

SUMMARY

Victims of family violence who commit homicide: Issues Paper

(NZLC IP39, 2015)

Family violence has long been recognised as a significant problem in New Zealand. Nearly half of all homicides in this country are related to family violence. Most are committed by people with a history of aggression but, sometimes, people who have been victims of long-term physical, sexual and psychological violence kill their abusers. Usually, although not always, such people are women who have suffered years of violence by male intimate partners.

The Law Commission has been asked to review the law in respect of victims of family violence who commit homicide. It has now released an Issues Paper, inviting submissions from the public by **18 December 2015**.

Background

The Law Commission's review follows the Fourth Annual Report of the Family Violence Death Review Committee, which concluded that, compared to similar international jurisdictions, New Zealand is "out of step" in how the criminal justice system responds to victims of family violence when they face homicide charges for killing their abuser.

The Commission has previously considered this issue in 2001, in *Some Criminal Defences with Particular Reference to Battered Defendants* (NZLC R73), and 2007, in *The Partial Defence of Provocation* (NZLC R98). In both reports the Commission recommended repeal of provocation in conjunction with changes to the law of sentencing for murder. The 2001 report also recommended reform of the law of self-defence to make it more accessible to "battered defendants".

New Zealand subsequently abolished the mandatory life sentence for murder and repealed provocation. The Sentencing Act 2002 retains a strong presumption in favour of life imprisonment for murder, however, and the law of self-defence remains unaltered.

Against this background the Law Commission has been asked to conduct the current review and report by 31 March 2016.

As part of its review the Commission has considered New Zealand case law, the Fourth Annual Report of the Family Violence Death Review Committee, the Law Commission's previous reports, overseas law reform work and literature on this issue.

The issues the Commission has identified

The Issues Paper identifies three main areas in which there is a risk the criminal justice system is not adequately providing for victims of family violence who commit homicide.

Self-defence

The law of self-defence has developed in a way that may operate to unfairly exclude victims of family violence who kill their abusers from successfully relying on the defence, in circumstances where they had no real alternative to the use of force. The courts have interpreted self-defence to require a defendant to be responding “proportionately” to an “imminent” threat, where there is no alternative to the use of force. The Commission’s review of relevant cases, literature and research indicate that the requirements of “imminence” and “proportionality” are difficult to reconcile with the ongoing and cumulative nature of family violence, and the entrapment it often involves.

Reduced culpability: partial defences and sentencing

There may be a legitimate need for a partial defence to recognise reduced culpability of defendants who kill their abusers other than in self-defence. Since the repeal of provocation, there are no relevant partial defences available to victims of family violence who kill their abusers. Partial defences reduce murder to manslaughter where a killing is excusable, but not wholly justified. Alternatively a specific homicide offence could achieve the same objective. The Commission has identified no clear evidence that the repeal of provocation has led to harsher outcomes (in terms of conviction or sentence) for victims of family violence who commit homicide. It is, however, arguable the law should provide for greater recognition of reduced culpability for defendants who kill abusers other than in self-defence.

Alternatively, there may be a case for sentencing reform to achieve the same objective, by providing for greater judicial sentencing discretion where a victim of family violence is convicted of murder for killing their abuser.

Understanding of family violence

Myths and misconceptions about the dynamics of family violence persist – including that a victim can put a stop to family violence by simply leaving an abusive relationship. This and other myths might mean victims of family violence can struggle to have their experiences understood and may receive inequitable treatment before the law.

The options for reform

The Commission considers some reform is needed to ensure the law applies equitably to victims of family violence. The Issues Paper canvasses a range of options for reform and seeks feedback on 20 specific questions around the law of self-defence, partial defences, sentencing, decisions to prosecute, evidence, and education on family violence for people in the justice system. The reform options set out in the paper are, in summary:

- Statutory reform of the law of self-defence, either by clarification of the existing test, or introduction of a new provision that applies to victims of family violence who take defensive action out of necessity;
- Introduction of other statutory provisions, to support interpretation of self-defence, for the admission of evidence and/or jury directions about family violence;

EMBARGOED UNTIL 11:00AM 11 NOVEMBER 2015

- Introduction of a new partial defence to murder, or a new homicide offence less culpable than murder. The Issues Paper sets out options based on overseas experiences;
- Amendment of the Sentencing Act 2002 to provide for greater flexibility in murder sentencing;
- Development of the Solicitor-General's Prosecution Guidelines to include prosecutorial consideration of the circumstances of victims of family violence; and
- Development and provision of education and training, for the judiciary and legal profession, about the dynamics of family violence.