

Terms of Reference

Victims of family violence who commit homicide

Context

In 2001 the Law Commission published a report examining the legal defences available to protect those who commit criminal offences as a reaction to domestic violence: *“Some Criminal defences with Particular Reference to Battered Defendants”* LCR73. Of particular note the Report recommended repeal of the partial defence to murder of provocation, an amendment to the defence of self-defence and abolition of the mandatory sentence of life imprisonment for murder.

In 2002 Parliament introduced discretionary sentencing in murder cases, subject to a presumption in favour of life imprisonment.

In 2007 the Law Commission published a second Report: *“The Partial Defence of Provocation”* LCR98. The Report again recommended repeal of this partial defence. The Commission concluded that its major deficiency was that the partial defence of provocation had been primarily used by violent offenders in respect of unwelcome advances or slights against their honour. It was seldom available to victims of family violence. Given this conclusion, the Commission re-examined whether the defence of self-defence should be amended to ensure that it is available to victims of family violence in appropriate cases. In answering this question the Commission noted the work undertaken as part of the Government Response to the Commission’s 2001 Report. That work concluded that amendment to section 48 of the Crimes Act 1961 (self-defence and defence of another) was not required to meet the needs of battered defendants, and might be undesirable in light of the fact that the section is generally regarded as working well. The Ministry reviewed recent case law, which tended to suggest that problems previously encountered were being ironed out in the courts; it thus concluded that the real problem previously was one of social awareness, rather than of law. The Ministry found that overwhelmingly stakeholders were comfortable with letting matters take their course. The Commission stated: “we are content at this stage to concur with the Ministry’s conclusions”.

In 2009 Parliament repealed section 169 of the Crimes Act 1961, which had provided for the partial defence to murder of provocation.

Since the 2009 repeal, the Family Violence Death Review Committee has been gathering data on all family violence homicides in New Zealand. In its Fourth Annual Report published in 2014, the Committee concluded that New Zealand is out of step in how the criminal justice system responds to victims of family violence when they face criminal charges for killing their abusive partners. To address this, the Committee recommended that the Government re-examine the options for amending the defence of self-defence and introducing a targeted partial defence to murder.

The Government has asked the Law Commission to conduct the re-examination recommended by the Family Violence Death Review Committee.

Reference

The Law Commission will re-consider whether the law in respect of a victim of family violence who commits homicide can be improved. As part of this review the Law Commission shall consider:

- a) Should the test for self-defence, in section 48 of the Crimes Act 1961, be modified so that it is more readily assessable to defendants charged with murder who are victims of family violence; and
- b) Whether a partial defence for victims of family violence who are charged with murder is justified and if so in what particular circumstances; and
- c) Whether current sentencing principles properly reflect the circumstances of victims of family violence who are convicted of murder?

Scope

The reference forms part of a broader range of initiatives relating to family violence being undertaken by the Ministry of Justice. It also forms part of two other projects being undertaken by the Law Commission, being alternative trial processes with particular focus on sexual offence cases and whether a separate offence of non-fatal strangulation is desirable.

Review Process

The reference will be undertaken by:

- Conducting preliminary research including a review of recent New Zealand cases and an assessment of overseas experience and best practise;
- Consulting with targeted agencies within New Zealand including the Police, Judiciary, Ministry of Justice, Family Violence Death Review Committee, New Zealand Law Society and other knowledgeable agencies;
- Engaging with an expert panel, made up of both public and non-public sector advisers, during the reference; and
- Publishing a Report.

Timing

The Law Commission will report to the Minister by the 31st March 2016.