

**Crimes Amendment (Non-fatal Strangulation)
Act 2023**

No. of 2023

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Crimes Amendment (Non-fatal Strangulation) Act 2023[†]

No. of 2023

[Assented to _____]

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

- (a) to amend the **Crimes Act 1958** to provide for 2 non-fatal strangulation offences; and
- (b) to make a consequential amendment to the **Family Violence Protection Act 2008**.

Crimes Amendment (Non-fatal Strangulation) Act 2023
No. of 2023

Part 1—Preliminary

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 13 October 2024, it comes into operation on that day.

Part 2—Amendment of Crimes Act 1958

3 New Subdivision (4A) of Division 1 of Part I inserted

After Subdivision (4) of Division 1 of Part I of the
Crimes Act 1958 insert—

"(4A) *Non-fatal strangulation*

34AB Definitions

(1) In this Subdivision—

chokes, strangles or suffocates includes
doing any of the following things—

- (a) applying pressure to the front or
sides of a person's neck;
- (b) obstructing any part of, or
interfering with the operation of, a
person's respiratory system or
accessory systems of respiration;
- (c) impeding a person's respiration;

family member has the meaning given by
section 8 of the **Family Violence
Protection Act 2008**;

injury has the same meaning as in
section 15;

sexual activity has the meaning given by
section 35D and subsection (2).

(2) If conduct constituting an offence against
section 34AE(1) occurs during sexual
activity (within the meaning of section 35D)
that conduct is itself ***sexual activity*** for the
purposes of this Subdivision.

34AC Guiding principles

It is the intention of Parliament that in interpreting and applying this Subdivision, courts are to have regard to the fact that—

- (a) non-fatal strangulation of a person by a current or former intimate partner indicates that the person is, statistically, significantly more likely to be killed by the current or former intimate partner; and
- (b) in circumstances of family violence, non-fatal strangulation can indicate an ongoing and escalating pattern of coercive and controlling behaviour by the perpetrator; and
- (c) even very short or individual instances of non-fatal strangulation can demonstrate the perpetrator's physical dominance and control over the victim and create an atmosphere of fear and compliance; and
- (d) non-fatal strangulation will not always leave physical signs or injuries, and it can result in physical signs or injuries that only appear after weeks or months have passed.

34AD Non-fatal strangulation intentionally causing injury

- (1) A person (A) commits an offence if—
 - (a) A intentionally and without lawful excuse chokes, strangles or suffocates another person (B); and
 - (b) A intends the choking, strangling or suffocation to cause an injury to B; and
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(c) the choking, strangling or suffocation causes an injury to B; and

(d) A is a family member of B.

Penalty: Level 5 imprisonment (10 years maximum).

Note

A mistaken but honest and reasonable belief that A was not a family member of B is not a defence to this offence—see section 34AK.

(2) For the purposes of subsection (1), it is not a lawful excuse that B consented to the conduct constituting the offence.

(3) A does not commit an offence against subsection (1) if the conduct constituting the offence occurs in the course of a procedure carried out in good faith for medical or body modification purposes.

Examples

1 A tattoos B's neck at the request of B.

2 A gives B a neck piercing at the request of B.

34AE Non-fatal strangulation

(1) A person (A) commits an offence if—

(a) A intentionally and without lawful excuse chokes, strangles or suffocates another person (B); and

(b) A is a family member of B.

Penalty: Level 6 imprisonment (5 years maximum).

Note

A mistaken but honest and reasonable belief that A was not a family member of B is not a defence to this offence—see section 34AK.

- (2) For the purposes of subsection (1), if the conduct constituting the offence is a sexual activity, that B consented to that conduct is not a lawful excuse except to the extent provided for by section 34AF.
- (3) Nothing in subsection (2) or section 34AF prevents B's consent to the conduct constituting the offence from being a lawful excuse for the purposes of subsection (1) if that conduct is not a sexual activity.
- (4) Nothing in sections 34AG to 34AJ applies in relation to consent being a lawful excuse where the conduct constituting the offence is not a sexual activity.

34AF Sexual activity and consent defence to offence of non-fatal strangulation

- (1) It is a defence to a charge for an offence against section 34AE(1) if—
 - (a) the conduct constituting the offence was a sexual activity; and
 - (b) either—
 - (i) B consented to the conduct; or
 - (ii) A reasonably believed that B consented to the conduct.
- (2) In this section—

consent has the meaning given by sections 34AG and 34AH.

**34AG Sexual activity and consent defence—
meaning of consent**

For the purposes of section 34AF(1)(b)—

- (a) consent means free and voluntary agreement; and
- (b) a person does not consent to the conduct constituting the offence just because they do not resist the conduct verbally or physically; and
- (c) a person does not consent to the conduct constituting the offence just because they consented to—
 - (i) a different sexual activity with the same person; or
 - (ii) the same sexual activity with the same person at a different time or place; or
 - (iii) the same sexual activity with a different person; or
 - (iv) a different sexual activity with a different person.

**34AH Sexual activity and consent defence—
circumstances in which a person does not
consent**

For the purposes of section 34AF(1)(b),
circumstances in which a person does not
consent to the conduct constituting the
offence include, but are not limited to, the
following—

- (a) the person does not say or do anything to indicate consent to the conduct;
 - (b) the person submits to the conduct because of force, a fear of force, harm of any type or a fear of harm of any
-

type, whether to that person or someone else, regardless of—

- (i) when the force, harm or conduct giving rise to the fear occurs; and
- (ii) whether it is, or is a result of, a single incident or is part of an ongoing pattern;

Examples

Each of the following is a type of harm that can be done to a person as described in this paragraph—

- (a) economic or financial harm;
 - (b) reputational harm;
 - (c) harm to the person's family, cultural or community relationships;
 - (d) harm to the person's employment;
 - (e) family violence involving psychological abuse or harm to mental health;
 - (f) sexual harassment.
- (c) the person submits to the conduct because of coercion or intimidation—
 - (i) regardless of when the coercion or intimidation occurs; and
 - (ii) whether it is, or is a result of, a single incident or is part of an ongoing pattern;
 - (d) the person submits to the conduct because the person is unlawfully detained;
 - (e) the person submits to the conduct because the person is overborne by the abuse of a relationship of authority or trust;
 - (f) the person is asleep or unconscious;
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- (g) the person is so affected by alcohol or another drug as to be incapable of consenting to the conduct;
- (h) the person is so affected by alcohol or another drug as to be incapable of withdrawing consent to the conduct;

Note

This circumstance may apply where a person gave consent when not so affected by alcohol or another drug as to be incapable of consenting.

- (i) having given consent to the conduct, the person later withdraws consent to the conduct taking place or continuing.

**34AI Sexual activity and consent defence—
reasonable belief in consent**

- (1) For the purposes of section 34AF(1)(b)(ii), whether or not A reasonably believes that B is consenting to the conduct constituting the offence depends on the circumstances.

Note

See section 34AJ for the effect of intoxication on the standard to be applied in determining whether A had a reasonable belief.

- (2) A's belief that B consents to the conduct constituting the offence is not reasonable if, within a reasonable time before or at the time the conduct takes place, A does not say or do anything to find out whether B consents to the conduct.
 - (3) Subsection (2) does not apply if—
 - (a) A has a cognitive impairment or mental illness (other than the effects of intoxication that is self-induced within the meaning of section 34AJ); and
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- (b) that cognitive impairment or mental illness is a substantial cause of A not saying or doing anything to find out whether B consents to the conduct constituting the offence.
- (4) A bears the burden of proving on the balance of probabilities the matters referred to in subsection (3).

Note

References to A and B in this section are references to the same A and B referred to in section 34AE.

**34AJ Sexual activity and consent defence—
effect of intoxication on standard to be
applied in determining reasonable belief**

- (1) In determining whether a person who is intoxicated has a reasonable belief at any time—
 - (a) if the intoxication is self-induced, regard must be had to the standard of a reasonable person who is not intoxicated and who is otherwise in the same circumstances as that person at the relevant time; and
 - (b) if the intoxication is not self-induced, regard must be had to the standard of a reasonable person who is intoxicated to the same extent as the person and who is in the same circumstances as that person at the relevant time.
 - (2) For the purposes of this section, intoxication is self-induced unless it came about—
 - (a) involuntarily; or
 - (b) because of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force; or
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- (c) from the use of a drug for which a prescription is required and that was used in accordance with the directions of the person who prescribed it; or
 - (d) from the use of a drug for which a prescription is not required and that was used for a purpose, and in accordance with the dosage level, recommended by the manufacturer.
- (3) However, intoxication that comes about in the circumstances referred to in subsection (2)(c) or (d) is self-induced if the person using the drug knew, or had reason to believe, when taking the drug that it would significantly impair the person's judgement or control.

34AK No defence of mistaken but honest and reasonable belief regarding relationship

For an offence against section 34AD(1) or 34AE(1), it is not a defence to a charge that, at the time of the conduct constituting the offence, A was under a mistaken but honest and reasonable belief that A was not a family member of B.

Note

References to A and B in this section are references to the same A and B referred to in sections 34AD and 34AE.

34AL Review of amendments made by Crimes Amendment (Non-fatal Strangulation) Act 2023

- (1) The Attorney-General must cause a review to be conducted of the operation of—
 - (a) this Subdivision; and
 - (b) section 5(2)(ba) of the **Family Violence Protection Act 2008**.
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- (2) The review must be commenced no later than 2 years after the commencement of the **Crimes Amendment (Non-fatal Strangulation) Act 2023**.
- (3) The review must be completed no later than 6 months after it commences.
- (4) The Attorney-General must cause a copy of the review to be laid before each House of the Parliament no later than 14 sitting days after receiving it."

4 Statute law revision

In section 36B(3) of the **Crimes Act 1958**, for "subsection (2)(c), (ca)" **substitute** "subsection (2)(c)".

Part 3—Consequential amendment of Family Violence Protection Act 2008

5 **Meaning of *family violence***

After section 5(2)(b) of the **Family Violence
Protection Act 2008** insert—

"(ba) choking, strangling or suffocating (within the meaning of section 34AB(1) of the **Crimes Act 1958**) a family member or threatening to do so;"

Part 4—Repeal of this Act

6 Repeal of this Act

This Act is **repealed** on 13 October 2025.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

[†] *Minister's second reading speech—*

Legislative Assembly:

Legislative Council:

The long title for the Bill for this Act was "A Bill for an Act to amend the **Crimes Act 1958** to provide for 2 non-fatal strangulation offences and to make a consequential amendment to the **Family Violence Protection Act 2008** and for other purposes."