



Research Brief

Strangulation, risk and intimate partner violence

Introduction

With increased awareness about family violence, and intimate partner violence as the most common form of such violence, there is debate about the most effective ways of preventing and responding to such violence. While police and politicians often advocate for, or support the introduction of, more family violence specific legislation, critics argue that more law will not necessarily contribute to improved outcomes for those experiencing family violence (see, for example, Walklate et al 2017). In the wake of Joy Rowley's death and the subsequent Coronial Inquiry, Victoria Police Assistant Commissioner Dean McWhirter recommended to Government the introduction of a stand-alone offence of strangulation. South Australia is also examining the possible introduction of such an offence. This Research Brief examines the definition of non-fatal strangulation, how it has come to be understood as a key risk of intimate partner homicide, and legal responses to non-fatal strangulation.

Acts of non-fatal strangulation can be described using a range of terms, including 'choking', 'suffocation', and 'grabbing the throat' (Special Taskforce, 2015: 302). The harms of strangulation include physical injury, loss of consciousness, death and wide ranging psychological and emotional health impacts (Law Commission, 2016). Within the context of intimate partner violence, it is an act of violence that serves to intimidate, coerce, control and physically harm (Law Commission, 2016).

Strangulation as a key risk indicator in intimate partner homicide

Research and death reviews in Australia and internationally have found that an incident of non-fatal strangulation greatly increases the likelihood of and risk of escalated harm or death in an intimate relationship (Douglas & Fitzgerald, 2014; FVDRC, 2014; Glass et al. 2008; Law Commission, 2016). Consequently, non-fatal strangulation features prominently in Australian state and territory risk assessment frameworks and screening tools as a key factor indicating the likelihood of repeat and escalated family violence (Douglas & Fitzgerald, 2014).

Strangulation is also a leading cause of death among women killed by a current or former male intimate partner. In Australia over the last ten years an act of strangulation/suffocation has been cited as the cause of death of 14-16 per cent of male perpetrated intimate partner homicides (Australian Domestic and Family Violence Death Review Network, 2018; Cussen & Bryant, 2015). In the UK, the 2016 Femicide Census Report concludes that strangulation was the second most common cause of homicide amongst women killed by a male perpetrator, the majority of which were intimate partner homicides (Brennan, 2016).

Identifying and responding to non-fatal strangulation

Australian based research and recent reviews have suggested that police often fail to identify and flag known risks of intimate partner violence, including strangulation (see, for example, RCFV, 2016). One reason put forward for this failure is the range of terms which can be used to describe the act of non-fatal strangulation,

several of which may mask the seriousness of the abusive behaviour, as well as the difficulty in some cases of identifying any resulting physical injuries (Law Commission, 2016; Special Taskforce, 2015). A United States study of three hundred strangulation cases revealed that the lack of physical injury present in many cases contributed to the inability of police, prosecutors and medical personnel to identify the risk and corroborate the victim's allegation that an act of non-fatal strangulation had occurred (Strack, McClane & Hawley, 2001).

An offence of strangulation: Australian developments

In Australia state and territory criminal law include offences against the person covering a wide range of conduct, including assault, assault causing bodily harm and attempted murder (Douglas & Fitzgerald, 2014). Typically, acts of strangulation have been charged under these offences. New South Wales and the Australian Capital Territory also have stand-alone offences for strangulation. The ACT offence, included in the *Crimes Act (1900)*, requires that the victim is rendered 'insensible' and 'unconscious' as a result of the act of strangulation. The NSW legislation applies to conduct involving 'attempts to choke suffocate or strangle' a person (Crimes Act 1990, s 37, on Australian legislation see further Douglas & Fitzgerald, 2014).

The Queensland Special Taskforce on Domestic and Family Violence (2015: 15, Recommendation 120) concluded that 'there are gaps in the existing Criminal Code' and recommended the introduction of a separate criminal offence of strangulation with a penalty reflecting that it is 'a predictor of escalation and increased risk to the victim'. The Taskforce (2015: 302) argued that a stand-alone offence would assist in ensuring better recording of incidents involving an act of non-fatal strangulation, increase protection for victims and better risk assessment practices. In April 2016, the Queensland Government introduced the *Criminal Law (Domestic Violence) Amendment Act 2016*. The new offence carries a maximum penalty of 7 years' imprisonment and applies to unlawful non-fatal choking, suffocation and strangulation committed in a domestic setting and carried out by a person in a domestic relationship with the victim and/or as conduct associated with domestic violence.

An offence of strangulation: International developments

Over 30 jurisdictions in the United States have legislated a stand-alone offence of strangulation (Gwinn et al. 2014). Of these, six states have enacted strangulation laws that are limited in application to domestic relationships (Gwinn et al. 2014). In 2006 Canada established a working group to review the need for a strangulation offence, which concluded that existing laws were adequate to address this type of criminal conduct (Law Commission, 2016).

In March 2016, the New Zealand (NZ) Law Commission recommended the creation of a specific criminal offence of strangulation (see also FVDRC, 2014). The Law Commission (2016) concluded that the high risks present in cases of intimate partner violence following an act of non-fatal strangulation were inadequately understood and responded to by police, judges and other relevant services. In their review of previous responses in non-fatal strangulation cases, the Law Commission found that due to evidentiary barriers perpetrators often had their charges reduced and received minimal sentences. The New Zealand Government subsequently accepted the Law Reform Commission's

recommendation and introduced the new offence in Part 8 of the *Crimes Act 1961* (NZ).

Arguments against a stand-alone offence of strangulation

Despite the proliferation of specific strangulation offences in Australia and internationally there is no reliable evidence that these offences have improved safety outcomes for victim/survivors. The RCFV (2016) examined the merits of but ultimately did not recommend the introduction of a specific offence of strangulation. In its RCFV submission, Victoria Legal Aid recommended against the introduction of such an offence arguing that the conduct is catered for among existing criminal law offences and that:

efforts to predict and manage risk are critical, but in our view these are more properly and effectively directed at earlier points in the system, rather than increasing the range of offences available once allegations or incidents of family violence have already occurred.

The Bar Association of Queensland, in their submission to the Special Taskforce, expressed similar concerns, arguing that a new offence may have unintended consequences given the difficulty of defining what specifically constitutes an act of non-fatal strangulation.

There are also concerns that introducing new family violence offences may detract attention from systemic failures to utilise extant laws and non-compliance with operational guidelines related to family violence. In 2018, in response to Victoria Police calls for the introduction of a new offence, Marianne Jago from Women's Legal Service Victoria argued that, 'the Crimes Act [Vic]

contains provisions for strangulation to be criminalised. Unfortunately, we regularly see cases where police have not followed existing good practices and policy' (Mills, 2018).

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