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LEGAL PRACTICE



The criminal offence of “choking, suffocation or strangulation”

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The criminal offence of choking (officially called “choking, suffocation or strangulation in a domestic setting”) was introduced into Queensland law in 2016, following a recommendation of the Special Taskforce on Domestic and Family Violence.

The offence is limited in its application to only apply in respect of domestic relationships; that limitation being based on established research suggesting that choking in a domestically violent relationship is a recognised predictor of future domestic homicide.

This article summarises what choking means and the legal processes surrounding charges of this nature. It also explains how allegations of choking outside of a domestic setting are handled by the police.

What is required to prove a charge of choking, suffocation or strangulation?

To prove a choking charge, the prosecution must prove the following elements beyond a reasonable doubt:

- the accused “choked, suffocated or strangled” another person;
- that was done without the other person’s consent;
- it was done “unlawfully”; and
- the accused and the other person were in a domestic relationship.

What is choking, suffocation or strangulation?

Whilst the terms ‘choking’, ‘suffocation’ and ‘strangulation’ all mean slightly different things in everyday language, for the purposes of this offence, they are regarded as a composite term covering a range of conduct.

The three words are not specifically defined, other than (as a collective expression) to *include* conduct whereby a person applies pressure to another person’s neck that completely or partially restricts the other person’s respiration or blood circulation, or both. This reference to a *partial* restriction is important – the law does not require the complete prevention of breathing or blood flow. A temporary, partial restriction is sufficient to prove the offence.

Given choking is still a relatively new offence, the full scope of its potential application is not yet settled. It may be that the offence covers a wider scope of behaviour than may be thought. For example, the offence may not be limited to conduct involving pressure to the neck, and might capture actions such as deliberately sitting on a person’s chest to restrict their breathing.

Proving “without consent”

The prosecution must prove that the choking occurred without the victim’s consent.

This element of the offence is included to avoid criminal liability arising in circumstances where a person consents to being choked by another, such as in the course of consensual sexual activity. The issue of consent might also arise in combat sports such as certain martial arts.

In practice, the prosecution usually seeks to prove this element with evidence from the victim that they did not consent to being choked, i.e. it occurred without their agreement.

The relevance of “domestic setting”

As noted above, the offence of choking is limited in its application to domestic relationships. As the law currently stands, it is unlikely to apply to a couple who have just met online, for example, and where such behaviour occurs (whether in the course of sexual activity or otherwise) soon after their initial meeting.

Where a choking-style offence occurs outside of a domestic relationship, the police are still able to lay other charges, such as assault.

Defending a charge of non-fatal strangulation

As noted above, the prosecution has to prove every element of the charge, including that the behaviour was ‘unlawful’. Instances where the law *might* regard choking as lawful include:

- a doctor conducting a medical procedure;
- in defence of one’s premises or property;
- a police officer making an arrest or preventing an escape; and

- a corrective services officer restraining a prisoner in the course of their duties.

As well as proving all of the elements of the offence, the prosecution must also negate any defences raised by the accused person. A number of well-recognised defences, like self-defence, and using ‘domestic discipline’ (such as a parent trying to manage an unruly child) are potentially available to a person accused of choking.

The common defence of provocation is not available, however. The law in Queensland provides that assault is not an element of a choking offence. Because the defence of provocation only applies to assault-based offences, an accused person is not able to rely on this defence when facing a choking charge.

Sometimes it is possible to have a charge downgraded (for example, to an assault) following negotiations with the prosecution, or alternatively, resolved by way of mediation.

You may find our earlier article, “Defences to criminal charges”, interesting or useful.

How are choking offences dealt with by the courts?

The law in Queensland provides that such offences must be dealt with in the District Court. Even on a plea of guilty, they cannot be dealt with in the Magistrates Court. That has implications for how long it takes for these matters to be finalised. The average length of time to resolve such matters is about one year for a plea of guilty, and closer to two years if the matter goes to trial.

Penalties for non-fatal strangulation

The offence of choking carries a maximum penalty of seven years' imprisonment.

Those sentenced for this offence usually receive a custodial sentence, the average length of imprisonment being about 2.5 years (with some sentences extending to 6+ years, at the upper end). In a small percentage of cases, the sentence of imprisonment imposed is wholly suspended, meaning the offender does not have to serve actual time in custody.

For child (under 18) offenders, the most common sentence is probation, followed by detention. You can learn more about sentencing for minors in our earlier article, “Sentencing children in Queensland”.

Possible reforms

The Queensland Law Reform Commission is conducting a review of Queensland’s laws into non-fatal strangulation. In particular, the Commission is looking at issues such as:

- whether the terms ‘chokes’, ‘suffocates’ and ‘strangles’ should be defined;
- whether the offence should remain limited to domestic settings;
- whether the need for the prosecution to prove a lack of consent should remain or be removed;

- whether the current maximum penalty is sufficient;
- whether such matters should be able to be finalised in the Magistrates Court.

The Commission is expected to report in late 2025.

Get help from a criminal lawyer

Choking is a serious offence, often arising in conjunction with allegations of domestic violence. It is crucial that expert legal advice be obtained at the earliest opportunity to best respond to such a charge. Those convicted can expect a lengthy jail term.

Gilshenan &Luton offer expert advice and representation in all areas of criminal law, including in respect of offences of this nature.

Contacting Gilshenan &Luton Lawyers

07 3361 0222 (24/7)

gnl@gnl.com.au

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