



18 October 2023

S23.16

## **Submission to the Justice Committee on the Victims of Family Violence (Strengthening Legal Protections) Bill 285-1**

### **Introduction**

1. The National Council of Women of New Zealand, Te Kaunihera Wāhine o Aotearoa (NCWNZ) is an umbrella group representing around 60 affiliated organisations and 300 individual members. Collectively our reach is over 200,000 with many of our membership organisations representing all genders. NCWNZ has 13 branches across the country.
2. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right.
3. This submission has been prepared by the NCWNZ Health, Safety and Wellbeing Action Hub and the Parliamentary Watch Committee drawing on existing NCWNZ policy and previous related submissions of NCWNZ.

### **Executive summary**

4. NCWNZ welcomes and strongly supports the purpose of this Bill to fundamentally strengthen the courts' statutory powers to protect victims of litigation abuse in family proceedings.
5. Vexatious litigation or litigation abuse is a form of stalking, widely accepted by definition to be repetitive and persistent unwanted intrusions into a person's life.
6. NCWNZ urges the Committee to take a broader approach to this Bill with a view to having

this type of stalking designated a criminal offence and included along with all other forms of stalking and harassment in the Crimes Act.

## Background

7. Women are disproportionately impacted by stalking, and the most dangerous, violent and persistent form of stalking is conducted by partners and ex-partners of women.

8. Stalkers are becoming more offensive with their actions and employing sophisticated means, including vexatious litigation and litigation abuse, to target their victims.

9. While there are already three separate key pieces of legislation that deal with different elements of stalking in New Zealand, The Harassment Act 1997, The Family Violence Act 2018, The Harmful Digital Communication Act 2015, none offers protection from all forms of stalking and harassment from all types of stalker. Indeed we note the Harassment Act explicitly excludes partners and is inherently inadequate to protect women from dangerous ex-partners.

10. Stalking is a known precursor to violence. Intimate partner stalking is associated with physical and sexual violence and an elevated risk of intimate partner homicide against women<sup>1</sup>.

11. Victims of intimate partner violence involving stalking must seek protection orders through the Family Violence Act before criminal charges can be laid, and these are for breaches of the order. This two-step process puts victims at further risk. A criminal stalking law has the potential to protect victims, by allowing for the arrest of stalkers before escalation to violence occurs.

12. Aotearoa New Zealand's current legislative position on stalking does not align with international practice. A growing number of countries have enacted, or have plans to introduce, legislation to criminalise stalking, thereby strengthening legal protections for victims of stalking. These include all 50 states of the USA (1990 onwards), Australia (1993 onwards), England and Wales where laws were introduced in 2012 and Police-initiated stalking protection orders developed in 2019. The European Union required all member states to have stalking laws enacted by 2017.

13. Together with The Coalition for the Safety of Women and Children and the National Collective of Independent Women's Refuges, NCWNZ has collaborated to produce a paper outlining the current issues pertaining to stalking in Aotearoa New Zealand and the need for a new criminal law on stalking to be included in the Crimes Act. This was sent to the Ministry of Justice in November 2022 and to the Minister of Police in May 2023.

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<sup>1</sup> Women's refuge 2019 study. Thorburn, N., & Jury, A. (2019). Relentless not romantic: Intimate partner stalking in Aotearoa New Zealand.

<https://womensrefuge.org.nz/wp-content/uploads/2019/11/Intimate-Partner-Stalking-.pdf>

14. NCWNZ notes that pre-election 2023 four of the main political parties agreed to make stalking a crime. Pre-election 2023 four of the main political parties agreed to make stalking a crime<sup>2</sup>.

## Recommendations

15. A broad review of all legislation relating to all types of stalking conducted by all types of stalker is undertaken with a view to making stalking a criminal offence and including it in the Crimes Act.

16. Together with The Coalition for the Safety of Women and Children and the National Collective of Independent Women's Refuges, NCWNZ has collaborated to produce a paper outlining the current issues pertaining to stalking in Aotearoa New Zealand and the need for a new criminal law on stalking to be included in the Crimes Act. This was sent to the Ministry of Justice in November 2022 and to the Minister of Police in May 2023.

## Conclusion

17. NCWNZ welcomes and supports the proposed legislation.

18. However, we urge the Committee to recommend the development of a new crime of stalking to be included in the Crimes Act.



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<sup>2</sup><https://www.newshub.co.nz/home/politics/2023/09/victim-advocates-welcome-labour-s-commitment-to-make-stalking-a-crime-questions-timing.html>

## Appendix:

### A STALKING LAW FOR NEW ZEALAND:

#### Why it is necessary and what it should look like

**November 2022**

Policy briefing from

- Auckland Coalition for the Safety of Women and Children
- National Collective of Independent Women's Refuges
- National Council of Women of New Zealand, Te Kaunihera Wāhine o Aotearoa

Key authors: Alison Towns (ACSWC), Natalie Thorburn (NCIWR) and Bernice Williams (NCWNZ)

#### Summary

Stalking is unwanted repetitive and persistent intrusions into a person's life: it is a form of abuse that is a risk factor for physical and sexual violence, including death. Even if a single action appears trivial, stalking is a pattern of behaviour, which a reasonable person would find distressing, or objectionable or frightening.

Women are disproportionately affected by stalking, particularly young women, disabled women, rainbow women and likely wāhine Māori, while migrants and ethnic minorities may experience unique forms of stalking. The most dangerous, and persistent stalking is conducted by ex-partners of women, with child contact being a particular risk factor. The targeting of women participating in public discourse (politicians, journalists, celebrities) may dissuade others from speaking out, preventing women from contributing their expertise and thought leadership to public discourse.

Protecting people from stalking is in line with Aotearoa New Zealand's international human rights obligations but our piecemeal legislation is out of step with comparator countries' laws to protect women and others from stalking. The options police currently have for responding to partner stalking (for example) do not hold stalkers accountable or make victims safer. Civil orders have been found to be ineffective with stalkers, some of whom use the Civil Court and restraining order processes as further opportunities for stalking. Stalking must be recognised as a crime rather than a civil dispute and be named as a crime in the Crimes Act 1961.

#### **Recommendations:**

1. The Ministry of Justice and other agencies of Te Puna Aonui adopt a shared understanding of stalking as "unwanted, repetitive and persistent intrusion into a person's life".
2. Government includes stalking in the Crimes Act 1961 as a separate crime that focuses on the actions of the perpetrator and identifies stalking as a pattern of unwanted, repetitive and persistent intrusive behaviour.
3. The Ministry of Justice and NZ Police develop guidelines for police, prosecution lawyers and judges, to produce consistent responses to stalking in each of these three sectors.
4. Agencies and services adopt a safety-orientated approach that puts victims' protection at the centre of the response.

5. Government funding is raised to adequate levels for NGO services for victims of stalking. 6. Government funds a campaign to raise the public’s awareness of stalking. 7. Government funds research on stalking that will identify continuous improvements to agencies’ actions thereby improving victims’/survivors’ safety.

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## Introduction & Positioning

Our organisations (ACSWC & NICWR) are Tauīwi-led umbrella bodies who value Te Tiriti o Waitangi, and acknowledge its importance in all spheres, including in regard to Te Aorerekura, the National Strategy to eliminate Family Violence and Sexual Violence. We would not presume to speak for Māori. We encourage the Ministry of Justice to seek involvement of Māori organisations in the continuing development of this mahi. We understand that colonisation brought Western patriarchal values to Māori, disrupting Te Ao Māori and tikanga, and contributing to over-representation in violence victimisation. We are mindful of the over-representation of wāhine Māori suffering intimate partner violence and, except for 2021, their over-representation in deaths through intimate partner violence. Given the impact of intimate partner violence on wāhine Māori we anticipate that Māori women may be disproportionately impacted through stalking actions.

Our organisations see the need for the criminalisation of stalking because of the harm done to victims/survivors. All of the organisations involved independently became concerned about the stalking of women – particularly with the advancement of new technologies, and the devastating impacts on women’s freedom to participate freely in the community. We

have now joined together to inform policy makers of our collective advice to make Aotearoa New Zealand safe and free from stalking.

### What is stalking?

1. There is widespread acceptance that stalking is repetitive and persistent unwanted intrusions into a person's life. Stalking involves a pattern of behaviour on the part of the stalker, or those recruited by the stalker, rather than a single event. A single action might appear trivial, but a pattern of unwanted repetitive, persistent and intrusive behaviour constitutes stalking. Stalking commonly continues despite attempts to stop it.

2. Stalking involves many actions including:

- surveillance (digital, non-digital or aerial)
- following (using digital means such as tracking devices and GPS, or non-digital means)
- threatening (explicitly or implicitly, this can include threats – of many types, including violence and death - against the individual being stalked, and/or those close to the individual, including family members and pets)
- phoning (sometimes late at night and repetitively)
- sending messages (using texts, e-mails, social media, unwanted notes, letters or more unconventional means, such as internet banking deposit reference fields)
- leaving unwanted items (varying from turds to flowers or expensive gifts)
- obstructing the victim from seeing other people, and/or obstructing and interfering with friends and family members or others connected to the victim
- loitering or standing near known or expected routes
- interfering with property, entering a victim's/survivor's property (home or vehicle)
- disturbing a person's sleep, peace and/or privacy
- spreading untruthful and/or damaging narratives (on-line or offline)
- doxing
- using litigation and vexatious litigation
- making false allegations to state agencies
- various other forms of cyberbullying including releasing revenge porn
- life sabotage (attempting to destroy the victim's/survivor's life by using a range of stalking actions that impact on the victim's/survivor's home, family, work, occupational, and/or social life)
- using a victim's/survivor's disability to harm
- proxy stalking: using others to stalk or stalking those close to the victim/survivor including children.

### Who is primarily affected?

#### Women

3. Women are disproportionately affected by stalking, and young women are particularly

targeted<sup>3</sup>. Women in the public world: celebrities, politicians, journalists, leading academics, are also known to be targeted by stalkers. In Aotearoa/New Zealand nearly two thirds of Women's Refuge clients are stalked<sup>4</sup> and women requiring safe at home programmes such as Whānau Protect are commonly stalked<sup>5</sup>. A study by the Backbone Collective of 512 women victims/survivors of family violence found that 39% described being stalked, while 41% of victims/survivors experiencing intimate partner violence report being stalked/having been stalked. Of 96 women who had separated from their partners, 47% continued to experience some form of stalking or unwanted contact<sup>6</sup>. Since the development of modern technologies, stalking against women has increased through the availability of cyber means where women, particularly separated women, are the primary targets<sup>7</sup>.

4. The most dangerous, violent and persistent stalking is conducted by ex-partners of women, with child contact being a high-risk factor, because it enables or enforces (if through a Parenting Order in the Family Court) apparently legitimate contact between the victim and the stalker, which the stalker commonly exploits to stalk more<sup>8</sup>. In this context stalking is a form of coercive control commonly used post separation<sup>9</sup>. (All forms of stalking can be used post-separation, but surveillance and other forms of stalking are also common during the relationship.) Stalking impacts on victims'/survivors' sense of safety in their own home and when out in the community, and leads to persistent distress, dread and/or debilitating fear or terror.

5. Escalation to violence and death. Stalking is a known precursor to physical violence. Intimate partner stalking is associated with physical and sexual violence and an elevated risk of intimate partner homicide against women<sup>10</sup>. Stalking is known to precede femicide (deliberate killing of a person because she is a woman<sup>11</sup>) and victims are good predictors of

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<sup>3</sup> Roberts, K. A. (2005). Women's experience of violence during stalking by former romantic partners: Factors predictive of stalking violence. *Violence Against Women*, 11(1), 89-114.

<sup>4</sup> Thorburn, N., & Jury, A. (2019). *Relentless not romantic: Intimate partner stalking in Aotearoa New Zealand*. Wellington: Women's Refuge NZ.

<sup>5</sup> Towns, A. J. (2014). *"It's about having control back, freedom from fear." An evaluation of the Shine safe@home programme for victims/survivors of domestic violence*. Auckland: Mt Albert Psychological Services Ltd. <sup>4</sup> The Backbone Collective (2020). Victim-Survivor Perspectives on longer-term support after experiencing violence and abuse. A report prepared for the Ministry of Social Development. January.

<sup>6</sup> The Backbone Collective (2020). Victim-Survivor Perspectives on longer-term support after experiencing violence and abuse. A report prepared for the Ministry of Social Development. January.

<sup>7</sup> Dragiewicz, M., Harris, B., Woodlock, D., & Salter, M. (2021). Digital media and domestic violence in Australia: essential contexts, *Journal of Gender-Based Violence*, 5(3), 377-393. Retrieved Oct 26, 2022, from <https://bristoluniversitypressdigital.com/view/journals/jgbv/5/3/article-p377.xml>

<sup>8</sup> Bendlin, M., & Sheridan, L. (2019a). Risk factors for severe violence in intimate partner stalking situations: An analysis of police records. *Journal of Interpersonal Violence*.

<sup>9</sup> Caralin Branscum, Seth Wyatt Fallik, Krystal Garcia, Breanna Eason & Kayla Gursahaney (2019): Stalking State Statutes: A Critical Content Analysis and Reflection on Social Science Research, *Women & Criminal Justice*

<sup>10</sup> Thorburn, N., & Jury, A. (2019). *Relentless not romantic: Intimate partner stalking in Aotearoa New Zealand*. Wellington: Women's Refuge NZ.

<sup>11</sup> Smith, J. M. (2021). *In Control: Dangerous relationships and how they end in murder*. London/Oxford/New York/Delhi/Sydney: Bloomsbury.

their safety: victims' belief of potential harm is associated with severe physical violence<sup>12</sup>.

### Minority Groups/Intersectional Perspective

6. (a) Members of Aotearoa New Zealand's disabled communities are at greater risk than non-disabled people of all forms of intimate partner violence including psychological abuse and controlling behaviours from abusers<sup>13</sup>.

Members of these communities experience particular forms of stalking commonly targeted at or utilising their disability, such as interfering with necessary medical care, threats relating to their medical treatment, and threats that exploit their disability, such as driving dangerously towards a hearing-impaired victim, who is unable to take evasive action. Both men and women are affected. The intersections of racism, ableism, sexism, and ageism can compound the extent of the stalking experienced.

(b) Ethnic and immigrant communities: Stalking is a feature of coercive control and psychological abuse against women in ethnic and migrant communities, and ethnicity-specific and sensitive approaches in our legislation are required to support and protect women dealing with this type of abuse. Ethnic and immigrant community members who experience stalking can experience threats unique to their situation such as threats to their immigration status, to their residency within Aotearoa New Zealand, to separation from their children through deportation, and to family members in their home countries.

(c) LGBTQI+ communities: Members of the LGBTQI+ community experiences higher levels of victimisation than the national average<sup>14</sup> and they are vulnerable to threats unique to their situation. For example, victims/survivors may experience threats to "out" them to family members and/or work colleagues.

### What is the impact of stalking on victims/survivors?

7. Stalking of women by intimate partners contributes to psychological harm, serious injury and death. Psychological harm includes symptoms of post-traumatic stress disorder, anxiety, depression and wide-ranging impacts on wellbeing.<sup>13</sup> For example, many victims/survivors feel unable to move freely or safely in the communities, to work or to study due to distress and fear, and their social, financial and occupational wellbeing is impacted. Public figures may reduce their public exposure and limit their participation in civil and public affairs. Some women describe feeling imprisoned in their own homes by the stalking, while also feeling unsafe in their own homes. Many struggle to sleep and their children are also

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<sup>12</sup> Bendlin, M., & Sheridan, L. (2019a). Above

<sup>13</sup> Human Rights Commission (2021). Whakamahia te tūkinō kore ināianeī, ā muri akeneī. Acting now for a violence and abuse free future: Violence and abuse of disabled people in Aotearoa New Zealand: Evidence and recommendations.

<sup>14</sup> See MOJ Victims of Crime reports.



commonly impacted<sup>15</sup>. Stalking may continue for years due to the failure of state institutions to take effective preventative action.

#### What are the human rights impacts of stalking?

8. Stalking interferes with a victim's rights to safety and, for some, their right to life. It interferes with a victim's rights to freedom of movement and association. It interferes with a victim's right to live free from the threat of violence.

It interferes with a victim's right to live free of torture and cruel treatment.

It interferes with a victim's right to work and education.

It interferes with a victim's right to a safe home.

It is a major cause of women's homelessness.

It interferes with a victim's health, including mental health.

It interferes with a victim's right to participate in civil and public life.

#### What are Aotearoa/New Zealand's obligations under international human rights agreements to victims/survivors of stalking?

9. The absence of robust, accessible legislation on stalking, and the inadequate implementation of appropriate measures to protect women from all forms of stalking means New Zealand is failing to meet its international human rights obligations, such as those listed below.

10. Aotearoa New Zealand is a signatory to the *International Covenant on Civil and Political Rights*, written into law through the *Bill of Rights Act 1990*. Article 6 of the Covenant emphasises that everyone has the right to life and that laws must be in place to ensure the right to life. Article 7 states that nobody should be subjected to torture or to cruel, inhumane or degrading treatment or punishment.

11. Aotearoa New Zealand is also a signatory to the *Convention on the Elimination of All Forms of Discrimination Against Women*, and the *Convention on the Rights of the Child*. CEDAW requires women to have equal opportunity to men, opportunities that are not available if women are stalked. Both conventions require New Zealand/the Government/State to take action to adopt laws to ensure that women and children, and others who are subjected to stalking, are free from discrimination, and to ensure that public institutions do not act to discriminate against victims. They require the state to establish institutions to ensure that no such discrimination occurs.

12. Aotearoa New Zealand became a signatory to the Declaration on the Rights of

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<sup>15</sup> Towns, (2014). Above.

Graham-Bermann, S. A., & Edleson, J. L. (2001). *Domestic Violence in the Lives of Children: The future of research, intervention and social policy*. Washington D.C.: American Psychological Association.

Indigenous Peoples in 2010<sup>16</sup>. Māori are impacted by the colonising structure of state institutions and the failure of these institutions to provide equitable practices and access to justice for Māori. The state is required to ensure that these discriminatory failures are remedied.

13. Aotearoa New Zealand ratified The Disability Convention in 2008 and is required to ensure that people with disabilities have the same rights as everybody else, which includes being safe and able to live freely.

14. Aotearoa New Zealand adopted The Sustainable Development Goals (SDGs) in 2015 as part of the UN's 2030 Agenda<sup>17</sup>. The absence of robust, accessible legislation on stalking, and the inadequate implementation of appropriate measures to protect women from all forms of stalking means New Zealand is not yet meeting these goals. Stalking can negatively impact a woman's health and well-being, economic status, access to education, and access to full participation in society, all areas highlighted in the Sustainable Development Goals. Examples of SDGs not being met in part due to inadequate stalking laws in Aotearoa New Zealand include the following. • Goal 3: Ensure healthy lives and promote well-being for all at all ages

- Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
- Goal 5: Achieve gender equality and empower all women and girls
- Goal 10: Reduce inequalities within and among countries.

10.2 By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status;

10.3 Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard;

10.4 Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality

- Goal 16: Peace, Justice, and Strong Institutions.

16.1 Significantly reduce all forms of violence and related death rates everywhere;

16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all;

16.7 Ensure responsive, inclusive, participatory and representative decision making at all

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<sup>16</sup> O'Sullivan D. (2020). Implementing the UN Declaration on the Rights of Indigenous Peoples in New Zealand. *Oxford Human Rights Hub*. URL: <https://ohrh.law.ox.ac.uk/implementing-the-un-declaration-on-the-rights-of-indigenous-peoples-in-new-zealand/>

<sup>17</sup> <https://sdgs.un.org/goals>

levels.

### How does NZ's legislation compare to other Western countries?

15. Aotearoa New Zealand is out of step with other countries that have legislative means in place to protect women and others from stalking. From 1990 all 50 US states had stalking laws; Queensland introduced stalking laws in 1993, followed by other Australian states<sup>18</sup>; England and Wales introduced stalking laws in 2012 and developed Police-initiated stalking protection orders in 2019; European Union required all member states to have criminal stalking laws by 2017<sup>19</sup>.

16. Canada and New Zealand have Harassment Acts. NZ introduced criminal harassment through its Harassment Act 1997, amending the Act in 2012. The Act treats harassment as a Civil matter, making restraining orders available to those not experiencing domestic violence. Both Canada's and New Zealand's Harassment Acts are rarely used for criminal proceedings.

### What is required in a Stalking Law?

17. Stalking needs to be criminalised and to be named as a crime in the Crimes Act 1961. It must be recognised as a crime rather than a civil dispute. Civil orders have been found to be ineffective with stalkers, who will use the Civil Court and restraining order legislation to further stalk and harm the victim with few consequences<sup>20</sup>. They are rarely held accountable for the harm caused by their actions.

18. The criminal law should meet the following requirements:

- a. Conceptualising stalking with explicitness, (two or more incidents over the course of a year and examples as above in paragraph 2, and future proofing (in order to capture future technological developments.)
- b. Evidentiary standards to be guided by the actions of the stalker, not the victim.
- c. Consequences that reflect the harm done. These consequences should include banning access to firearms and offensive weapons, and appropriately serious sentencing (up to five years imprisonment) that considers the harm done to victims.

Government should also implement:

- d. Training of law enforcement officers and creation of guidelines for policing, prosecution and adjudicating.

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<sup>18</sup> Bausch, S.M. (2004). Stalking in Australia: From past to present. Accessed at <https://www.grin.com/document/30907>

<sup>19</sup> van der Aa, S. (2017). New trends in the criminalization of stalking in the EU member states. *European Journal of Criminal Policy and Research*. doi: 10.1007/s10610-017-9359-9

<sup>20</sup> Bendlin, M., Sheridan, L., & Johnson, A. (2022). Stalking Recidivism: A Comparison of Operational Definitions. *Journal of Interpersonal Violence*, 37(9–10), NP8138–NP8160

e. Enhanced funding for victim services<sup>21</sup> including NGO funding to raise awareness and provide support.

### What is NZ's existing legislative framework?

19. NZ does not have a legislative framework that covers the range and pattern of behaviours that constitute stalking. Government has tended to legislate for piecemeal offences in a reactive response to publicity and concerns. This means that victims must employ several different legislative possibilities for action.<sup>21</sup>

20. *The Crimes Act 1961*: This Act provides for property crimes, computer crimes, threatening behaviour and intimidation, and breaking and entering. A stalking law would allow for the pattern of behaviour to be part of the Crimes Act, just as strangulation has been included as part of the Crimes Act, due to its potential for death and serious harm (e.g. brain damage and injuries to the neck requiring operation). Including stalking in the Crimes Act has the potential to save many lives, given that it commonly precedes homicide, particularly the femicide of intimate ex partners or partners. It further has potential to act as a deterrent/to address the revenge killing of children by men, following separation, a tactic employed to punish the mother (e.g. the Livingstone children<sup>22</sup>). Typically, there is a pattern of stalking prior to such events.

21. *Harassment Act 1997*. The criminal provision in the Harassment Act 1997 (HA) most closely aligns with stalking in that it addresses loitering and watching. However, the Harassment Act is not appropriate for issues of family violence. The Act's provisions are framed to address acquaintance/gang stalking and do not cater for the range of tactics used by perpetrators of intimate partner violence. There are typically fewer than 100 Harassment Act prosecutions per year for partner stalkers and even fewer convictions (less than 50 annually), which contrasts starkly with the prosecutions and convictions for similarly high-risk forms of partner violence.

22. Victims of intimate partner violence involving stalking are discriminated against as they must seek protection orders through the Family Violence Act before criminal charges can be laid, and these are for breaches of the order. This two-step process puts victims at further risk, and some perpetrators of violence have killed women on hearing that they have taken out protection orders against them. A criminal stalking law has the potential to prevent such killings, by allowing for the arrest of stalkers before escalation to violence occurs.

23. *Harmful Digital Communication Act 2015*: This Act was set up to address school bullying and is not fit for purpose for the many victims/survivors of intimate partner violence who seek its services for protection from cyber-stalking. Netsafe, the agency appointed by Government to respond to reports of online harm is limited in its ability to respond to

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<sup>21</sup> Branscum et al (2019) Above.

<sup>22</sup> King, R. (2017). Digital domestic violence: Are victims of intimate partner cyber harassment sufficiently protected by New Zealand's current legislation? *Victoria University of Wellington Law Review*, 48, 29-54. Retrieved from <http://www.nzlii.org/nz/journals/VUWLawRw/2017/2.html>

victims, and is not set up to be able to offer immediate redress or support for victims of online harm. There is a protracted reporting process involved, then mediation between stalker and victim may be offered if certain criteria are met. Mediation is not appropriate and can be extremely dangerous for women victims/survivors of intimate partner violence. The Act is not future-proofed for new digital means of surveillance or harm and has required adjustment to address new forms of cyber-bullying including the use of revenge porn to harm women, which has now been criminalised. (Experience of the Harassment Act has shown that combining civil and criminal action in an Act does not encourage the police to treat criminal actions seriously.) Rather than attending to the actions of the perpetrator, the Act leaves the victim vulnerable to proving harm for criminal prosecution, when the unwanted, repetitive and persistent acts of the perpetrator should be enough to show that a reasonable person would find such action objectionable. The Act does not address many forms of cyber-stalking that involve surveillance or monitoring, forced digital access, degrading content and life sabotage as these do not constitute 'communication'.

24. *The Family Violence Act 2018*: Unfortunately, the Family Violence Act did not include specification of the repetitive use of modern technologies through, for example, text messages, e-mails, Facebook, and a comprehensive documentation of the other actions specified in paragraph 2 that make up stalking, to inform the judiciary when considering protection order applications. This leaves women who are victims of family violence and their children vulnerable. The judiciary struggles with the concept of psychological abuse and requires the actions to be specified to gain a full understanding. There is also a lack of understanding among the judiciary that stalking and coercive control involve a pattern of actions, and a failure to consider the history that contributes to that pattern of control and abuse. Clearly articulated specific examples/criteria would be instrumental in guiding the judiciary.
25. *The Privacy Act 2020*: This act applies to businesses and organisations. It does not apply to individual perpetrators. This leaves those who, for example, experience surveillance cameras targeting their property, at risk of stalking with no recourse for complaints. The Privacy Commission was instrumental in developing the Harassment Act 1997, but it has no legal ability to address privacy matters for victims of stalking.

#### How do the Police currently respond to criminal stalking?

26. *Law enforcement setting*: The NCIWR research (2019) identified that decisions not to report partner or ex-partner harassment and stalking are influenced by victims' anticipation of unhelpful police and justice responses. Gender and race inequities in police responses to reports are known to intersect in the decisions made by women to seek help from the police, with greater harm to women of colour. These failures of institutions to protect are known to further entrap women in dangerous relationships and to exacerbate post-traumatic stress symptoms. International research has noted similar impacts on women's decisions to seek help.
27. The options police currently have for responding to partner stalking do not hold stalkers

accountable or make victims safer. There is widespread ignorance about victims' experiences of stalking, which results in victim-blaming and an inability to access justice. Police are currently not equipped to classify stalking in terms of risk or criminal offending.<sup>26</sup>

28. *Public knowledge:* Many media reports express outrage at what are clearly various forms of stalking, but these actions are often not named as stalking. (For example, Judith Collins, a National MP, spoke on Radio NZ of being phoned multiple times at home from midnight until 8am by an unknown male but did not identify this action as stalking.<sup>27</sup> She described such actions as common experiences of women MPs with offenders universally being men). There is clearly lack of public and media knowledge about the range of stalking actions and the harmful consequences for victim/survivors.

## Policy Recommendations

29. It is imperative to address the systemic gaps that manifest in poor outcomes for victims of stalking, particularly partner or ex-partner stalking, who are predominantly women. Action must be taken on the following recommendations to improve the wellbeing and safety of women and children:

1. Ministry of Justice and other agencies of Te Puna Aonui adopt a shared conceptual understanding of stalking as "unwanted, repetitive and persistent intrusion into a person's life".
2. Government includes stalking in the Crimes Act 1961 as a separate crime that focuses on the actions of the perpetrator and identifies stalking as a pattern of unwanted, repetitive and persistent intrusive behaviour.
3. Ministry of Justice and NZ Police develop guidelines for police, prosecution lawyers and judges, to produce consistent responses to stalking in each of these three sectors.
4. Agencies and services adopt a safety-orientated approach that puts victims' protection at the centre of the response.
5. Government funding is raised to adequate levels for NGO services for victims of stalking.
6. Government funds a campaign to raise the public's awareness of stalking. 7. Government funds research on stalking that will identify continuous improvements to agencies' actions thereby improving victims'/survivors' safety.

30. The following table summarises policy recommendations and responsible agencies.

Table 1: Agencies responsible

Responsible Agency	Policy Recommendation
Ministry of Justice	The inclusion of stalking in the Crimes Act 1961 as a separate crime that focuses on the actions of the perpetrator and identifies stalking as a pattern of unwanted, repetitive, persistent and intrusive behaviour.

Ministry of Justice	Remove criminal harassment from the Harassment Act 1997 and replace it with the Crimes Act stalking legislation.
Ministry of Justice	Remove all criminal action from the Harmful Digital Communications Act and replace it with the Crimes Act stalking legislation
Ministry of Justice	Amend the Family Violence Act to include all stalking actions as described in paragraph 2 of this report.
Police	Develop guidelines for Police for appropriate police action on stalking as has been produced in the UK. Provide mandatory training to all police frontline staff, developed in consultation with Women's Refuge, which includes identification of stalking, immediate safety responses to victims, prosecution potential, recording and review of cases.
Ministry of Justice	Develop guidelines for prosecutors and for the judiciary for implementation of effective action on stalking.
MSD	Fund and develop NGO services for victims of stalking
Police/ACC	Fund an awareness campaign on stalking for the public
Ministry of Justice	Fund process evaluation of the development of this stalking response and research to improve the response of agencies and the experiences of help-seeking for victims/survivors.

### Our organisations

**The Auckland Coalition for the Safety of Women and Children** is made up of 13 preventing violence organisations – including sector leaders, service providers and policy advisors – who work together toward the vision of an Aotearoa New Zealand free from violence against women and children. Members share frontline best practice and collectively develop high-quality, experience-informed advice for decision-makers and communities locally and nationally.

#### Our Members:

- Auckland Women's Centre – Te Wāhi Wāhine o Tāmaki Makaurau
- Eastern Women's Refuge
- HELP Support for Sexual Abuse Survivors
- Inner City Women's Group

- Mental Health Foundation
- Mt Albert Psychological Services Ltd
- National Council of Women, Auckland
- North Shore Women's Centre
- Pacific Women's Watch, New Zealand
- Rape Prevention Education – Whakatu Mauri
- Respect
- Rodney Women's Centre
- Shakti Community Council NZ
- SHINE Safer Homes in NZ Everyday
- The Backbone Collective
- Women's Health Action Trust
- YWCA, Auckland

Analysis of a safe-at-home programme by Coalition member Dr Alison J Towns, a key author of this current paper, revealed there was no recognition of the relationship between stalking behaviours and the terror experienced by women and children. Dr Towns worked with a Coalition committee to begin a programme of education of the specialist family violence organisations, and key government agencies (MOJ, FVSV Joint Venture) and others, including SAFTINET and the media, about the nature of stalking and the harm done to others. Coalition member Deb Mackenzie of the Backbone Collective had also gathered information for the Backbone's research reports, which revealed that stalking was a concern to the women surveyed.

**The National Collective of Independent Womens Refuges** is the umbrella organisation of 40 independent Womens Refuges across New Zealand. Women's Refuge is New Zealand's leading agency in responding to and preventing Domestic Violence. The goal of the National Collective is to liberate women, children, families and whānau from family violence by providing quality services and social commentary.

In 2019, NCIWR research revealed the extent of stalking experienced by women seeking refuge from NCIWR.