



# Strangulation in the context of domestic violence

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## Introduction

Redfern Legal Centre (RLC) strongly supports the recent recommendation by the NSW Domestic Violence Death Review Team 'that the NSW Attorney General consider a review of the operation of the NSW offence of strangulation to determine whether this offence is operating effectively'.<sup>1</sup>

RLC supports this recommendation because (a) attempted strangulation is commonly reported by victims of domestic violence, (b) it can seriously affect the long-term physical and psychological health of a victim, (c) it is an indicator of future homicide, and (d) it appears the current NSW legislation does not adequately address the problem.

RLC recommends that the Attorney General looks for example to the new Queensland offence of strangulation, which has fewer elements to prove than the NSW offence and has resulted in more charges being laid.

## The Issue

Strangulation is one of the most common and most lethal forms of domestic violence, and has been described as the 'ultimate form of power and control'.<sup>2</sup> It is an act that is highly predictive of future homicide: one study has found that the odds of future homicide were increased by 800% for victims previously strangled by their partners.<sup>3</sup>

Over the past six months, 54 victims referred to RLC's domestic violence service, the Sydney Women's Domestic Violence Court Advocacy Service (Sydney WDVCS), have reported they have been choked, garrotted or strangled; however, it seems that in most of these cases the defendant has not been charged with strangulation.

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<sup>1</sup> NSW Domestic Violence Death Review Team Report 2015 – 2017, Recommendation 5.1

<sup>2</sup> Alliance for HOPE International: 'Facts victims of strangulation need to know' [strangulationtraininginstitute.com](http://strangulationtraininginstitute.com)

<sup>3</sup> Nancy Glass et al, 'Non fatal strangulation is an important risk factor for homicide of women', *American Journal of Emergency Medicine* 2008



The NSW Domestic Violence Death Review Team Report 2015–2017 (the Report) demonstrates the link between strangulation and domestic homicide in recent cases examined by the Team, and the importance of responding effectively to this particular form of violence.<sup>4</sup>

Data referred to in the Report highlights the limitations around charging and convicting under the NSW strangulation offence. The data reveals that in over a quarter of intimate partner homicides, the domestic violence abuser had strangled the victim at some time prior to the fatal assault. The Report also identified that strangulation offences were not being charged under the offence of strangulation, but rather were being charged as common assault or assault occasioning actual bodily harm. This finding is reflected in many of the Sydney WDVCS cases where strangulation has been reported.

## NSW Legislation

In 2014, a new offence of 'choking, suffocation and strangulation' was introduced to the *Crimes Act 1900* (NSW)<sup>5</sup> to address the problem of 70% of domestic violence assaults involving strangulation in NSW being charged as common assault. However, it appears that the new offence has not addressed this problem, possibly because of the difficulty in proving all of the elements offence.

The 2014 amendment provides that a person is guilty of an offence if that person:

1. (a) intentionally chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance, and  
(b) is reckless as to rendering the other person, unconscious, insensible or incapable of resistance.

Maximum penalty: imprisonment for 10 years

2. A person is guilty of an offence if the person:
  - (a) chokes, suffocates or strangles another person, so as to render the other person unconscious, insensible or incapable of resistance, and
  - (b) does so with the intention of enabling himself or herself to commit, or assisting any other person to commit, another indictable offence.

Maximum penalty: imprisonment for 25 years

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<sup>4</sup> NSW Domestic Violence Death Review Team Report 2015-2017

<sup>5</sup> Section 37, *Crimes Act 1900* NSW

We would argue that the future health of a victim can be adversely affected without necessarily rendering the other person unconscious, insensible or incapable of resistance. Research has found that victims can suffer from a range of injuries not always noticeable immediately after the event, and some victims have died as long as three weeks after the attack as a result of brain damage caused by lack of oxygen during the strangulation.<sup>6</sup>

## Other Jurisdictions

Some other jurisdictions have created a specific offence of strangulation in a domestic violence context. For example, in Queensland the offence of strangulation specifically relates to offences committed in the context of domestic violence, with lower penalties than NSW, but fewer elements to prove:

- (1) A person commits a crime if –
  - (a) the person unlawfully chokes, suffocates or strangles another person without the other person’s consent: and
  - (b) either –
    - (i) the person is in a domestic relationship with the other person; or
    - (ii) the choking, suffocation or strangulation is associated domestic violence under the Domestic and Family Violence Protection Act 2012.

In May 2017 it was reported that 798 people had been charged in the first 12 months of operation of the new Queensland offence.<sup>7</sup>

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<sup>6</sup> Heather Douglas and Robin Fitzgerald, ‘Strangulation, Domestic Violence and the Legal Response’, *Sydney Law Review* 231 (2014) 36

<sup>7</sup> <http://statements.qld.gov.au/Statement/2017/5/7/798-people-charged-in-first-12-months-of-new-domestic-violence-offence>