specifically speaks to the misconception that might be held by jurors about strangulation and its effects – noting that cases are won and lost on whether a victim is believed, rather than on whether elements of the offence are proved.

Achievement of Policy Objectives

The Bill implements the QLRC Report recommendations.

Enhancing s 351A of the Criminal Code, addressing non-fatal strangulation beyond s 315A of the Criminal Code, reducing delays for victims

The Bill amends the *Criminal Code Act 1899* to:

- clarify that s 315A also applies to people in a relation involving coercion and control.
- 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.
- modify the way consent is relevant by including a defence of affirmative consent if the conduct constituting the offence occurs in a sexual context.

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

- include a defence where a s 315A offence is part of a socially acceptable function or activity, including a sporting event.

- remove the application of three defences that apply to s 315A (s 269, s 270 and s 280 of the Criminal Code).

- 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.

- amend the definition of 'bodily harm' to include complete or partial restriction of a person's respiration and/or blood circulation

- allow for a person who pleads guilty to a s 315A offence to be sentenced in the Magistrates Court

Addressing non-fatal strangulation beyond s 315A of the Criminal Code (sentencing)

The Bill amends the *Penalties and Sentences Act 1992* (PS Act) to:

- provide that conduct capable of restricting or that does restrict a person's respiration and/or blood circulation is an aggravating factor on sentence for all offences except an offence:

    - against s 315A or s 315 of the Criminal Code

    - resulting in death or grievous bodily harm.

- provide 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.

Recommendation 8(b) of the QLRC report stated the PS Act should be amended so a person who is convicted for an offence involving the conduct capable of or that does restrict respiration and/or blood circulation should have their conviction notated as a non-fatal strangulation offence.

New section 12B of the PS Act implements this recommendation by providing that if a conviction is recorded in relation to the offence, it must be recorded as a conviction for a strangulation offence. If no conviction is recorded, the offence must be entered into their criminal history as a strangulation offence, except where a court makes an order to the effect it is not satisfied the offence is also a strangulation offence.

The operation of this new section in relation to charges under amendments to the Criminal Code and Justices Act allow for an offence to be noted as both a strangulation offence and a domestic violence offence. Essentially, new section 12B will operate in alignment with existing section 12A in relation to domestic violence offences.

Improving evidence collection and decision making (jury directions)

The Bill also amends the *Evidence Act 1977* to provide for jury directions relating to victim-survivor evidence.

Capable Conduct

The Bill includes a legislative note that explains that conduct capable of restricting a person's respiration and/or blood circulation could include:

- applying pressure to the person's neck
- covering the person's nose or mouth
- obstructing or interfering with the person's respiratory system or accessory systems of respiration.

In this context, capable of is sought to mean conduct that has a realistic possibility of restricting a person's respiration and/or blood circulation, not explicitly for the conduct to meet the higher standard of being likely or probable to a person's respiration and/or blood circulation.

A test for assessing whether conduct is capable of restricting a person's respiration and/or blood circulation was formed in GS v R; Director of Public Prosecutions (NSW) v GS (2022) 107 NSWLR 618; [2022] NSWCCA 65, which states:

> *"[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]."*

It is important that public education and awareness campaigns that accompany the reforms in the lead up to and following commencement canvas the range of conduct that could be captured by the language 'conduct capable'.

Alternative ways of achieving policy objectives

There are no known alternative ways of achieving the policy objectives to achieve the legislative reform recommended by the QLRC.

However, the report speaks at length of the importance of legislative reform to be accompanied by education and public awareness campaigns. The first recommendation from the QLRC was for the Queensland Government to "*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*."

Laws have one role to play in educating and raising awareness with the public on the seriousness and danger of non-fatal strangulation – but laws alone cannot and will not be enough. A statewide public education and advertising campaign must accompany the reforms in the lead up to and following commencement.

Estimated cost for government implementation

Any implementation costs are expected to be met from within existing budget allocations.

Consistency with fundamental legislative principles

The Bill has been drafted having regard to the fundamental legislative principles (FLPs) in the *Legislative Standards Act 1992* (LS Act) and is generally consistent with FLPs. Where it deviates, in particular in relation to retrospectivity, it is justified and reasonable to do so, as it relates to the serious and important matter of providing justice for victims.

Those matters are addressed in detail below.

Penalties for offences under new s 315A

The right to liberty and whether a penalty is proportionate to an offence are relevant to the consideration of whether the Bill has sufficient regard to the rights and liberties of individuals. Legislation must impose consequences that are proportionate and relevant to the actions to which the consequences are imposed.

While the Bill does not expand the maximum penalty for an offence under s 315A(1), it creates a new aggravated offence under new s 315A(2) with a maximum penalty of 14 years imprisonment, consequentially resulting in the potential for the sentencing court to impose a more severe sentence than the existing s 315A provides.

The amendments to introduce the higher maximum penalty for an aggravated offence, and the potential impact on the rights and liberties of individuals, is considered justified to reflect the seriousness of the offending and is consistent with the maximum penalty for grievous bodily harm and coercive control offences. It is considered that the insertion of new s 315B to provide for reasonable defences against an offence under s 315A moderates any potential impact and provides a mitigating factor.

The amendments are also moderated by the provisions of s 575 of the Criminal Code, which provides the ability for a defendant to be convicted of the simpliciter form of the offence, even where indicted on the aggravated offence, if restriction of respiration and/or blood circulation is not established but all other elements of the simpliciter form are.

Charges of indictable offences under s315A to be heard summarily

Clause 10 of the Bill implements recommendation 9 of the QLRC report through amending s 552BA of the Criminal Code to provide an offence against s 315A (if the defendant pleads guilty) as a relevant offence where the matter must be heard and decided summarily.

As the QLRC notes at page 146 of their report, this amendment will consequentially require consideration 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*."

This clause potentially departs from the FLP that the legislation have sufficient regard to the rights and liberties of individuals as provided for in section 4(2)(a) of the LS Act, in particular the right to privacy and reputation, right to a fair hearing and rights in criminal proceedings.

It is considered that any potential impact on the right to privacy and reputation of the defendant is justified, as it ensures the matter is dealt with efficiently and without delay. Any potential impact on the right to a fair hearing and rights in criminal proceedings are considered proportionate, as the nature of the amendment could also result in reducing the time defendants spend on remand.

Jury directions

Clauses 16 to 18 of the Bill amend the *Evidence Act 1977* to provide that a judge may give directions to a jury in relation to lack of physical injury to the complainant, differences in a complainant's account, and the way a complainant may respond to evidence provided at trial (trauma responses and recall of traumatic experiences).

These provisions may be inconsistent with principles of natural justice, particularly in relation to unbiased decision-makers and the right to recognition and equality before the law.

The overall test regarding unbiased decision-makers is whether the relevant circumstances would give rise, in the mind of a party or a fair-minded and informed member of the public, to a reasonable apprehension or suspicion of a lack of impartiality on the part of the decision-maker.

The purpose of the amendments is to address what the QLRC describes as misconceptions about non-fatal strangulation and its impacts, both physical and psychological. In relation to unbiased decision-makers.

Any departures from FLPs are justified as the amendments will ensure juries receive appropriate directions to understand evidence given, and ensure juries are better equipped to make informed decisions, particularly in cases involving domestic and family violence and coercive control, which is consistent with a fair hearing.

Consultation

The QLRC in preparing their report consulted with stakeholders across Queensland. Their report specifically calls out 538 consultees, 40 preliminary consultation meetings and 114 further 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.

Submitters to the review included, but are not limited to:

- Royal Australian College of General Practitioners of Queensland
- Queensland Sexual Assault Network
- Women's Legal Service
- Red Rose Foundation
- Domestic Violence Action Centre Inc

- Queensland Ambulance Service
- Bar Association of Queensland
- Queensland Law Society
- Queensland Indigenous Family Violence Legal Service, and
- Office of the Victims' Commissioner

The Queensland Labor Opposition, in preparing to draft the Bill, consulted with some stakeholders in relation to the policy proposal and intent of the Bill. Consultation will occur extensively with stakeholders as part of the committee process. The Queensland Labor Opposition will also continue to directly consult with relevant stakeholders and legal experts after the Bill is introduced in addition to the committee process.

Consistency with legislation of other jurisdictions

Non-fatal strangulation offences, domestic setting definitions and maximum penalties across each Australian jurisdiction vary. The Bill broadly aligns with particular legislative definitions, consent requirements and domestic setting scope found interjurisdictionally.

A detailed interjurisdictional comparison was undertaken by the QLRC in informing the recommendations that underpin the Bill.

Notes on provisions

Part 1 – Preliminary

Clause 1 provides that the Act may be cited as the *Criminal Code (Non-fatal Strangulation) and Other Legislation Amendment Act 2026*.

Clause 2 provides that the Act commences on 24 January 2028.

Part 2 – Amendment of Criminal Code

Clause 3 provides that Part 2 amends the *Criminal Code Act 1899*.

Clause 4 amends section 1 (Definitions) to insert new definitions of "restrict" and "sex worker". It also provides a new definition for "strangulation offence" which is properly defined in new section 6C.

Clause 5 inserts a new section 6C to provide a new definition for "strangulation offence" outside of the meaning under section 315 or 315A.

Clause 6 amends section 315 (Disabling in order to commit indictable offence) by clarifying strangulation as conduct capable of restricting a person's respiration or blood circulation, or both, aligning the meaning in section 315 (see paragraph 2.90 of the QLRC Report) with the amendments to be made to section 315A as outlined in recommendation 2.

Clause 7 amends section 315A by omitting the former section 315A and replacing it with new sections 315A, 315B, 315C and 315D.

New section 315A subsection (1) provides for the simpliciter non-fatal strangulation offence as was provided for in the former section, but provides clarification on, and examples of, the type of conduct that constitutes an offence of unlawfully engaging in conduct that restricts another person's respiration or blood circulation.

The maximum penalty for an offence under subsection (1) is 7 years imprisonment.

Subsection (2) provides for the aggravated non-fatal strangulation offence that is conduct that completely or partially restricts another person's respiration or blood circulation, and provides clarification on, and examples of, the type of conduct that constitutes an offence of unlawfully engaging in conduct that restricts another person's respiration or blood circulation. The maximum penalty for an offence under subsection (2) is 14 years imprisonment.

Subsection (7) provides that defences under sections 269 (defence of provocation), 270 (prevention of repetition of insult), and 280 (domestic discipline) of the Criminal Code do not apply in relation to an offence under new section 315A.

New section 315B provides for reasonable criminal defences for offences against section 315A, if the act is or forms part of a sexual act for which the other person consents to said act, or if the offence is "committed" as part of a socially acceptable function or activity. The definition of a function activity may include a sporting event.

New section 315C provides for the circumstances in which consent may not be given or is taken not to have been given. New subsection (1)(a) through (1)(m) provides specific examples.

Subsection (2) provides that if a person against whom an alleged offence has been committed under section 315A suffers relevant harm as a result of the offence, said relevant harm is proffered as evidence of the lack of consent unless otherwise proven.

Subsection (3) provides the definition for relevant harm in relation to subsection (2).

New section 315D provides a further defence for mistake of fact in relation to consent.

Subsection (2) provides that in deciding whether a belief of consent provided was honest and reasonable, regard may not be had to the voluntary intoxication of the person.

Subsection (3) provides that a mistake of fact in relation to consent defence is not reasonable if the person did not attempt to ascertain whether the other person consented to the act.

Clause 8 amends section 339 by inserting a new section 339(7) to create a new meaning of bodily harm which captures the ordinary meaning of bodily harm as is provided for in existing section 339, as well as the new non-fatal strangulation harm offence.

Clause 9 amends section 348AA (Circumstances in which there is no consent) to ensure the new non-fatal strangulation harm offence is captured in addition to grievous bodily harm by creating a new 'relevant harm' meaning.

Clause 10 amends section 352 to ensure the new non-fatal strangulation harm offence is captured in relation to sexual assaults.

Clause 11 amends section 552BA to provide that an offence against new section 315A (if the defendant pleads guilty) is a relevant offence in relation to charges of indictable offences that must be heard and decided summarily.

Clauses 12 to 13 amend sections 564 and 572 to provide that an indictment for an offence may state the offence is a strangulation offence or that a court may order an indictment amended to state the offence is a strangulation offence.

Clause 14 inserts a new Chapter 116 to establish transitional provisions for the period between passage and commencement.

New section 776 provides that proceedings for matters relating to offences committed against former sections 315 or 315A prior to commencement may be continued, started and a person convicted and punished for the former offence as if the amendment Act had not commenced.

New section 777 provides that indictments for a strangulation offence in amended sections 564 and 572 only apply if the offence was committed on or after commencement.

Part 3 – Amendment of Evidence Act

Clause 15 provides that Part 3 amends the *Evidence Act 1977*.

Clauses 16 to 17 provide for either the requirement or ability for a judge to provide directions to the jury, including:

- new section 103ZDA – if evidence is given that suggests a difference in the complainant's account that may be relevant to their truthfulness or reliability, the judge must direct the jury in relation to the recall of domestic violence offences, trauma responses and commonality of differences in accounts of an offence as affected by trauma responses;

- new section 103ZDB – the judge may inform the jury, in providing a direction under 103ZDA, inform the jury how trauma affects people differently and that the absence or presence of emotion does not, of itself, represent a mistruth or misrepresentation of the truth;

Clause 18 inserts a new Part 6D that provides for jury directions related to strangulation.

New section 103ZZZX provides that a direction under new Part 6D must be given at the earliest time in the proceedings determined to be appropriate by the judge.

New section 103ZZZY provides that for a charge of a section 315A offence or other offence involving conduct that completely or partially restricts a person's respiration or blood circulation, and where no evidence has been presented that the person against whom an offence is alleged to have been committed, the judge may direct that people who experience such conduct may have no physical injuries and that the absence of injury does not represent a mistruth or misrepresentation of the truth.

New section 103ZZZZ provides for similar directions to be given to that provided for in new section 103ZDA, applying specifically to proceedings relating to a charge of a section 315A offence or other offence involving conduct that completely or partially restricts a person's

respiration or blood circulation. New section 103ZZZZA provides for similar directions to be given to that provided for in new section 103ZDB, where proceedings relate to a charge of a section 315A offence.

Clause 19 inserts a new Part 9, Division 22 to establish transitional provisions in relation to the amendments in Clauses 16 to 18 apply in relation to a criminal proceeding only if the offence the subject of the proceeding was committed on or after commencement.

Clause 20 amends schedule 3 to insert a definition of "difference" in relation to the jury direction amendments.

Part 4 – Amendment of Justices Act

Clause 21 provides that Part 4 amends the *Justices Act 1886*.

Clause 22 amends section 4 (Definitions) to insert the definition of "strangulation offence" as is defined in new section 6C of the Criminal Code.

Clause 23 amends section 47 by inserting a new subsection 47(9)(d) to include the strangulation offence.

Clause 24 amends section 48 by inserting a new subsection (4) to allow for a complaint to be amended to state the offence is also a strangulation offence.

Clause 25 inserts a new Part 11, Division 9 to establish that charges for strangulation offences (as amended by this Act) apply in relation to a complaint only if the offence was committed on or after commencement.

Part 5 – Amendment of Penalties and Sentences Act

Clause 26 provides that Part 5 amends the *Penalties and Sentences Act 1992*.

Clause 27 amends section 4 (Definitions) to ensure the definition of a prosecutor includes new section 12B this Act inserts.

Clause 28 amends section 9 by inserting a new subsection (9D) and (9E). Subsection (9E) provides that when sentencing an offender convicted of a strangulation offence, the court must treat it as an aggravating factor.

However, subsection (9D) outlines that subsection (9E) does not apply if the court of sentencing an offender with an offence against sections 315 and 315A of the Criminal Code, or an offence that causes the death of or grievous bodily harm to another person.

Clause 29 inserts a new section 12B that if a conviction is recorded in relation to the offence, it must be recorded as a conviction for a strangulation offence. If no conviction is recorded, the offence must be entered into their criminal history as a strangulation offence, except where a court makes an order to the effect it is not satisfied the offence is also a strangulation offence.

These provisions only apply if a complaint or indictment states it is a strangulation offence and the offender is convicted.

Clause 30 inserts a new Part 14, Division 28 to create transitional provisions in relation to new section 9 stating the amendments only apply to the sentencing of an offender after commencement, despite whether the conviction happened before or after commencement.

Part 6 – Other Amendments

Clause 31 provides that Schedule 1 amends the legislation it mentions.

Schedule 1 – Other amendments

Amendment of Disability Services Act

Clauses 1 and 2 replace references to section 315A of the Criminal Code in Schedules 2 and 4 of the *Disability Services Act 2006* to reflect the amended heading of section 315A.

Amendment of Weapons Act

Clause 1 replaces a reference to section 315A of the Criminal Code in Schedule 1AA of the *Weapons Act 1990* to reflect the amended heading of section 315A.

Amendment of Working with Children Check Act

Clause 1 replaces a reference to section 315A of the Criminal Code in Schedule 4 of the *Working with Children Check Act 2000* to reflect the amended heading of section 315A.