

Budget sensitive

In confidence

Office of the Minister of Justice

Chair

Cabinet Social Policy Committee

## **REFORM OF FAMILY VIOLENCE LAW**

### **Paper Three: Prosecuting family violence**

#### **Proposal**

1. This paper is the third of three papers seeking Cabinet agreement to reforms to the law applying to family violence, following the review of family violence legislation. I seek agreement to changes to elements of the criminal law's response to family violence.

#### **Executive summary**

2. The review of family violence legislation found limitations in the criminal law that could be addressed to ensure that the distinctive nature of some types of family violence offending is better recognised and responded to. In particular:
  - family violence offending is not consistently identified or recorded in the criminal justice system because almost any offence can be a family violence offence
  - existing offences do not clearly criminalise all family violence behaviours
  - the serious and repeat nature of family violence, and its long lasting effects, are not always recognised
  - victim safety is not always adequately considered in decisions that affect them, and
  - court practices could be improved to better support and protect victims.
3. I make a number of recommendations in this paper to address these limitations. My recommendations include the introduction of a family violence offence framework to distinguish family violence from other offending, the introduction of new offences to fill gaps in the criminal law, and actions to better protect the safety of victims in court decision making.

#### **Family violence and the criminal law**

4. For much of the twentieth century family violence was downplayed as a primarily private matter, and the criminal justice system reflected this. Attitudes subsequently shifted, with family violence increasingly seen as a public concern. Protection orders were introduced in the 1980s, in part to address the perceived limitations of the criminal law. By the 1990s attitudes in the criminal justice system reflected these wider changes.

5. In *Taueki*<sup>1</sup> (the sentencing guideline judgment for serious violence) the Court of Appeal recognised that family violence was a major problem in New Zealand society. The Court stated that assault committed in a domestic context should not be treated any less seriously than other types of violence.
6. Family violence now makes up a large proportion of criminal offending. The New Zealand Crime and Safety Survey found that in 2013 57 percent of violent interpersonal offences were committed by an intimate partner or other family member.<sup>2</sup>
7. Responding to family violence offending is a significant component of justice sector agencies' workload. In 2015, Police responded to 109,328 family violence incidents.<sup>3</sup> In 2015, approximately 20 percent of all sentences managed by the Department of Corrections included at least one family violence offence.<sup>4</sup>
8. Family violence differs from other forms of offending. It occurs in the context of a family relationship, so the perpetrator knows the victim; they may have children together and live in the same home. The victim and perpetrator may continue to have contact well after the offending has been dealt with. Family violence offending is also distinguished by its nature, which relates to the cumulative impact on victims of an ongoing pattern of abuse, and the breach of the trust inherent in family relationships. There is often a co-occurrence of abuse against different victims (e.g. a partner and their children), and abuse has serious and long lasting effects on these victims.

## Identifying and distinguishing family violence offences

### Review finding

Family violence offending is not consistently identified or recorded within the justice system.

I propose:

- introducing a 'virtual' framework of family violence offences to facilitate the consistent identification of family violence, and enable the use of differentiated court processes for criminal offending in those cases
- defining family violence in relevant criminal legislation as offending occurring in the context of a family relationship (cross-referenced to the Domestic Violence Act 1995).

9. Police currently charge and prosecute family violence under a wide range of generic offences, such as property damage, assault or murder. Other than breach of a protection order, New Zealand does not have any specific family violence offences. The reliance on generic offences means there are numerous offences that can be prosecuted. However, it also makes it difficult to reliably identify and record family violence offending across all offences, or to apply particular court processes as appropriate in a family violence context.
10. I propose introducing a 'virtual' framework of family violence offences. This will facilitate the consistent identification of family violence and distinguish it from other

<sup>1</sup> *R v Taueki* [2005] 3 New Zealand Law Reports 372.

<sup>2</sup> Ministry of Justice. (2015). *New Zealand Crime and Safety Survey 2014*.

<sup>3</sup> New Zealand Police. (2015). *Family violence investigations 2010-2014*.

<sup>4</sup> Department of Corrections. (2012). *Community-based domestic violence interventions: A literature review*.

criminal offending. Every offence identified as a ‘family violence offence’ will be ‘flagged’ by Police when charges are filed. The flag will signal the use of a differentiated approach throughout the court process. Subject to proposals in paragraphs 40 to 57 in this paper being agreed:

10.1. decisions on bail will be influenced by the presence of a family violence flag, highlighting the need to ensure victim safety

10.2. family violence specific aggravating factors will apply when judges decide the sentence, and

10.3. family violence convictions will be made visible on criminal records.

*Note: Cabinet agreed to one aggravating factor: “an offender being subject to a protection order at time of offending”*

11. In sum, the presence of a family violence ‘flag’ will serve to guide decision-makers, allowing them to place more restrictions on the perpetrator and alerting them to the safety needs of victims. The flag will remain on criminal records and may serve to inform future court decision-making, including decisions about parenting orders made in the Family Court. The defendant will be able to challenge the entry and use of the flag.
12. A consistent approach to identifying family violence offending will also help to increase the accuracy of data about family violence. This is a secondary, but important, benefit that will contribute to future evidence-based investment decisions.
13. I recommend that family violence be defined in relevant criminal legislation as offending occurring in the context of a family relationship. The definition of ‘family relationship’ would cross-refer to the definition of ‘domestic relationship’ in the Domestic Violence Act 1995. This definition is broad, capturing spouses and partners, family members, individuals who live in the same household and ‘close personal relationships’. The court has the discretion to determine a ‘close personal relationship’ on a case-by-case basis, with reference to a set of criteria on the nature, intensity and duration of the relationship.

## **Prosecuting family violence offending in all its forms**

### **Review finding**

Existing offences do not clearly criminalise all family violence behaviours.

I propose introducing new criminal offences of strangulation, coercion to marry, and assault on a family member.

14. I want to ensure that the full spectrum of family violence offending behaviours can be prosecuted. I therefore recommend the introduction of four new family violence offences.
15. Paragraphs 16-25 of this paper also comprise my proposed response to the Law Commission’s report *Strangulation: The case for a new offence*. A summary of the Commission’s findings and the proposed response is attached as Appendix One.

## Strangulation

16. The Law Commission has recommended a new offence of strangulation or suffocation, to better protect victims of family violence.<sup>5</sup> In family violence circumstances, strangulation has been identified as a significant risk factor for future fatal attacks.<sup>6</sup> Strangulation is commonly used by perpetrators of family violence as a tactic to control a partner, instilling fear by showing the victim that the perpetrator has the ability to kill. Perpetrators of strangulation are not always held to account for the severity of their behaviour, as it is not always charged, or may be charged as a less serious offence due to a lack of physical evidence or injury.
17. I propose to introduce a new offence of strangulation, to have general application, as recommended by the Law Commission (i.e. not limited to family violence cases). This would address a gap in the current offence framework and recognise the particularly serious nature of the behaviour.
18. Professionals dealing with subsequent family violence offences, such as Police, programme providers and judges, will be able to see strangulation on a perpetrator's criminal record. This will give these professionals an important piece of information to better equip them to conduct appropriate risk management and safety planning.
19. I recommend the offence covers a person intentionally or recklessly impeding breathing or blood circulation by applying force to the victim's throat, neck, nose or mouth. This is a modified form of the Law Commission's recommended offence, to ensure all relevant acts are covered (e.g. forcing objects into the victim's mouth).
20. I seek a decision about whether to include 'compressive asphyxia' in the scope of the offence, to include cases where the offender applies pressure to the victim's chest. Police supports this approach. This behaviour was not included in the Law Commission's recommended offence. Police estimate 30 to 50 prosecutions of 'compressive asphyxia' per year.

Section 9(2)(f)(iv)

21. Further, I recommend a maximum penalty for this offence of either seven years' imprisonment or five years' imprisonment. The Law Commission proposed a maximum penalty of seven years, which is supported by Police. Seven years would make strangulation equivalent to the offences of wounding with intent to injure and threatening to kill.

Section 9(2)(f)(iv)

22. A maximum penalty of five years' imprisonment would make strangulation equivalent to the offences of injuring with intent and disabling. While strangulation may contain an implicit threat to kill, it also has a similar effect to that of disabling

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<sup>5</sup> Law Commission. (2016). *Strangulation: The case for a new offence*. NZLC R138. A summary of findings and the proposed response is attached as Appendix One.

<sup>6</sup> Glass, N. et al. (2008). 'Non-fatal strangulation is an important risk factor for homicide of women'. 35 *The Journal of Emergency Medicine*, 329.

(which includes rendering a person unconscious) so either penalty may be justified.

Section 9(2)(f)(iv)

23. If a maximum penalty of seven years' imprisonment is preferred, there is a further question of whether strangulation should be included in the three strikes regime in the Sentencing Act 2000. That regime provides an escalated sentencing response for repeat instances of New Zealand's most serious criminal offences.
24. I recommend that strangulation not be included in the three strikes regime. Offences with a maximum penalty of seven years included in the three strikes regime, such as wounding with intent to injure and aggravated injury, involve serious levels of physical violence and harm. The act of strangulation signals the potential for future violence and carries an implicit threat to kill. It is therefore more equivalent to the offence of threatening to kill, which is not included in the three strikes regime.
25. The Law Commission also recommended changes to Police family violence incident reports and the Police National Intelligence Application, to increase the visibility of strangulation. In addition to this, it recommended education on strangulation be provided to Police and judges who work in the family violence area to support the introduction of a new offence. I propose that the Government accept these recommendations.

#### *Coercion and control*

26. I have considered a possible offence of coercion and control. Such an offence acts to criminalise patterns of behaviour, including where there has been ongoing psychological intimidation and control at the highest level. It would recognise the cumulative impact of such behaviour and signal that a repeated pattern of coercion or control can have significant adverse consequences for a victim.
27. The introduction of such an offence could send a clear message that this form of abuse is sufficiently serious that it justifies the intervention of the criminal law. It would also recognise the ongoing nature of the behaviour as being relevant to the offender's culpability.
28. However the challenges with delineating between non-criminal and criminal activity of this type are very real. There are a range of views about what constitutes acceptable family dynamics and behaviour, and the point at which these become so coercive or controlling that the intervention of the criminal law is required. I anticipate that any such offence would be used in a very limited number of cases.
29. Such an offence could only be considered if we were satisfied the line between criminal and non-criminal behaviour could be clearly drawn and, at this point, that has not been established.

#### *Coercion to marry*

30. A forced marriage is one where a person enters into a marriage without freely and fully consenting, due to the use of coercion, threats or deception. This is distinct from arranged marriages, which occur with the consent of the marriage partners.

31. Data on the prevalence of forced marriage in New Zealand is not available and the issue, by nature, is largely invisible. However, Police and several submitters on the review proposed a specific offence of forced marriage on the basis of their experience working with some communities.
32. Behaviour related to forced marriage is covered by some existing offences. Under the Crimes Act 1961 it is an offence to “give a woman in marriage without consent, if for reward or gain”, or to “take or detain, without consent, with the intent to marry”. However, a specific offence of ‘coercion to marry’ would fill a gap in the law by criminalising the specific act of forcing a person to marry. This may capture circumstances where duress is purely psychological, such as pressure from family or community members, and the behaviour is not covered by existing offences (i.e. there is no abduction or violence, and the coercion does not meet the tests for blackmail).
33. I recommend that the offence cover circumstances where a person is threatened, intimidated or deceived with the intent that person enters into a marriage or civil union. I also propose that the offence is able to be committed irrespective of whether a marriage or civil union ceremony actually takes place, and irrespective of whether the ceremony was, or would have been, legally binding. I further propose that the offence apply to acts that take place overseas in accordance with section 7A of the Crimes Act 1961.<sup>7</sup>
34. I recommend a maximum penalty for this offence of either five years’ imprisonment or three years’ imprisonment. Section 9(2)(f)(iv)

#### *Assault on a family member*

35. I recommend a new offence of assault on a person that the perpetrator has domestic relationship with. The offence of male assaults female is often considered a proxy for family violence. However, it is limited in its coverage, and does not extend, for example, to same sex couples. Family violence that falls outside the scope of the offence must either be prosecuted as common assault (with a lesser maximum penalty) or a more serious offence, if there is evidence to support it.
36. A new offence of assault on a person that the perpetrator has domestic relationship with would cover a wider range of family relationships, including for example, intimate partners in any relationship (whether same sex or opposite sex) and siblings (assaults by parents against children would continue to be dealt with by the separate Crimes Act 1961 offence of assault against a child under the age of 14). Assault on a family member will more accurately reflect the diverse nature of family violence offending. The new offence will be consistent with the proposed broad definition of ‘family violence’.
37. Retaining the offence of male assaults female will ensure the law continues to acknowledge the seriousness of gendered violence even outside the context of family violence.

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<sup>7</sup> Section 7A allows for New Zealand citizens and residents to be charged with committing certain crimes against other New Zealand citizens and residents outside of New Zealand.

38. At present perpetrators charged with male assaults female are excluded from being bailable as of right.<sup>8</sup> I propose that this exclusion apply to assault on a family member.
39. I recommend that the maximum penalty for the new offence of assault on a family member be set at the same level as the current male assaults female offence, which is two years imprisonment. This is higher than the one year maximum penalty for common assault and lower than the three year maximum penalty for aggravated assault, and assault with intent to injure.

Section 9(2)(f)(iv)

## Recognising at sentencing the harm caused by family violence

### Review finding

The serious and repeat nature of family violence offending is not always recognised.

I propose:

- introducing family violence specific aggravating factors for judges to take into account at sentencing
- introducing a requirement, upon conviction, for the court to direct an offence be recorded on a person's criminal record as a family violence offence, if satisfied this was the case.

40. I have considered the merits of introducing higher maximum penalties for family violence offending. However, the efficacy of that approach is not clear and the costs to government and society are considerable. I am not convinced that these costs represent the most effective use of new investment.

### *Family violence as an aggravating factor at sentencing*

41. While I do not propose to introduce higher maximum penalties, I consider there is merit in introducing family violence specific aggravating factors to be considered at sentencing. These factors could include, for example, whether:

41.1. the offender was subject to a protection order at the time of the offending

41.2. strangulation against a family member was a feature of the offending

41.3. the offending was part of a pattern of behaviour, or

41.4. the offending involved violence witnessed by children.

*Note: Cabinet agreed to one aggravating factor: "an offender being subject to a protection order at time of offending"*

42. These factors can already be taken into account by sentencing judges. However, their explicit inclusion in the Sentencing Act will confirm that these are distinct features of family violence that should be taken into account when sentencing an offender. It will also ensure these factors receive consideration by all sentencing judges on a consistent basis.

*Note: Cabinet considered it preferable to rely on the new strangulation offence as the primary response to acts of strangulation, and that there was sufficient guidance in the Sentencing Act 2002 and court decisions to enable sentencing judges to take strangulation into account as appropriate*

43. The inclusion of strangulation as an aggravating factor reflects the recommendation of the Law Commission.<sup>9</sup> However, the Law Commission

<sup>8</sup> A person who is bailable as of right may not be remanded in custody, regardless of their risk of offending on bail or other considerations. They may still be subject to bail conditions to mitigate those risks, and will lose their bailable as of right status if they breach those conditions; Bail Act 2000, section 7(2).

recommended that this aggravating factor apply in all cases, including non-family violence cases. I propose to modify the Commission's recommendation to limit it to family violence cases. This reflects the fact that the heightened risk of future fatality associated with strangulation is specific to family violence.

#### *Ensuring family violence offending is visible on criminal records*

44. I believe there is considerable value in ensuring that a conviction for family violence offending is clearly recorded as such on an offender's criminal record. This approach would have a denunciatory effect on the offender. It would also enable the court to more easily take an offender's past record of family violence into account when making bail and sentencing decisions, in the event of repeat offending.
45. To this end, I propose introducing a requirement for the court to direct an offence be recorded on a person's criminal record as a family violence offence, if satisfied this was the case at the point of conviction. The offender should have the opportunity to challenge the entry on the record.
46. This recommendation will also implement the Law Commission's recommendation to record convictions for strangulation offences as family violence offending on the criminal record, where applicable.<sup>10</sup>

#### **Ensuring the safety of victims through the criminal justice process**

##### **Review finding**

Victims', including children's, safety is not always adequately considered in decisions which affect them.

I propose:

- making victims', including children's, safety the primary consideration in bail decisions for family violence cases
- empowering the court to impose any condition it considers reasonably necessary to protect victims, including children, in family violence bail decisions
- empowering the court to place non-contact conditions on defendants remanded in custody.

47. Family violence, by its very nature, means that the perpetrator and victim are known to each other. They may have children together, and live in the same home. These factors can contribute to a victim's fear of continued violence while a defendant is on bail, awaiting a court hearing.

#### *Making victim safety the primary consideration in bail decisions*

48. When determining whether to grant bail, the court must balance the right for an individual to be released on reasonable terms, against the interests of any victims and the safety of the wider community. The law provides for different bail rules in family violence cases, but confines them to certain offences. For example, a person charged with male assaults female is never bailable as of right.

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<sup>9</sup> Law Commission. (2016). *Strangulation: The case for a new offence*. NZLC R138.

<sup>10</sup> Law Commission. (2016). *Strangulation: The case for a new offence*. NZLC R138.

49. Many offences that occur in a family violence context fall under the even more restrictive bail rules that apply to more serious offences. For example, certain violent and sexual offences require the defendant to satisfy the judge on the balance of probabilities that he or she will not offend while on bail or at large.<sup>11</sup>
50. However, there is a perception that victim safety is not considered consistently in bail decisions. I propose amending the Bail Act 2000 to make victims', including children's, safety the primary consideration in family violence bail decisions. This would ensure the heightened risk victims of family violence face is always taken into account, while maintaining decision-makers' discretion to respond to individual circumstances.
51. I also recommend amending the Bail Act so that the court may impose any condition it considers reasonably necessary to protect victims, including children, in family violence bail decisions. This is currently the requirement when Police decide whether to grant Police bail for defendants charged with domestic violence offences, but there is nothing similarly explicit in respect of court bail. Commonly used conditions include restrictions on a defendant's place of residence, bans on alcohol consumption and curfews.

*Enabling courts to impose non-contact conditions on defendant remanded in custody*

52. I am aware that, in some instances, defendants remanded in custody may threaten and abuse victims, leading to charges to be dropped as witnesses recant. Judges do not have the discretion to impose conditions preventing defendants, who have been remanded in custody, from contacting victims or witnesses. Victims and witnesses must actively request such conditions, or refuse contact.
53. I propose amending legislation to enable the imposition of non-contact conditions on family violence perpetrators remanded in custody. This would remove the onus on victims to refuse contact with defendants.

**Improving victims' experience of court proceedings**

**Review finding**

There is a need for enhanced practice in courts.

I propose:

- introducing a legislative presumption in the Evidence Act 2006 that video records of on-scene interviews with the complainant be played as all or part of their evidence in chief
- amending the Evidence Regulations 2007 to allow for digital recording and storage of video record evidence.

54. Victims of family violence often require a greater level of support or protection throughout the court process than victims of some other crimes. I want to ensure that court procedures recognise the particular vulnerabilities of these victims and operate in a way that avoids unnecessary distress to victims, and increases the likelihood that they come forward and participate throughout the criminal court process.

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<sup>11</sup> Bail Act 2000, sections 7(2), 10.

55. My officials are developing detailed advice on legislative and non-legislative options for improving the experiences of family violence and sexual violence victims in the court. This advice will also be informed by the recent Law Commission report, *The Justice Response to Victims of Sexual Violence*. In the interim, I seek agreement to the following proposal.

*Use of video recordings to provide victim's evidence in court*

56. Police have been piloting the use of mobile devices to record interviews with family violence victims at the scene. The intention is to play these interviews as evidence in any subsequent prosecution. It is expected that this evidence will increase the likelihood of a successful prosecution and reduce the number of cases that require a trial to determine guilt. Under current legislation Police have to apply to the court on a case-by-case basis to use the video as evidence.
57. I propose to amend the Evidence Act 2006 to introduce a presumption that the video record is played as all, or part, of the complainant's evidence in chief, on the basis that the complainant would then be available to be cross-examined and re-examined in the usual way. This will make the process more efficient for Police and courts. The presumption would only apply to adult complainants in family violence cases and specific conditions would be applied to ensure that the video was made in a timely way and that the complainant understood that the video record could be used in evidence.
58. A recent court decision has highlighted that the process Police use to record, deal with and store these interviews does not comply with the Evidence Regulations 2007. I propose amendments to the Evidence Regulations to allow for digital recording and storage of video record evidence. To enable Police to continue with the pilot I propose that these amendments be progressed as soon as possible, prior to the legislative change proposed in this paper.

**Legislative implications**

59. The legislative implications of the proposals in this paper are addressed in Paper one in the *Legislative implications* section.

**Financial implications**

60. The new offences proposed in this paper will impact the criminal justice pipeline, due to changing the number of criminal proceedings, and the length and type of resultant penalties imposed. Changes to bail are considered unlikely to have significant cost implications.
61. I anticipate that the proposals in this paper will begin to have an impact from approximately July 2018.
62. The cost estimates rely on assumptions about the behaviour of Police, prosecutors, defence counsel, judges, and court staff. Where possible these have been informed by discussion with the relevant parties.
63. The estimated costs of these proposals, along with the costs to Police, are incorporated in the financial implications section of Paper one (from paragraph 40).

*Financial implications of a family violence offence framework*

64. The family violence offence framework distinguishes between family violence and other forms of offending. This raises the potential to create incentives to challenge the determination of a case as falling within the offence framework.
65. This cost will be concentrated at the point of charging and in charge discussions, and therefore be borne largely by Police and Crown Law.

*Financial implications of new family violence offences*

Section 9(2)(f)(iv)

67. Table one summarises the estimated financial implications of the new offence of strangulation (depending on the maximum penalty selected). The cases prosecuted under the new offence would likely otherwise have been prosecuted under less serious assault offences (based on advice from Police). This means moving from offences with a penalty of two, three, or five years' imprisonment to one with a penalty of five or seven years' imprisonment.

Section 9(2)(f)(iv)

68. Table two summarises the estimated financial implications of the other proposed offences. For assault on a family member, certain cases currently prosecuted under common assault (one year's imprisonment) would instead be prosecuted under an offence with a penalty of two years' imprisonment. For coercion to marry, all cases are expected to be new, but the volumes are likely to be very low.

Section 9(2)(f)(iv)

*Financial implications of aggravated sentencing factors*

Section 9(2)(f)(iv)

*Financial implications of changes to bail*

70. Male assaults female and breach of a protection order are subject to similar bail conditions as those proposed. Many offences that occur in a family violence context already fall under the more restrictive bail rules that apply to more serious offences.
71. The primary effect of changes to bail is expected to be on lower level offences, such as common assault, and on the conditions imposed upon defendants released on bail. These are expected to have marginal financial implications.

## Recommendations

72. The Minister of Justice recommends the Committee:

### ***Identifying and distinguishing family violence offences***

1. **agree** to facilitate the consistent identification of family violence by establishing a virtual framework of family violence offences where Police identify (“flag”) on the charging document that an offence is family violence;
2. **agree** that a defendant will be able to challenge the entry and use of the flag;
3. **agree** that, for the criminal context, family violence will be defined by reference to the offending occurring in the context of a family relationship;
4. **agree** that a family relationship be defined by reference to the definition of “domestic relationship” in the Domestic Violence Act 1995;

### ***Prosecuting family violence in all its forms***

5. **note** the proposals in paragraphs 16-25 of this paper comprise the proposed Government response to the Law Commission’s report *Strangulation: The case for a new offence*, as summarised in Appendix 1 of this paper;
6. **agree** to introduce an offence of strangulation if a person intentionally or recklessly impedes breathing or blood circulation by applying force to the victim’s throat, neck, nose or mouth;
7. **note** the cost of including compressive asphyxia in the scope of the strangulation offence is not included in the paper,

Section 9(2)(f)(iv)

8. **agree** either
  - a) to include compressive asphyxia in the scope of the strangulation offence
  - or
  - b) not to include compressive asphyxia in the scope of the strangulation offence;
9. **agree** either:
  - c) to set the maximum penalty for strangulation at seven years’ imprisonment as recommended by the Law Commission in its report *Strangulation: The case for a new offence*;
  - or
  - d) to modify the Law Commission’s recommendation to set the maximum penalty for strangulation at five years’ imprisonment;

10. **agree**, should the Committee set the maximum penalty for strangulation at seven years' imprisonment, that the offence should not be included in the three strikes regime in the Sentencing Act 2002;
11. **agree** to accept the Law Commission recommendations in its report *Strangulation: The case for a new offence* that:
  - the Police family violence incident report (POL 1310) be amended to include questions designed to screen for strangulation;
  - the Police National Intelligence Application be amended to record specifically whether or not a family violence incident included an allegation of strangulation;
  - Police who attend family violence call-outs should receive education about the prevalence, signs, symptoms and lethality of strangulation, and judges who undertake criminal or family law work should be offered similar education;
12. **agree** to introduce an offence of coercion to marry to cover circumstances where a person is threatened, intimidated or deceived with the intent that person enters into a marriage or civil union regardless of whether the marriage or civil union takes place and is, or would have been, legally binding;
13. **agree** to either:
  - a) set the maximum penalty for the offence of coercion to marry at five years' imprisonment;
  - or
  - b) set the maximum penalty for the offence of coercion to marry at three years' imprisonment;
14. **agree** that extraterritorial jurisdiction apply to this offence by including it in section 7A of the Crimes Act 1961;
15. **agree** to introduce an offence of assault on a person the perpetrator has a domestic relationship with, to cover all circumstances of violence within families;
16. **agree** that the maximum penalty for the offence of assault on a family member should be two years' imprisonment;
17. **agree** that perpetrators charged with assault on a person they have a domestic relationship with should not be bailable as of right;
18. **note** that no changes are proposed to the offences of male assaults female and assault on a child;

### **Recognising at sentencing the harm caused by family violence**

19. **agree** to amend the Sentencing Act 2002 to prescribe family violence specific aggravating factors to be taken into account by sentencing judges;
20. **agree** that the aggravating factors referred to in recommendation 18 should identify those circumstances that distinguish family violence from other offending including, for example, that the offence was part of a pattern of behaviour or that the offender was subject to a protection order at the time of the offence;
21. **agree** that the aggravating factors referred to in recommendation 19 should also include where strangulation against a person the perpetrator has a domestic relationship with was a feature of the offence;
22. **note** that recommendation 20 modifies the Law Commission's recommendation in its report *Strangulation: The case for a new offence* by limiting strangulation to an aggravating factor that must be taken into account in sentencing only for a family violence offence;
23. **agree** to introduce a requirement, upon conviction, that the court direct an offence be recorded on an individual's criminal record as a family violence offence, if satisfied this was the case;
24. **note** that recommendation 22 above also implements the Law Commission recommendation in its report *Strangulation: The case for a new offence*, that where strangulation occurs in a family violence context, it be recorded on an individual's criminal record as a family violence offence;

*Note: Cabinet agreed to one aggravating factor: "an offender being subject to a protection order at time of offending"*

*Note: Cabinet considered it preferable to rely on the new strangulation offence as the primary response to acts of strangulation, and that there was sufficient guidance in the Sentencing Act 2002 and court decisions to enable sentencing judges to take strangulation into account as appropriate*

### **Ensuring the safety of victims throughout the criminal justice process**

25. **agree** that the Bail Act 2000 be amended to make victim safety the primary consideration in bail decisions for family violence cases;
26. **agree** that the Bail Act 2000 be amended to enable the court to impose any condition it considers reasonably necessary to protect victims in family violence bail cases;
27. **agree** to legislative amendments to enable the court to impose non-contact conditions on defendants remanded in custody for family violence offences;

### **Improving victims' experience of court proceedings**

28. **agree** that the Evidence Act 2006 be amended to include a legislative presumption that video records of interviews with family violence complainants be played as all or part of the complainants' evidence in chief;
29. **agree** that the legislative presumption proposed in recommendation 27 apply when specified conditions are met, such as that it is a family violence case, the video was made in sufficient proximity to the time of the alleged offence, and that the complainant understood that the video record could be used in evidence;

30. **agree** to amend the Evidence Regulations 2007 to allow for digital recording, and to provide for dealing with and storage of video record evidence;
31. **agree** that the amendments to the Evidence Regulations referred to in recommendation 29 occur as soon as possible, prior to the passage of the legislative amendments agreed to in this paper;
32. **invite** the Minister of Justice to issue drafting instructions to Parliamentary Counsel Office to make the required amendments to the Evidence Regulations referred to in recommendation 29;

***Legislative implications***

33. **note** the legislative implications of the proposals in this paper are addressed in Paper one: Context and supporting integrated responses;

***Financial implications***

34. **note** the financial implications of the proposals in the paper are addressed in Paper one: Context and supporting integrated responses.

Authorised for lodgement

Hon Amy Adams  
**Minister of Justice**

Date signed: \_\_\_\_/\_\_\_\_/\_\_\_\_

**Appendix One: Law Commission recommendations in *Strangulation: The case for a new offence* and proposed response**

Rec #	Description	Proposed response
1	Part 8 of the Crimes Act 1961 should be amended to make a person who strangles or suffocates another person liable to imprisonment for a term not exceeding seven years.	Accept or Modify - see paragraphs 17, 19-22
2	In that offence, “strangles or suffocates” should mean impedes normal breathing or circulation of the blood by intentionally applying force on the neck or by other means.	Modify - see paragraph 19, 20
3	The Crimes Act should be amended to require that, if a person pleads guilty to the strangulation offence or is found guilty of the strangulation offence the court is satisfied that the offence was a family violence offence, the court must direct that the offence be recorded on the person’s criminal record as a family violence offence.	Accept - see paragraph 45
4	Section 9 of the Sentencing Act 2002 should be amended to include strangulation as an aggravating factor that must be taken into account in sentencing.	Modify - see paragraph 42
5	The Police family violence incident report (POL 1310) should be amended to include questions designed to screen for strangulation.	Accept - see paragraph 25
6	The Police National Intelligence Application (NIA) should be amended to record specifically whether or not a family violence incident included an allegation of strangulation.	Accept - see paragraph 25
7	Police who attend family violence call-outs should receive education about the prevalence, signs, symptoms and lethality of strangulation. Similar education should also be offered to judges who undertake criminal law or family law work.	Accept - see paragraph 25