

## 114. Choking, suffocation or strangulation in a domestic setting: s 315A

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### 114.1 Legislation

[Last reviewed: February 2025]

*Criminal Code*

[Section 315A](#) - Choking, suffocation or strangulation in a domestic setting

### 114.2 Commentary

[Last reviewed: February 2025]

The offence of choking, suffocation or strangulation without consent in a domestic relationship was introduced in 2016 as a consequence of recommendations in the 'Not Now, Not Ever: Putting an End to Domestic Violence in Queensland' report.

The elements of the offence are that: -

1. The defendant choked, suffocated or strangled the complainant;
2. The act of the defendant was unlawful;
3. The complainant did not consent to the act of choking, suffocation or strangulation; and
4. Either the defendant and the complainant were in a domestic relationship, or the act of the defendant was 'associated domestic violence' as defined in the *Domestic and Family Violence Protection Act 2012* (Qld).

Section 1 of the *Criminal Code* provides that a 'domestic relationship' is a 'relevant relationship' pursuant to s 13 of the *Domestic and Family Violence Protection Act 2012* (Qld). Part 2, Division 3 of that Act provides, in ss 13 to 20, the various definitions of what is a 'relevant relationship'. In a case where the allegation that the defendant and complainant were in a domestic relationship is in dispute, it will be necessary to direct the jury to consider the issue having regard to relevant parts of these statutory definitions.

'Associated domestic violence' is defined in s 9 of the *Domestic and Family Violence Protection Act 2012* (Qld). It is domestic violence towards a relative, associate, or child of an aggrieved (including a child who usually lives with an aggrieved).

Section 315A(1A) provides 'a person is taken to choke, suffocate or strangle another person if the person applies pressure to the other person's neck that completely or partially restricts the other person's respiration or blood circulation, or both.' This subsection was inserted by the *Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024* (Qld) and commenced on 23 September 2024.

The definition, which does not limit the meaning of the words ‘chokes’, ‘suffocates’ or ‘strangles’, was inserted to address concern about whether the offence was limited to conduct involving the restriction of breathing (as discussed in *R v WCA* [\[2023\] QCA 265](#)).

There is no transitional provision for the amendment. Because the amendment arguably widens the definition, it is likely to be regarded as a substantive amendment, and thus would apply only to offences committed after the commencement of the provision on 23 September 2024 (see *Rodway v The Queen* [\(1990\) 169 CLR 515](#)).

Prior to the amendment, the meaning of ‘choked’ was considered by the Court of Appeal in *R v HBZ* [\(2020\) 4 QR 171](#). There, Mullins JA (McMurdo JA and Boddice J agreeing) held at 187 the trial judge was correct to direct the jury that ‘choked’ is an ordinary English word that bears its ordinary meaning, that is ‘to hinder or stop the breathing of a person’. Mullins JA also observed at [\[187\]](#) that:

‘The act of choking will not be proved, unless there is some detrimental effect on the breathing of the victim, because otherwise it would not constitute the act of choking. Even if the restriction of the breathing, as a result of the action of choking the victim, is of short duration, without any lasting injury and does not result in a complete stoppage of the breath of the victim, that will be sufficient, as the offence is directed at deterring that type of conduct from occurring at all’.

Where the lawfulness of the defendant’s act is in issue, it will be necessary to direct the jury concerning any ‘defences’ raised on the evidence. Because assault is not an element of the offence, provocation cannot provide a defence to a charge brought under s 315A.

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

### 114.3 Suggested direction

[Last reviewed: February 2025]

*For offences alleged to have been committed before 23 September 2024*

**To prove that the Defendant [choked/suffocated/strangled] the complainant, the prosecution must prove, beyond reasonable doubt, each of the following.**

**1. The Defendant [choked/strangled/suffocated] the complainant.**

**To [choke/suffocate/strangle] means to hinder or restrict the breathing of another person. There must be some detrimental effect on the breathing of**

**the complainant, but it need not result in a complete stoppage. The hinderance or restriction may be brief or temporary, and it does not matter if there is no lasting physical injury.**

- 2. The [choking/strangulation/suffocation] was unlawful. Unlawful means that it was not justified, authorised or excused by law.**

(Any defence raised on the evidence, such as self-defence, may be incorporated in this direction).

- 3. The complainant did not consent.**

- 4. The Defendant and the complainant were in a domestic relation with each other [or the choking/strangulation/suffocation was ‘associated domestic violence’].**

(Refer to the definitions of ‘relevant relationship’ and ‘associated domestic violence’ if necessary).

*For offences alleged to have been committed after 23 September 2024*

**To prove that the Defendant [choked/suffocated/strangled] the complainant, the prosecution must prove, beyond reasonable doubt, each of the following.**

- 1. The Defendant [choked/strangled/suffocated] the complainant.**

**To [choke/suffocate/strangle] another person means to apply pressure to the other person’s neck that completely or partially restricts the other person’s respiration – that is, breathing – or blood circulation, or both. There must be some detrimental effect on the respiration or blood circulation of the complainant, but it need not result in a complete stoppage of respiration or blood circulation. The restriction may be brief or temporary, and it does not matter if there is no lasting physical injury.**

- 2. The [choking/strangulation/suffocation] was unlawful. Unlawful means that it was not justified, authorised or excused by law.**

(Any defence raised on the evidence, such as self-defence, may be incorporated in this direction).

- 3. The complainant did not consent.**

- 4. The Defendant and the complainant were in a domestic relation with each other [or the choking/strangulation/suffocation was ‘associated domestic violence’].**

(Refer to the definitions of ‘relevant relationship’ and ‘associated domestic violence’ if necessary).