

# Regulatory Impact Statement: Establishing an Offence of Stalking

## Coversheet

Purpose of Document	
Decision sought:	<i>Analysis produced to inform Cabinet decisions on the creation of a standalone stalking offence. Accompanies 'Addressing Stalking in New Zealand' Cabinet Paper.</i>
Advising agencies:	<i>Ministry of Justice</i>
Proposing Ministers:	<i>Minister for Justice, Hon Paul Goldsmith</i>
Date finalised:	<i>26 September 2024</i>
Problem Definition	
<p>Current legal and operational settings do not adequately respond to stalking. Stalking is a serious problem, causes a wide range of harms and can escalate to physical violence and homicide. Settings address harassment but fail to address key aspects of stalking and do not provide adequate protection for victims. Without intervention, these issues will persist and may be exacerbated by societal changes, including advances in technology.</p>	
Executive Summary	
<p>This regulatory impact statement (RIS) outlines options for a new criminal offence for stalking, in line with Ministerial direction.</p> <p><b><i>Stalking causes serious and wide-ranging harm in New Zealand</i></b></p> <p>Stalking is characterised by a perpetrator making unwanted, persistent and repetitive intrusions into another person's life, causing a range of serious emotional, psychological, social and economic harms to that person. Stalking behaviours and scenarios vary greatly but typically carry significant risk the behaviour will escalate to physical violence, including homicide.</p> <p>The prevalence of stalking in New Zealand is unquantified. However, anecdotal evidence and international data and research indicate that this is a serious issue, which may be worsening with increasing incidence of cyberstalking.</p> <p>Stalking often involves a former intimate partner or other family member continuing a pattern of family violence but can also be perpetrated by acquaintances or strangers. Women, particularly those who are young, public figures, LGBTQIA+, disabled and victims of family violence, are disproportionately affected by stalking.</p> <p><b><i>Stalking is partially responded to through a patchwork of different statutes</i></b></p> <p>Stalking and harassing behaviours are currently addressed by statutes across the civil and criminal law, including the Harassment Act 1997, Family Violence Act 2018, Crimes Act 1961 and Harmful Digital Communications Act 2015.</p> <p>To date, stalking has largely been considered the same as, or a form of, harassment. None of the Acts above explicitly refer to stalking. Consequently, stalking behaviours are often dealt with using the most comparable offence: criminal harassment in section 8 of the Harassment Act.</p> <p>Criminal harassment has a reasonably stable and low rate of charges and convictions. It has several deficiencies in its application to stalking, including identified issues with the mens rea and actus reus elements, the penalty level and a lack of available defences.</p> <p><b><i>The civil law also provides some remedies for stalking</i></b></p> <p>Victims of stalking may be able to obtain restraining orders under the Harassment Act (if not in a family relationship), protection orders under the Family Violence Act (if in a family relationship) or orders under the HDCA. However, there are concerns that such orders are</p>	

not easily accessible for victims of stalking and that they are not always effective to deter the respondent's stalking behaviours.

***Officials have considered options for a criminal offence and supporting amendments***

The Ministry's preferred option would repeal the offence for criminal harassment and replace it with a new 'stalking and harassment' offence in the Crimes Act, with the following features:

- an actus reus based on 2 or more legislatively specified acts done within 12 months,
- a mens rea element of 'knowingly causing fear or distress',
- a defence against the offence if specified acts are done for a lawful purpose, with reasonable excuse or in public interest, and
- a maximum penalty of five years' imprisonment.

The proposal also includes supportive amendments to other legislation:

- empowering courts to make restraining and HDCA orders at sentencing,
- establishing aggravating factors of stalking and breach of a restraining order,
- include stalking in the definition of 'psychological abuse' in the Family Violence Act 2018, and
- amending the Arms Act 1983 to include the offence in the list of offences that disqualify the offender from obtaining a firearms licence for 10 years.

***Our analysis highlights net benefits of the proposal, subject to effective implementation***

Our assessment indicates that the preferred option would provide net benefits against our criteria, as compared to the status quo. The Ministry therefore considers the option would contribute to meeting the policy objectives of improving public confidence in the criminal response to stalking and responding effectively to stalking. However, the available evidence, while limited, suggests that a law change alone may not improve justice responses to stalking.

Responsibility for implementation predominantly sits with Justice, New Zealand Police and Department of Corrections. There is a risk that a lack of funding for specialised training, support services or public information campaigns may limit the effectiveness of the offence and therefore reduce its impact on public confidence.

While Justice has confirmed that it can implement the parts of the proposal they are responsible for within baseline funding, Police has advised that their costs and impacts are yet to be determined. Modelling indicates that the proposal will result in increases to the prison population. The Department of Corrections has advised that any such increase will require appropriate resourcing and prisoner network funding decisions are likely required to ensure there is Corrections infrastructure capacity and frontline staff are supported to manage additional people safely.

**Limitations and Constraints on Analysis**

The analysis in this regulatory impact statement has been constrained by –

**Time constraints and narrow scope:** The Minister of Justice (the Minister) directed the Ministry of Justice (the Ministry) to create a criminal offence for stalking, focussing on criminal law only and to introduce legislative changes to Parliament by the end of 2024. These directions limited our ability to develop and assess a wider range of options, including those related to the civil law.

**Lack of broader consultation:** The constraints associated with this process restricted our ability to undertake broad or public engagement. Instead, officials have consulted with interested agencies and representative organisations. However, officials only sought comments on general preferences for an offence and not the specific proposal analysed in this RIS.

Officials engaged with the New Zealand Police (Police), Te Puna Aonui, the Ministry for Women, Crown Law Office, the Office of the Privacy Commissioner and the Department of Corrections. Officials worked particularly closely with Police, as the agency responsible for implementation of the new offence.



Officials also engaged with the Coalition for the Safety of Women and Children (CSWC) and the Chief Victims Advisor. They provided a victim-advocate perspective, including insights about the lived experience for stalking victims.

Officials were unable to engage with the judiciary, defence lawyers, and Māori<sup>1</sup> on this proposal. Engagement at this stage on the proposal would have assisted in identifying and addressing any unintended consequences.

Where evidence was available, officials sought to mitigate the limited consultation in this process by using a variety of data sources to better understand diverse perspectives. For example, domestic data sources were particularly important to understanding the victim perspective in New Zealand. Further, case law and international data and research, provided key insights for the defence and Judiciary perspectives.

All groups and members of the public will have the opportunity to submit on the proposal during the Select Committee process.

**Data limitations:** There is no population-based data on stalking and no dedicated stalking offence in the New Zealand statute from which to extract charging and conviction data. Evidence about the scale and nature of the stalking problem has therefore been drawn from:

- charging and convictions statistics for comparable offences,
- the New Zealand Crime and Victims Survey,
- domestic survey data from non-governmental organisations,
- domestic and international case law,
- data from comparable jurisdictions with stalking offences, and
- international research into the nature, impact, recidivism risk and risk factors of stalking, as well motivations behind stalking.

Data has also been provided by agencies, including a thematic summary of mortality review data from Te Tāhū Hauora Health Quality & Safety Commission, vulnerability data from Whaikaha - Ministry for Disabled Peoples, call out data from Police, and costings from the Department of Corrections. Based on available data, the Ministry has undertaken modelling on the potential impact on the prison population.

Officials have relied on the available data and evidence to support the following assumptions:

- stalking is a significant issue in New Zealand, and
- the current criminal response to stalking is inadequate and ineffectual.

#### Responsible Manager(s) (completed by relevant manager)

*Rajesh Chhana*

*Deputy Secretary Policy*

*Ministry of Justice*



26 September 2024

#### Quality Assurance (completed by QA panel)

Reviewing  
Agency:

Ministry of Justice

<sup>1</sup> Cabinet Office guidance on Te Tiriti promotes engagement with Māori as a good faith partner where policies will impact them. [CO \(19\) 5: Te Tiriti o Waitangi / Treaty of Waitangi Guidance | Department of the Prime Minister and Cabinet \(DPMC\)](#)

**Panel Assessment  
& Comment:**

The Ministry of Justice Regulatory Impact Analysis Quality Assurance Panel has reviewed the Regulatory Impact Statement (RIS) - Establishing an Offence of Stalking - prepared by the Ministry of Justice and consider that the information and analysis summarised in the RIS partially meets the Quality Assurance criteria.

The RIS provides a robust analysis of the harms of stalking, and the challenges in responding to this behaviour, drawing on a range of domestic and international research. The options analysis in the RIS was significantly constrained by ministerial direction to introduce a criminal offence of stalking by the end of 2024. The RIS only identifies and analyses one option, and embedded features; it is therefore difficult to assess how this option, or alternative design features, would have compared against other approaches. Due to time constraints, there has been limited public consultation on the proposed offence and no engagement with the judiciary and the defence bar. The RIS notes that the efficacy of the new criminal offence may be limited by lack of funding to support broader operational changes (for example, specialised training, support services, and public information campaigns.)

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

*Stalking is repetitive and persistent but can consist of wide-ranging behaviours*

1. Definitions of stalking vary across jurisdictions, but it is often characterised by behaviours which “cause psychological harm to a person, or arouse apprehension or fear, through repeated pursuit, surveillance, communication, or interference”,<sup>2</sup> perpetrated as “repetitive and persistent unwanted intrusions into a person’s life.”<sup>3</sup>
2. Stalking presents a legislative challenge because it is not constrained to one discrete act, like most other offences. Instead, stalking usually comprises of a series of actions which, when taken in isolation, might constitute legal or ‘normal’ behaviour.<sup>4</sup>
3. Stalking increasingly makes use of digital technology and the internet (‘cyberstalking’). This is a worldwide phenomenon, seen since the late 2010s and reinforced by reliance on the internet during the COVID-19 pandemic.<sup>5</sup> For example stalking, including cyberstalking, of politicians in New Zealand increased during the pandemic.<sup>6</sup> Table 1 outlines common stalking behaviours in New Zealand.

<sup>2</sup> Australian Bureau of Statistics. (2023). 044 Acts that threaten, harass, or control. ABS. <https://www.abs.gov.au/statistics/classifications/australian-and-new-zealand-standard-offence-classification-anzsoc/2023/04/044>.

<sup>3</sup> FINAL-A-STALKING-LAW-FOR-NZ-NGO.pdf (awc.org.nz)

<sup>4</sup> O’Sullivan, C. and Staunton C. (2023). *Stalking and Harassment: an investigation of experiences in Ireland*. Cork: University College of Cork, at 13 and 20; Scott, A.J. 2020. *Stalking: How perceptions differ from reality and why these differences matter*. In: Ray Bull and Iris Blandon-Gitlin, eds. *The Routledge International Handbook of Legal and Investigative Psychology*. Abingdon: Routledge; Thorburn, N., & Jury, A. (2019). *Relentless not romantic: Intimate partner stalking in Aotearoa New Zealand*. Wellington: Women’s Refuge NZ; Tompson, L., Belur, J. & Jerath, K. A victim-centred cost-benefit analysis of a stalking prevention programme. *Crime Sci* 10, 21 (2021). <https://doi.org/10.1186/s40163-021-00158-5>

<sup>5</sup> [Sentencing Stalking in Victoria \(apo.org.au\)](#); [Police-reported crime statistics in Canada, 2021 \(statcan.gc.ca\)](#); [Unmasking Stalking report; Stalking: findings from the Crime Survey for England and Wales - Office for National Statistics \(ons.gov.uk\)](#)

<sup>6</sup> Every-Palmer S, Hansby O and Barry-Walsh J. (2024) *Stalking, harassment, gendered abuse, and violence towards politicians in the COVID-19 pandemic and recovery era*. *Frontiers in Psychiatry*.

**Table 1: Stalking Behaviours from New Zealand Surveys**

<b>Victims of Intimate Partner Stalking (2019)<sup>7</sup></b>	Sent dozens of text messages – 75.93% <sup>8</sup> Sat outside house/school/work often – 70.69% Phoned often – 69.32% Followed them by car or on foot – 62.83% Asked friend/associate to follow them – 60.97% Often questioned family and friends – 59.81% Often dropped off gifts/notes – 59.81% Called from different/burner cell phones – 57.33% Found them through social media check ins – 48.60% Contacted through fake social media accounts – 40.67% Posted threats or degrading material online – 38.79% Deliberately damaged their property – 33.40% Logged into their social media account – 33.40% Broke into their house and moved belongings - 27.51% Questioned their children about whereabouts – 27.10% Phoned employer often – 25.05% Broke into their house and tampered with things – 23.32% Installed apps on their phones – 11.92% Checked their online banking transactions – 10.63% Used monitors and surveillance cameras – 3.92% Checked their odometer – 3.74%
<b>Members of Parliament (difference between 2014<sup>9</sup> and 2022<sup>10</sup>)</b>	Inappropriate social media contact – +36% Inappropriate letters, faxes or emails – +28% Unwanted approaches – +32% Distribution of malicious material – +25% Threats to harm – +15% Alarming behaviour at electorate office – no change Inappropriate telephone calls – +9% Loitering – +16% Property interference – +12% Following behaviour – +20% Spurious legal action – +9% Physical attack (actual or attempted) – +3%

4. Stalking can also involve third parties, for example when a perpetrator engages friends or associates to undertake stalking behaviours or use children, other family members or friends to access information about or control the victim. Victims also report that stalking can include where third party individuals, groups or organisations can play a role in jeopardising reputations, relationships and education or work opportunities. Examples

<sup>7</sup> Thorburn, N., & Jury, A. (2019) at footnote 4. Numbers relate to tactics used during a relationship. Numbers differ for after relationships. See page 71. Thorburn and Jury conducted surveys of 712 victims of intimate partner stalking and interviewed 18 of the participants and 4 advocates to compile the *Relentless not romantic* report. The survey was qualitative and supplemented with prevalence measurement questions. The numbers in the table reflect the number of respondents who reported the behaviour after separating from their partner.

<sup>8</sup> Figures in red are the percentage of respondents who experienced the behaviour.

<sup>9</sup> Every-Palmer, S., Barry-Walsh, J., and Pathé, M. (2015) *Harassment, stalking, threats and attacks targeting New Zealand Politicians: A mental health issue*. Australian-New Zealand Journal of Psychiatry (49)(7). Every-Palmer et al conducted a survey of New Zealand MPs in 2014. The survey had an 84% response rate and collected both quantitative and qualitative data from the respondents. The numbers in the table are represented as the percentage of total number of respondents.

<sup>10</sup> Every-Palmer, S., Hansby, O., and Barry-Walsh, J. (2024). Every-Palmer et al surveyed New Zealand MPs again in 2022. The questionnaire was sent via email to 119 MPs. The response rate was approx. 45%, including 20 men and 34 women. The responses were compared to results from 2014 study to look at trends over time. The research found that "harassment of parliamentarians is an escalating issue. Online threats and misogyny are increasingly apparent. This harassment has significant psychosocial costs for victims, their families and staff and for democratic processes". The numbers in the table above are represented as the percentage of total number of respondents.



include false accusations made to health services or government organisations and stalkers making direct contact with employers or lecturers.<sup>11</sup>

5. Evidence shows that perpetrators typically combine a variety of different stalking behaviours<sup>12</sup> and have a wide range of motives for their behaviours, including rejection, resentment, power or control and seeking intimacy based on predation or social incompetence.<sup>13</sup> There is also significant recidivism risk associated with stalking.<sup>14</sup>
6. There is no one 'profile' of a perpetrator of stalking but evidence suggests that they are predominantly male, older than their victim and known to the victim, often as an ex-partner or through a family connection.<sup>15</sup>
7. This connection is also clearly demonstrated by statistics from the National Collective of Independent Women's Refuges database. Of clients who report experiences of stalking, 74.6% are stalked by their partner or ex-partner pre-separation and 64.7% are stalked post-separation.<sup>16</sup> However, there is also evidence that acquaintance stalking is common,<sup>17</sup> whereas stranger stalking is less common.<sup>18</sup>

#### *Stalking causes serious and wide-ranging harm*

8. Stalking can have emotional, psychological, social and economic impact on victims.<sup>19</sup> It is also a significant predictor of serious physical assault,<sup>20</sup> including homicide.<sup>21</sup> The use of children as a means to stalk is a clear risk factor for escalation to familial homicide.<sup>22</sup>
9. Persistent or recurring stalking tends to cause more serious harm to the victim.<sup>23</sup> Research from the UK shows that the average stalking case lasts between 6 months and 2 years, but 30% of those who contact the UK National Stalking Helpline have experienced stalking for over 2 years.<sup>24</sup>
10. Stalkers who perpetrate serious physical violence typically stalk for shorter time periods (possibly due to being apprehended when physical violence is perpetrated).<sup>25</sup> However,

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<sup>11</sup> See Thorburn, N., & Jury, A. (2019) at footnote 4.; The Family Violence Death Review Committee. (2024). *Findings from Family Violence Death Review Committee (FVDR) data relating to stalking: January 2020 - June 2024*.

<sup>12</sup> Ibid.

<sup>13</sup> Muller, R.T. (2013). *In the Mind of a Stalker*. Available at: [In the Mind of a Stalker | Psychology Today](#). (published 22 June 2013); Patrick, W.L. (2024). *What motivates stalkers?: The purpose behind the pursuit*. Available at [What Motivates Stalkers?: The Purpose Behind the Pursuit | Psychology Today](#). (published 16 June 2024); Russo, F. (2023). *Psychologists Struggle to Explain the Mind of the Stalker*. Available at [Psychologists Struggle to Explain the Mind of the Stalker | Scientific American](#). (published 16 July 2023); [Sentencing Stalking in Victoria \(apo.org.au\)](#); [Police-reported crime statistics in Canada, 2021 \(statcan.gc.ca\)](#); [Unmasking Stalking report](#).

<sup>14</sup> Coupland, S. H., Storey, J. E., Kropp, P. R., & Hart, S. D. (2023). Forecasting Stalking Recidivism Using the Guidelines for Stalking Assessment and Management (SAM). *Assessment*, 30(4), 1168-1181. <https://doi.org/10.1177/10731911221086050>

<sup>15</sup> Sentencing Advisory Council (2022). *Sentencing Stalking in Victoria*. [apo-nid316805.pdf](#) See also; O'Sullivan, C., and Staunton, C. (2023). *Stalking and Harassment: An investigation of experiences in Ireland*. Centre for Criminal Justice and Human Rights: Ireland; See also Tompson, L., Belur, J. & Jerath, K at footnote 4.

<sup>16</sup> See Thorburn, N., & Jury, A. (2019) at footnote 4.

<sup>17</sup> Logan, T., & Landhuis, J. (2024). *Acquaintance stalking victim experiences of work interference, resource loss, and help-seeking*. *International Review of Victimology*, 30(1), 50-69. <https://doi.org/10.1177/02697580221125880>

<sup>18</sup> See Tompson, L., Belur, J. & Jerath, K at footnote 4.

<sup>19</sup> Ibid. See also Thorburn, N., & Jury, A. (2019) at footnote 4.

<sup>20</sup> Sheridan, L. and Roberts, K. (2011). *Key Questions to Consider in Stalking Cases* 29(2) *Behavioural Sciences & The Law* 255 at 259. Surveyed 1,766 victims of stalking in the United Kingdom. Almost one-third had suffered violence. 8% had required medical treatment for injuries ranging from cuts to disfigurement, permanent disability and sterility because of rape.

<sup>21</sup> Flowers, C., et al., (2020). 'Identifying the Characteristics Associated with Intimate Partner Stalking: A Mixed Methods Structured Review and Narrative Synthesis' 31(6) *The Journal of Forensic Psychiatry & Psychology* 889 at 915-916; Thorburn, N., & Jury, A. (2019) at footnote 4; Victorian Government (2018). *Family Violence Multi-Agency Risk Assessment and Management Framework* at 28-29; Churcher, F.P., and Nesca, M. (2013). *Risk Factors for Violence in Stalking Perpetration: A Meta-Analysis*. *FWU Journal of Social Sciences* 7(2), 100 at 106-107.

<sup>22</sup> *Findings from Family Violence Death Review Committee (FVDR)* see footnote 11.

<sup>23</sup> [Sentencing Stalking in Victoria \(apo.org.au\)](#); See also O'Sullivan, C., and Staunton, C. (2023) at footnote 11.

<sup>24</sup> [Let's Talk Stalking | Staffordshire Police](#)

<sup>25</sup> *Sentencing Stalking in Victoria* at footnote 23.

data provided by Te Tāhū Hauora Health Quality & Safety Commission shows that stalkers who escalate to familial homicide persist with stalking despite court orders and conditions specifically targeting this behaviour.<sup>26</sup>

*Stalking is only partially responded through several criminal offences*

11. There is no dedicated stalking offence in New Zealand legislation. Where stalking involves criminal behaviour – such as trespass, threatening behaviour,<sup>27</sup> intimidation,<sup>28</sup> or loitering – such offences do not reflect the repetitive and persistent nature of stalking and may obscure a pattern of behaviour if viewed in isolation.
12. Criminal harassment is the most comparable offence to stalking. It attempts to respond to an invasive pattern of behaviour, rather than discrete events, and this pattern is made up of specified acts that are similar to common stalking behaviours.<sup>29</sup>
13. A person may be found guilty of criminal harassment if they undertake a ‘pattern of behaviour’ and do so intending or knowing that that the behaviours cause or are likely to cause the victim fear for their own or someone in their family’s safety. A ‘pattern of behaviour’ is defined as at least 2 ‘specified acts’<sup>30</sup> within a 12-month period.<sup>31</sup> Case law has determined that both the specified acts themselves and the pattern of behaviour as a whole must actually or reasonably cause fear for safety.<sup>32</sup>
14. ‘Intent’ requires the prosecution to prove that the person intended a certain outcome or was virtually certain of the consequences of their behaviour but undertook the behaviour anyway. Safety refers to psychological, psychiatric or emotional harm, but does not consider feelings of anger, annoyance or upset.<sup>33</sup>
15. Criminal harassment is a category 3 offence with a maximum penalty of 2 years imprisonment. In 2023, 111 people were proceeded against for criminal harassment. For 74 people, this was their most serious offence. Of these 74:<sup>34</sup>
  - a. 46 were charged
  - b. 25 were convicted, and
  - c. 3 received a sentence of imprisonment.
16. Criminal harassment has several deficiencies in its application to stalking. In particular:
  - a. The list of specified acts is designed to target issues such as gang harassment and does not reflect the wide range of stalking behaviours.<sup>35</sup>
  - b. The mens rea elements of ‘intent’ and ‘fear for safety’ are high standards to prove in the context of stalking, where harm may be only psychological or subjective in nature and stalkers may have a wide range of motivations.
  - c. The maximum penalty of 2 years imprisonment appears insufficient to respond to the most severe cases of stalking.

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<sup>26</sup> Sheridan, L. and Roberts, K. (2011) at footnote 20.

<sup>27</sup> Such as threatening to kill (section 306), threatening to destroy property (section 307) or threats of harm to people or property (section 307A) in the Crimes Act 1961.

<sup>28</sup> Section 21, Summary Offences Act 1981.

<sup>29</sup> Section 4, Harassment Act 1997.

<sup>30</sup> Table 1.

<sup>31</sup> Section 4, Harassment Act 1997.

<sup>32</sup> *Mooney v Wilkinson* [2015] NZHC 2488; BC201563376 at [24]-[26].

<sup>34</sup> Ministry of Justice. (2024). *New stalking offence modelling summary*. Numbers reflect finalised cases where criminal harassment was the most serious offence in 2023.

<sup>35</sup> Various at footnote 5. See also Table 1 and section 4, Harassment Act 1997.

- d. There are no defences available for the offence itself, even though it would capture behaviours that may be legitimate under other circumstances.<sup>36</sup>
  - e. The Sentencing Act sets out a list of aggravating factors in section 9(1) that the court must consider. Aggravating factors should intensify or worsen a particular instance of offending, rather than restate any elements of the offence. While there are a range of aggravating factors in s 9(1) that may apply to stalking behaviours<sup>37</sup> and provision for the court to consider any other factor not specifically listed,<sup>38</sup> there are none that address the particular cumulative harm of stalking. There are aggravating factors for committing a family violence offence and breaching a protection order, but none for restraining orders.
17. In addition, there are currently no provisions to protect victims of stalking and harassment from the risk posed by access to firearms by the perpetrator.<sup>39</sup> Evidence shows serious risks associated with family violence and access to firearms generally<sup>40</sup> and indicates that stalkers with access to firearms have a higher risk of escalation to violence.<sup>41</sup>

*The civil law also provides some remedies for stalking*

18. There are some civil law remedies for stalking, including under the Harassment Act 1997, the Family Violence Act 2018 and the Harmful Digital Communications Act 2015 (HDCA).
19. For example, victims of stalking may be able to obtain restraining orders under the Harassment Act (if not in a family relationship), protection orders under the Family Violence Act (if in a family relationship) or orders under the HDCA. Breaching any of those orders constitutes a criminal offence, providing some protection for victims without having to prove other offences.<sup>42</sup>
20. Orders under the HDCA target harm associated with harmful digital communications. For example, orders may require a person to take down material or refrain from pursuing certain conduct.<sup>43</sup> Restraining orders and protection orders recognise patterns of behaviour, which can include common stalking behaviours such as watching, loitering near, following or accosting the victim.<sup>44</sup>
21. Like the criminal law, none of the statutes expressly refer to stalking. Inconsistencies between the orders also mean the civil law lacks a comprehensive and consistent response for victims of stalking. For example, victims in a family relationship with their stalker cannot apply for a restraining order<sup>45</sup> but may be able to obtain a protection order

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<sup>36</sup> There is a defence for “lawful purpose” with regards to the application for a restraining order but this does not apply to criminal harassment.

<sup>37</sup> Including section 9(1)(a) involving actual or threatened violence; section 9(1)(b) involving unlawful entry/unlawful presence in a dwellinghouse; section 9(1)(ca) involving a family violence offence and breach of protection order; section 9(1)(d) the extent of loss, damage, harm; section 9(1)(e) particular cruelty; section 9(1)(d) abusing a position of trust or authority; section 9(1)(g) vulnerability of the victim; section 9(1)(h) hostility to a particular group; section 9(1)(hb) involvement or association with organised criminal groups.

<sup>38</sup> Section 9(4)(a), Sentencing Act 2002.

<sup>39</sup> Criminal harassment is not one of the disqualifying offences in the Arms Act 1983. The Act will be rewritten this Parliamentary term, including the list of disqualifying offences.

<sup>40</sup> Tobin-Tyler E. (2023). *Intimate Partner Violence, Firearm Injuries and Homicides: A Health Justice Approach to Two Intersecting Public Health Crises*. J Law Med Ethics. 51(1) at 64-76. Doi: 10.1017/jme.2023.41; Kellerman, A., Heron, S. (1999). *Firearms and family violence*. Emergency Medicine Clinics of North America.17(3) at 699-716; [Firearms-Prohibition-Orders-Legislation-Bill-Submission-final.pdf \(womensrefuge.org.nz\)](#)

<sup>41</sup> Folkes, S., Hilton, Z. and Harris, T. (2012) *Weapon Use Increases the Severity of Domestic Violence but Neither Weapon Use Nor Firearm Access Increases the Risk or Severity of Recidivism* 28(6) Journal of Interpersonal Violence 1143.

<sup>42</sup> Sections 16 and 25, Harassment Act 1997; sections 79 and 112, Family Violence Act 2018; sections 19 and 21, HDCA 2015.

<sup>43</sup> Section 19, HDCA 2015.

<sup>44</sup> See section 4, Harassment Act 1997; section 11, Family Violence Act 2018.

<sup>45</sup> Section 9(4) of the Harassment Act 1997 excludes a person who is or has been in a family relationship with the perpetrator from applying for a restraining order.



for a wider range of behaviours than someone in a non-family relationship.<sup>46</sup> However, neither protection nor restraining orders explicitly capture stalking.<sup>47</sup>

22. While there is provision for protection orders to be made at sentencing in family violence cases, there is no corresponding ability to make restraining or HDCA orders at sentencing for criminal harassment. This requires victims to go through additional court processes to obtain these orders. Protection orders also last indefinitely,<sup>48</sup> whereas a restraining order will only last a year unless otherwise specified.<sup>49</sup>
23. Officials have not identified any reported cases of protection orders based on findings of stalking.<sup>50</sup> This may indicate a gap in the current regime where a lack of explicit reference to stalking in the legal definitions of family violence may mean that stalking is not currently viewed as a form of family violence nor sole grounds for a protection order.<sup>51</sup>
24. Evidence and stakeholder insights also suggest that orders do not always deter stalkers, especially in the family violence context, leaving victims at continued risk of harm.<sup>52</sup> For example, data provided by Te Tāhū Hauora Health Quality & Safety Commission shows that stalkers whose behaviour escalate to familial homicide tend to continue stalking despite court orders and conditions.<sup>53</sup>

#### *Current settings and practices impact on victims' experience*

25. Victims can find it difficult to disclose stalking. Under the current legal settings, it can be challenging to understand what constitutes chargeable behaviours for criminal harassment or grounds for police intervention.
26. Further, victims may encounter multiple issues preventing access to help in response to disclosure. For example, victims report that stalking behaviours are not taken seriously by authorities or not identified as criminal behaviour. Case examples indicate that this may occur even where there is involvement of threats to kill.<sup>54</sup> Police may also investigate complaints but not be able to find the evidence required for prosecution.
27. Agencies have identified that the lack of explicit reference to stalking in legislation creates issues operationally, including when Police officers are called to respond to stalking - the lack of a specific offence code means they are not always aware that the behaviours can constitute a crime.

#### *Internationally, many jurisdictions have adopted specific stalking laws*

28. Several international jurisdictions have adopted specific laws targeting stalking behaviours, including the UK, all states in the United States and several Australian states. Others, like Canada, prosecute stalking under harassment laws.
29. There is limited evidence on the effectiveness of changing the legal status of stalking to provide an effective criminal justice response. Existing international research, while sparse and generally only measured by number of cases filed or rates of prosecution, indicates that legal changes alone may not impact criminal justice responses. The

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<sup>46</sup> The definition of family violence goes beyond harassment behaviours specified in the Harassment Act 1997. For example, it also expressly captures physical and sexual abuse.

<sup>47</sup> Such as through the use of social media platforms or electronic tracking devices.

<sup>48</sup> Section 107, Family Violence Act 2018.

<sup>49</sup> Section 21, Harassment Act 1997.

<sup>50</sup> Justice does not collect data on grounds for granting protection orders and officials have not identified case law where protection orders have been granted for stalking. In contrast, there is case law suggestion that restraining orders have been granted for stalking, see for example *Porter v T* [2021] NZHC 2886.

<sup>51</sup> Family violence is defined as violence inflicted against a person by a person with whom that person is, or has been, in a family relationship. While the definition of 'psychological abuse' includes some behaviours that may feature in stalking, it does not currently explicitly refer to stalking - see sections 9 and 11 in the Family Violence Act 2018.

<sup>52</sup> *The Family Violence Death Review Committee*. (2024) at footnote 11.

<sup>53</sup> *Findings from Family Violence Death Review Committee (FVDRC)* at footnote 11.

<sup>54</sup> *The Family Violence Death Review Committee*. (2024) at footnote 11.

research notes that challenges with evidentiary requirements, lack of specialised training for the actors in the justice systems and continued under-reporting are likely contributing factors.<sup>55</sup>

30. Further, it appears common around the world that a lack of knowledge and awareness among actors in the justice systems leading to poor experiences and outcomes for victims persist internationally.<sup>56</sup>

### What is the policy problem or opportunity?

*The criminal justice response to stalking in New Zealand is inadequate*

31. Current criminal justice settings do not adequately respond to stalking. Stalking is a serious problem, causing a wide range of harms, which can escalate to physical violence and homicide.
32. Stalking differs from harassment. One stalking report from the UK characterised harassment as unwanted and repeated behaviour, but stalking as fixated, obsessive, unwanted and repeated.<sup>57</sup> Despite this, and further differences between stalking and harassment, the current law focuses on responding to harassment.
33. This creates a misalignment between the law and the nature of stalking and the needs of victims, including the safety of victims through operational and civil responses. Without intervention, these issues will persist and may be exacerbated by societal changes, including advancements in modern technology.
34. The scope of this proposal is limited to the criminal jurisdiction. Evidence indicates that responses which rely only on the creation of a criminal offence may have limited impact on behaviour without effective implementation and operational policy.<sup>58</sup> Operational policy, practice and services are not out of scope but are not addressed at this stage in the policy process.

*The extent of the stalking problem in New Zealand is unquantified*

35. There are limited population-based statistics on the prevalence<sup>59</sup> of stalking in New Zealand. However, anecdotal evidence and stakeholder insights suggest stalking is a common problem and may be worsening with technological advances.<sup>60</sup>
36. Police callout data shows there were 1,868 calls for service to stalking or harassment related offending in 2023. This number has more than doubled since 2015.<sup>61</sup> Women's Refuge statistics show that, of clients who are asked and answer assessment questions

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<sup>55</sup> Bouffard, L.A. et al. (2021). *Still in the shadows: The unresponsiveness of stalking prosecution rates to increased legislative attention*. Journal of Criminal Justice. 73 (101794). <https://doi.org/10.1016/j.jcrimjus.2021.101794>; [Download.ashx \(suzyplamplugh.org\)](#) at 4.4; [Canada's laws on stalking crimes inadequate: experts | CTV News](#); [Intimate-Partner-Stalking-.pdf \(womensrefuge.org.nz\)](#) at 21.

<sup>56</sup> [Paladin - Get informed \(paladinservice.co.uk\)](#); [Download.ashx \(suzyplamplugh.org\)](#) at 4.4; [Canada's laws on stalking crimes inadequate: experts | CTV News](#);

<sup>57</sup> MOPAC Evidence and Insight (2024) *Stalking in London: a deep dive*.

<sup>58</sup> Bouffard, L.A. et al. (2021) at footnote 55. [Download.ashx \(suzyplamplugh.org\)](#) at 4.4; [Canada's laws on stalking crimes inadequate: experts | CTV News](#); [Intimate-Partner-Stalking-.pdf \(womensrefuge.org.nz\)](#) at 21.

<sup>59</sup> 'Prevalence' refers to the relative rate of offending in a given population or compared to a wider class of offending. It is calculated differently in different studies.

<sup>60</sup> Thorburn, N., & Jury, A. (2019) at footnote 4.; [New Zealand women demand stalking laws changed as dangerous act on the rise | news.com.au — Australia's leading news site](#); ['It's an epidemic': Calls for stalking to be made illegal in New Zealand | Stuff](#); [Social Media Is Fostering A Big Rise In Real-World Stalking \(forbes.com\)](#); [Cyber stalking rampant amongst young New Zealanders - study \(securitybrief.co.nz\)](#).

<sup>61</sup> Police call-out data on Criminal Harassment (offence code 1841) and contravening a restraining order (1842, 7451, 3831) for the period from July 2014 to May 2024. The data supplied is derived from the Demand and Activity dataset which counts crime and non-crime incidents reported to Police, both when it was initially reported to Police and at the initial attendance complete stage of the process. The classification of offences and incidents as reported to Police may change between the time they were initially reported and the time after initial attendance.

about stalking, 74.6% are stalked by their partner or ex-partner pre-separation and 64.7% are stalked post-separation.<sup>62</sup>

37. The most comparable offence available domestically is criminal harassment. Both the number of people charged and convicted for criminal harassment have remained reasonably stable over the last decade.<sup>63</sup>
38. Domestic stakeholders have highlighted that the true scale and scope of stalking in New Zealand is likely under-estimated because of the barriers to disclosing stalking harm and receiving appropriate responses.<sup>64</sup> Under-reporting may be exacerbated by the lack of a specific offence code for stalking. This means that even when a report is made, the offending may not be identified as relating to stalking behaviours.

*International evidence suggests stalking is a significant issue*

39. Internationally, estimates on the prevalence of stalking vary:
  - a. Research on comparable jurisdictions provides a range of prevalence estimates – between 4.5% and 23.4% in all people's lifetimes (6.1-23.4% for women vs 2-15.2% for men) and 5.8-6% in the last year for all people (1-9% vs 0.4%-8.9% ).<sup>65</sup>
  - b. Prevalence across European states not including England and Wales, prevalence estimates range from between 9-11.6% in all people's lifetimes (17% vs 4-7%) and 1.6-2.9% in the last year for all people (5% vs 2%).<sup>66</sup>
  - c. In England and Wales, the national Crime Survey for England and Wales has shown prevalence dropping from 7.8% in 2004 to 4.3% in 2022. However, since the introduction of the stalking offence in 2012, the prevalence of stalking has increased steadily from 3.6%. Cyberstalking data has only been collected since 2021 and sits around 2%. These measures are separate from charging and conviction rates.<sup>67</sup>
  - d. In Canada, the prevalence of criminal harassment (as a percentage of all criminal code cases without traffic offences) has seen disproportionate increases compared to similar offences. Stalking prevalence increased by 38% from 2005/06 to 2021/22 (from 1.1% to 1.52%). The prevalence of the broader category of 'crimes against the person' did not increase as much, only increasing by 12.5% from 2006/06 to 2019/20 (from 32% to 38%).<sup>68</sup>
  - e. In the United States the lifetime prevalence of stalking has been estimated at approximately 10% for women and 5% for men.<sup>69</sup>

<sup>62</sup> Thorburn, N., & Jury, A. (2019) at footnote 4. This statistic is from Women's Refuge databases, not from the survey associated with this research.

<sup>63</sup> Based on data provided by the Ministry of Justice AIC Team.

<sup>64</sup> See footnote 9.

<sup>65</sup> van der Aa, S. (2010). *Stalking in the Netherlands. Nature and prevalence of the problem and the effectiveness of anti-stalking measures*. Tilburg: Maklu Uitgevers. 'Prevalence' calculated variously but as population prevalence. Countries included Australia, US, Canada, Sweden, Germany, England and Wales and Scotland.

<sup>66</sup> Ibid. Includes Scotland, Sweden and Germany. Surveys did not always provide data on all prevalence measures.

<sup>67</sup> Based on data extracted from *Stalking: findings from the Crime Survey for England and Wales*. Office for National Statistics (ons.gov.uk). 'Prevalence' calculated as the number of respondents who were victims of a given offence at least once. Respondents are self-selected from a random pool throughout England and Wales. Domestic violence reported in the interviewer-led parts of the CSEW are prone to under-reporting.

<sup>68</sup> Based on data extracted from [Adult criminal courts, number of cases and charges by type of decision \(statcan.gc.ca\)](https://www.statcan.gc.ca/tables/98-001-x/2019001/article/00001-eng). 'Prevalence' calculated by officials as a basic proportion of all offending and of all offending of the same type (as categorised by the dataset). Actual cases stayed steady for this period, but total offences decreased.

<sup>69</sup> Tjaden, P., & Theonnes, N. (2000) *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey*. National Institute of Justice. 'Prevalence' calculated as the number of victims of stalking in the given population within the last 12 months.



40. Evidence suggests that stalking, especially cyberstalking, is on the rise worldwide.<sup>70</sup>

*Women are disproportionately impacted by stalking*

41. Women, particularly those who are young, public figures, LGBTQIA+, disabled and victims of family violence are disproportionately affected by stalking.<sup>71</sup> There is limited data and research as to how wāhine Māori and women of other ethnicities are affected by stalking. However, Māori are disproportionately represented as victims of crime and as victims of family violence and therefore are likely to be experiencing stalking disproportionately.<sup>72</sup> The same pattern may apply to refugees and women of various ethnicities.<sup>73</sup>
42. Some research suggests that the prevalence of stalking for men may be underestimated due to societal gender norms on victimisation and feelings of fear. For instance, men may not recognise unwanted attention from a person of the opposite sex as dangerous in the same way that women do.<sup>74</sup>

*Some groups may have unique experiences of stalking*

43. Stalking of immigrants and ethnic minorities can include specific cultural elements or the use of immigration status to exert control.<sup>75</sup>
44. Young people are more likely to be victims and perpetrators of cyberstalking than the older population.<sup>76</sup> Stalking of public figures also often involves cyberstalking and is frequently motivated by mental illness.<sup>77</sup>
45. LGBTQIA+ persons are also likely to experience cyberstalking and their victimisation is often associated with the stalker's failure to understand or accept the target's sexual orientation, gender identity or sex characteristics.<sup>78</sup>
46. People with disabilities, particularly women, have a higher prevalence of intimate partner violence and are more likely to experience victimisation by a family member than the

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<sup>70</sup> Thorburn, N., & Jury, A. (2019) at footnote 4.; [New Zealand women demand stalking laws changed as dangerous act on the rise | news.com.au](#) — Australia's leading news site; 'It's an epidemic': Calls for stalking to be made illegal in New Zealand | [Stuff](#); [Social Media Is Fostering A Big Rise In Real-World Stalking \(forbes.com\)](#); [Cyber stalking rampant amongst young New Zealanders - study \(securitybrief.co.nz\)](#); [Stalking rises during Covid pandemic - police \(bbc.com\)](#); [Report reveals rise in global digital stalking in 2023 \(securitybrief.co.nz\)](#)

<sup>71</sup> Thorburn, N., & Jury, A. (2019) at footnote 4; Fanslow, J.L., et al. (2021). *Lifetime Prevalence of Intimate Partner Violence and Disability: Results From a Population-Based Study in New Zealand*. American Journal of Preventive Medicine, Vol. 61, Issue 3, Sept. 2021 at 320-328; Wilson S, Dempsey C, Farnham F, Manze T, Taylor A. (2018) *Stalking risks to celebrities and public figures*. BJPsych Advances.24(3) at 152-160. doi:10.1192/bja.2017.22; Sheridan, L. P., Scott, A. J., & Campbell, A. M. (2019). *Perceptions and Experiences of Intrusive Behavior and Stalking: Comparing LGBTIQ and Heterosexual Groups*. Journal of Interpersonal Violence, 34(7), 1388-1409. <https://doi.org/10.1177/0886260516651313>.

<sup>72</sup> Ministry of Justice (2024) *New Zealand Crime and Victim Survey: NZCVS key results 2023 (Cycle 6)*. Wellington, NZ. Retrieved from: [NZCVS 2023 Key Results \(Cycle 6\) \(justice.govt.nz\)](#); [Te-Tangi-.pdf \(justice.govt.nz\)](#).

<sup>73</sup> Auckland Coalition for the Safety of Women and Children, National Collective of Independent Women's Refuges and National Council of Women of New Zealand, Te Kaunihera Wāhine o Aotearoa. (2022). *A stalking law for New Zealand – why it is necessary*. Available at: [FINAL-A-STALKING-LAW-FOR-NZ-NGO-November.pdf \(awc.org.nz\)](#)

<sup>74</sup> Logan, T. (2022). *Examining Factors Associated with Stalking-Related Fears Among Men and Women Stalked by Male and Female Acquaintances*. Journal of Interpersonal Violence, 37(9-10), NP6958-NP6987. <https://doi.org/10.1177/0886260520967755>; See also O'Sullivan, C. & Staunton C. (2023) at footnote 4.

<sup>75</sup> Auckland Coalition for the Safety of Women and Children, National Collective of Independent Women's Refuges and National Council of Women of New Zealand, Te Kaunihera Wāhine o Aotearoa. (2022). *A stalking law for New Zealand – why it is necessary*. Available at: [FINAL-A-STALKING-LAW-FOR-NZ-NGO-November.pdf \(awc.org.nz\)](#)

<sup>76</sup> Kalaitzaki, A. (2020). *Cyberstalking Victimization and Perpetration Among Young Adults: Prevalence and Correlates*. In M. Wright (Ed.), *Recent Advances in Digital Media Impacts on Identity, Sexuality, and Relationships* at 22-38. IGI Global. <https://doi.org/10.4018/978-1-7998-1063-6.ch002>

<sup>77</sup> Wilson S, Dempsey C, Farnham F, Manze T, Taylor A. (2018) at footnote 71.

<sup>78</sup> Sheridan, L. P., Scott, A. J., & Campbell, A. M. (2019) at footnote 71.

general population.<sup>79</sup> Whaikaha Ministry of Disabled People note that stalking of disabled women is usually targeted at or utilising their disability.<sup>80</sup>

### What objectives are sought in relation to the policy problem?

47. The following objectives are sought:
- a. **improve public confidence in the criminal response to stalking**, and
  - b. **respond effectively to stalking** by providing an appropriate and proportionate response to the harm caused.
48. Improving public confidence in the criminal response to stalking (a) is important as the current perception appears poor.<sup>81</sup> Responding effectively to stalking (b) means being able to hold perpetrators to account for the actual harm experienced by the victim, through a well-designed, workable offence.
49. These objectives are interconnected and may also be mutually reinforcing. For example, objective (a) is likely to be influenced by how well objective (b) is implemented: a new stalking offence that effectively responds to stalking is likely to enhance public confidence in the criminal response to stalking.
50. At times, the imperative to capture victims' lived experience of harm accurately and expansively may need to be balanced against the requirement to ensure that the offence is workable and clearly sets out the boundaries of the criminal law.

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

51. The following criteria have been used to assess options to ensure they meet the policy objectives above.

Criteria	What this means
<b>Certainty</b>	<ul style="list-style-type: none"> <li>The extent to which the option makes it clear that stalking is a serious offence.</li> <li>The extent to which the option supports clarity and certainty around the application of the offence, including through fair labelling.<sup>82</sup></li> </ul>
<b>Effectiveness and feasibility</b>	<ul style="list-style-type: none"> <li>The extent to which the option can be effectively implemented and operationalised, including:               <ul style="list-style-type: none"> <li>the ability to prosecute and meet the standard of proof to hold perpetrators accountable, and</li> <li>cost effectiveness.</li> </ul> </li> </ul>

<sup>79</sup> Fanslow, J, et al. *Lifetime Prevalence of Intimate Partner Violence and Disability: Results From a Population-Based Study in New Zealand* (2021). *American Journal of Preventive Medicine*, Vol. 61, Issue 3, Sept. 2021, pp.320-328; *New Zealand Crimes and Victims Survey Cycle Five: Who Is Experiencing Crime?* (2022). Ministry of Justice.

<sup>80</sup> Advice provided by Whaikaha- Ministry of Disabled People.

<sup>81</sup> The CSWC's petition, calling for the introduction of a criminal offence for stalking had over 20,000 signatures. The CSWC has also supplied the Minister with a legislative drafting proposal for consideration. Further, a not-yet-drawn Member's Bill also seeks to criminalise stalking. Several recent media articles have also drawn attention to the inadequacy of current settings.

<sup>82</sup> Fair labelling refers to the principle that criminal offending should be sub-divided and the 'label' – including both the categorisation and the description – of each offence represents the nature and magnitude of the offender's wrongdoing. Fair labelling supports fairness for perpetrators and victims alike and communicates the boundaries of the criminal law effectively.

	<ul style="list-style-type: none"> <li>The extent to which the option accurately reflects lived experience of stalking today and is flexible enough in the face of novel or emerging trends.</li> </ul>
<b>Consistency and workability with domestic laws and obligations</b>	<ul style="list-style-type: none"> <li>The extent to which the option supports consistency across the domestic statute and works well with relevant laws and obligations, including:               <ul style="list-style-type: none"> <li>other offences across the criminal and civil law which may capture similar behaviour.</li> <li>constitutional principles (including consistency with rule of law, procedural fairness, natural justice, access to justice, the New Zealand Bill of Rights Act 1990 and Te Tiriti o Waitangi).</li> <li>criminal justice principles (presumption of innocence, burden and standard of proof).</li> </ul> </li> </ul>

### What scope will options be considered within?

52. The scope of the options considered has been limited by direction from the Minister to:
- create a criminal offence for stalking, focussing on criminal law only, and
  - introduce a Bill by the end of 2024.
53. To introduce a Bill by the end of 2024, Cabinet policy approvals are required by the end of September 2024, which allowed 4-5 weeks to develop options. Officials have therefore not yet pursued non-regulatory options or options to significantly amend the civil law considered in this RIS.

### What options are being considered?

#### Option 1 – Status Quo

54. Under this option, the offence of criminal harassment would continue to be the primary response to stalking in New Zealand. Criminal harassment criminalises:
- a pattern of behaviour, which is:
    - composed of specified acts,<sup>83</sup>
    - directed against another person,<sup>84</sup>
    - on at least 2 occasions within a 12-month period.
  - with the intention that the harassment cause or that it would be likely to cause, the other person to fear for their safety or the safety of their family members.
55. Criminal harassment is a category 3 offence with a maximum penalty of 2 years imprisonment.<sup>85</sup> There are no defences particular to criminal harassment.<sup>86</sup>

#### Option 2 – Repeal and replace criminal harassment with 'stalking and harassment' offence

56. The criminal harassment offence in the Harassment Act would be repealed. Stalking behaviours and harassment would both be criminalised through the new offence of

<sup>83</sup> Section 4, Harassment Act 1997.

<sup>84</sup> Section 3, Harassment Act 1997.

<sup>85</sup> A category three offence is any offence carrying a penalty of two years imprisonment or more that isn't a category four offence. People charged with category three offences can elect a jury trial.

<sup>86</sup> Section 17, Harassment Act 1997. While criminal harassment does not have explicit defences provided for, LDAC guidance outlines that defences should be included where a high maximum penalty is available. This will ensure that only those culpable are liable for the offence.



'stalking and harassment'. This is the only significant option considered because the scope is limited to considering only a criminal offence.

57. Some brief consideration was given to retaining the existing criminal harassment offence alongside the new offence. It was set aside as being unlikely to meet the criteria. It would create ambiguity in the law as the two criminal offences would overlap significantly. Replacing the current offence would only create an inconsistency between the current definition in the civil law (for restraining orders) and the definition in the new offence. Parallel definitions in different jurisdictions would result in less ambiguity.
58. Key elements of all offences are mens rea, actus reus, defences and penalties. These elements of the proposed offence are detailed below. Although various alternatives for these elements were considered they were not ultimately significant enough to include separately.<sup>87</sup>
59. Officials are confident that the design elements chosen for this offence respond to the policy problem and satisfy the options criteria. This analysis is outlined in Table 2.

#### *Mens rea*

60. People should be liable for an offence only if they are at fault for the prohibited conduct.<sup>88</sup>
61. The proposed mens rea is "Person A stalks or harasses Person B if they engage in a pattern of behaviour knowing it will likely cause fear or distress to Person B."
62. This formulation provides for a mental element at a lower standard than the status quo, thereby addressing anecdotal concerns that the 'intent' standard is too difficult to prove. 'Knowing' means knowing or correctly (and without significant doubt) believing. The qualification that the belief be a correct one is implicit in the meaning of knowledge.
63. Establishing knowledge of harm can be difficult, especially for apparently innocuous behaviour which is common to stalking. The offence therefore specifies a constable may provide a person who commits a specified act with a notice. This notice creates a presumption that any future specified acts by Person A are done with the knowledge that they may cause fear or distress to Person B.
64. The notice system would help establish a presumption of knowledge while also acting a warning to the perpetrator. Police has indicated that having some form of statutory basis for issuing notices would be beneficial. The use of fear or distress as responses to stalking will capture a wider range of responses than the status quo, recognising that victims will not have a uniform reaction to stalking.
65. Officials also considered other responses to stalking behaviours, like "alarm". However, Police and Crown Law determined that alarm is an unworkably low threshold which would capture a large amount of genuinely innocuous behaviour.
66. Officials also considered a mens rea standard of 'reckless' instead of "knowing". This standard would be met where a person is aware of the associated risk of stalking behaviours and unreasonably decides to act anyway. This standard has the same practical challenges to proof as 'knowing' and was therefore dismissed.

#### *Actus reus*

67. The description of prohibited behaviours should be precise and rationally connected with the harm targeted by the policy objective.<sup>89</sup>
68. The proposed actus reus would be:

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<sup>87</sup> See Legislation Guidelines (2021), [Part 24: Creating criminal offences](#), Legislation Design and Advisory Committee

<sup>88</sup> [The Legislation Design and Advisory Committee \(ldac.org.nz\)](#)

<sup>89</sup> [The Legislation Design and Advisory Committee \(ldac.org.nz\)](#)

- a. Person A engages in a pattern of behaviour if they do any specified act to Person B on at least 2 separate occasions within a period of 12 months, including:
    - i. watching, following, loitering, or obstructing
    - ii. recording or tracking
    - iii. contacting or communicating
    - iv. damaging, devaluing, moving or interfering with taonga<sup>90</sup> or property, whether or not Person A or Person B have an interest in the property (for the avoidance of doubt, property includes but is not limited to pets.)
    - v. damaging or undermining Person B's mana, reputation, opportunities, or relationships;
    - vi. any act which would cause fear or distress to a reasonable person.
  - b. Specified acts may be done directly or indirectly to Person B and may be done in person or by any other means. Specified acts include acts perpetrated through or to any third-party with or without the knowledge of the third party.
69. The approach in the offence would identify and condemn the harms associated with stalking by clearly establishing the behaviours considered stalking.<sup>91</sup> Officials are not aware of any concerns with the use of 12-month period.
70. "Any other behaviour" has been interpreted by the courts as a hard bar to meet in relation to criminal harassment as they have required all the specified acts to cause fear or distress.<sup>92</sup> The list in this option excludes that interpretation by removing "other".
71. The clarification of "by any means" and role of third parties provides flexibility for the offence, including to develop in line with changing technology and stalking strategies. It will also address the use of children to stalk victims.<sup>93</sup>
72. The incorporation of "mana" and "taonga" promotes responses to stalking that are relevant and appropriate for Māori, who appear to be disproportionately affected by stalking.<sup>94</sup> Māori are also overrepresented as victims of family violence and crime in general. This approach ensures perpetrator accountability for stalking behaviours which are based in tikanga Māori.<sup>95</sup>

### Defences

73. The offence will specify a pattern of behaviour does not constitute stalking or harassment if all of the acts are done for a lawful purpose, with reasonable excuse, or in the public interest.
74. These defences are not defined in legislation, but case law interprets actions done:

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<sup>90</sup> Per Stephens, M. And Boyce, M. *He Papakupu Reo Ture: A Dictionary of Māori Legal Terms*. (2013) Wellington: LexisNexis – "The customary usage of taonga refers to property or anything highly prized. The giving and receiving of taonga was an important part of creating and maintaining reciprocal relationships between groups. Per [CO \(19\) 5: Te Tiriti o Waitangi / Treaty of Waitangi Guidance | Department of the Prime Minister and Cabinet \(DPMC\)](#) – "treasure, anything prized - applied to anything considered to be of value including socially or culturally valuable objects, resources, phenomenon, ideas and techniques."

<sup>91</sup> See Table 1.

<sup>92</sup> See footnote at 30.

<sup>93</sup> Evidence shows that stalkers use third parties to perpetrate stalking against a victim, either through a third party (e.g., using associates to stalk, calling a victim's place of work or using court processes to force contact) or to third party (e.g., to the child, parents or siblings of a victim). See for example: Justice Committee (2024) *Victims of Family Violence (Strengthening Legal Protections) Legislation Bill commentary* at 4.

<sup>94</sup> Thorburn, N., and Jury, A. (2019) at footnote 4.

<sup>95</sup> Te ao Māori concepts in legislation can help achieve tikanga Māori outcomes. See <https://www.lawcom.govt.nz/assets/Publications/StudyPapers/NZLC-SP24.pdf>

- a. for a “lawful purpose” as those legally authorised (including through warrant) and/or “legitimate” actions. A legal action will not be protected if it is not legitimate.<sup>96</sup>
  - b. with a “reasonable excuse” as those a reasonable person would consider justified.<sup>97</sup>
  - c. in the “public interest” as those with a strong policy justification. It is a wide test to allow courts to continue to respond to changing understandings of stalking.
75. Police noted concerns that these tests lack explicit protections of their role. Case law establishes the lawful purpose test as protecting legitimate Police operations.<sup>98</sup>

#### *Penalty*

76. The maximum penalty should not be disproportionately severe but should reflect the worst case of possible offending.<sup>99</sup> For stalking, this could include damaged relationships, loss of employment, PTSD, changing address and contact details, etc.<sup>100</sup>
77. The maximum penalty is proposed to be set at five years’ imprisonment. This option would set the penalty significantly higher than the maximum penalty for criminal harassment.
78. Similar types of offence have a five-year penalty, including injuring with intent to cause injury and discharging a firearm with intent to intimidate as provided for in the Crimes Act.<sup>101</sup> Modelling suggests that a five-year penalty would likely result in 42 to 98 people receiving a sentence of imprisonment in the three years after enactment.<sup>102</sup>
79. Officials also considered a maximum penalty of three years imprisonment but decided that it did not sufficiently reflect the most significant harm which stalking can cause. This would be closely aligned with similar types of offences, include threatening acts in relation to dwellinghouses and persons in dwellinghouses<sup>103</sup> and breach of a protection order under the Family Violence Act.<sup>104</sup> Modelling suggests that a three-year penalty result in 21 to 51 people being sentenced.<sup>105</sup>

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<sup>96</sup> *Veronica v Ikeda* BC202060124 (HC).

<sup>97</sup> *Hilder v Police* (1989) 4 CRNZ 232.

<sup>98</sup> *Mooney v Wilkinson* [2015] NZHC 2488; BC201563376.

<sup>99</sup> [The Legislation Design and Advisory Committee \(Idac.org.nz\)](https://www.idac.org.nz/)

<sup>100</sup> MOPAC Evidence and Insight (2024). see footnote 57.

<sup>101</sup> Sections 189 and 308A, Crimes Act 1961.

<sup>102</sup> Ministry of Justice modelling at footnote 34.

<sup>103</sup> Section 308, Crimes Act 1961.

<sup>104</sup> Section 111, Family Violence Act 2018.

<sup>105</sup> This range assumes that 200-450 people are proceeded against.



**Table 2: How do the options and design elements compare to the status quo?**

	Certainty	Effectiveness and feasibility	Consistency and workability with domestic laws and obligations	Overall assessment
Option 1 – Status Quo	0	0	0	0
Option 2 – Repeal and replace criminal harassment	++ A single offence supports fair-labelling for both stalking and harassing. Single offence avoid overlap supports certainty of application.	++ Provides a direct legislative response to stalking behaviours. More certain legislation supports effective responses.	Certainty supports rule of law principle that law should be easily understood. Avoids inconsistencies related to two different definitions of harassment.	++
<i>Mens rea – knowingly caused fear or distress</i>	“Distress” better reflects impacts of stalking.	Responds to concerns that ‘intent’ is too difficult to prove and does not reflect motivations behind stalking. Certainty supports enforceability, confidence reporting for victims.	Stronger mens rea element reflects significance of penalty. Clarity supports rule of law expectation of accessible law. Behaviours engage NZBORA rights no more than status quo.	+
<i>Actus Reus – Updated list of specified behaviours</i>	Specified behaviours provides certainty about application.	Certainty supports enforceability, confidence reporting for victims.	Clarity supports rule of law expectation of accessible law. Behaviours engage NZBORA rights no more than status quo.	+
<i>Defences – Lawful purpose, reasonable excuse and public interest</i>	Defence supports confidence of actors carrying out legitimate behaviours. Use of established legal test makes court interpretation more predictable.	Certainty supports enforceability, confidence reporting for victims. Additional tests support flexibility.	Clarity supports rule of law expectation of accessible law. Provides for judicial discretion with the use of established tests.	++
<i>Penalty – 5 years maximum imprisonment</i>	Five years imprisonment reflects greater level of harm from stalking. Clearly signals condemnation.	Costs are approx. ten times higher from additional people receiving Corrections-managed sentences.	Length is comparable with similar offences.	++

## ***Additional Package of Amendments to Other Legislation***

80. A package of amendments to other legislation would support the realisation of the benefits of the new offence.

### *Civil orders at sentencing*

81. Currently, the court can make a protection order when sentencing a person for a family violence offence but there is no ability to make restraining or HDCA orders at sentencing.<sup>106</sup> Victims are required to pursue separate courts processes to obtain them.
82. This part of the package would amend the Sentencing Act 2002 to empower courts to make restraining and HDCA orders at sentencing of stalking and harassment, if satisfied the grounds in those sections have been met. This would be consistent with the approach to making protection orders at sentencing.

### *Aggravating factors*

83. Currently, a range of aggravating factors may be applicable to criminal harassment.<sup>107</sup> However, none specifically addresses the characteristics of stalking or for breaching restraining orders under the Harassment Act 1997.
84. This part of the package would amend section 9(1) of the Sentencing Act 2002 to provide for the following new aggravating factors at sentencing:
- a. the unique circumstances often associated with stalking pattern of behaviour, related to persistence, repetitiveness and prolonged duration, and
  - b. where the offender was subject to a restraining order in under s 16 of the Harassment Act in favour of the victim at the time of the offending.
85. This approach would ensure there is an aggravating factor that accounts for the unique, cumulative harms of stalking. It would also ensure that restraining orders are treated consistently with protection orders under the Family Violence Act at sentencing.
86. A long and specific list of aggravating circumstances may create inconsistent sentencing practices and complicate the sentencing process. There is a general risk of diminishing the deterrent effects of aggravating factors as the list is becoming longer and increasingly specific.

### *Stalking and the Family Violence Act 2018*

87. Currently, the Family Violence Act 2018 defines family violence as violence inflicted against a person by a person with whom that person is or has been, in a family relationship. Violence means physical, sexual or psychological abuse.<sup>108</sup> None of these explicitly refer to stalking,<sup>109</sup> even though the stalking appears to match the intent of the legislation.<sup>110</sup>
88. This part of the package would amend the definition of 'psychological abuse' in the Family Violence Act to make explicit reference to stalking to recognise that stalking commonly occurs in family relationships<sup>111</sup> and stalking harms can cause psychological harm.<sup>112</sup>

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<sup>106</sup> Section 16 of the Harassment Act 1997 and the HDCA Act 2015 set out the requirements for restraining and HDCA orders.

<sup>107</sup> Section 9, Sentencing Act 2002.

<sup>108</sup> Section 9, Family Violence Act 2018.

<sup>109</sup> Section 11, Family Violence Act 2018.

<sup>110</sup> Section 9(3) refers to coercive and controlling behaviour and cumulative harm caused to the victim; section 10 refers to a pattern of behaviour, which may be up of acts that, when viewed in isolation, may appear minor or trivial.

<sup>111</sup> Thorburn, N., & Jury, A. (2019) see footnote 4.

<sup>112</sup> Stephen Noffsinger, MD. (2015). *What stalking victims need to restore their mental and somatic health*. Current Psychiatry Vol.14, No.6. Retrieved from: [043\\_0615CP\\_Noffsinger\\_FINAL.pdf \(mdedge.com\)](https://www.mdedge.com/content/full/043_0615CP_Noffsinger_FINAL.pdf)

### Stalking and firearms licensing requirements

89. Currently, section 22H of the Arms Act 1983 sets out a list of offences that disqualify a person from obtaining a firearms licence within 10 years of being convicted or being released from custody after conviction.<sup>113</sup> This list does not include criminal harassment.<sup>114</sup>
90. This part of the package would amend the Arms Act 1983 to add stalking to the list of offences that disqualify the offender from obtaining a firearms licence for 10 years to reflect the evidence that:
  - a. stalking carries a significant risk of reoffending,<sup>115</sup> and
  - b. stalkers who have access to firearms may be more likely to escalate to violence.<sup>116</sup>
91. This option would prevent a recidivist stalker from accessing firearms legally, possibly also having a preventative effect on escalation. A firearms licence would also not be issued to anyone where there is a risk that a disqualified person may gain access to another person's firearms, for example where there is a disqualified person living in the same household as the licence applicant.<sup>117</sup>
92. Inclusion of the stalking and harassment offence with a 5-year sentence of imprisonment would be consistent with the current list of offences covered in section 22H. However, this list, and the corresponding criteria, may change during the re-write of the Arms Act 1983 this Parliamentary term.

### What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
<b>Additional costs of the preferred options compared to taking no action</b>			
Victims of stalking	<b>Ongoing</b> – Opportunity and access costs associated with engagement with criminal justice system	<b>Medium</b>	<b>Low</b>
Perpetrators of stalking	<b>Ongoing</b> – Legal fees, opportunity costs, damages/fines associated with expanded liability for behaviours	<b>Medium</b>	<b>Low</b>
Legal profession	<b>One-off</b> – Setup, training costs associated with new law, guidance, increased case loads	<b>Low</b>	<b>Low</b>

<sup>113</sup> Section 22H, Arms Act 1983.

<sup>114</sup> A person is disqualified from holding a firearms licence if the person has, or has had within the previous 10 years, a protection order made against them under the Family Violence Act 2018 or its predecessor, the Domestic Violence Act 1995.

<sup>115</sup> *Findings from Family Violence Death Review Committee (FVDRC)* see footnote 11.

<sup>116</sup> Folkes, Stephanie, N, Zoe Hilton and Grant T Harris. (2012). *Weapon Use Increases the Severity of Domestic Violence but Neither Weapon Use Nor Firearm Access Increases the Risk or Severity of Recidivism*. 28(6) *Journal of Interpersonal Violence* 1143.

<sup>117</sup> Section 24(2)(a), Arms Act 1983.



Law enforcement (e.g. Police)	<b>Ongoing –</b> Costs associated with investigating and prosecuting new offence. Training and education to staff on responding to stalking Issue noted by Police but costs unconfirmed. Monitoring of policy.	<b>High</b> Unconfirmed. Police indicated that adaptation to changes to criminal harassment will be beyond their baseline, based on the cost to respond to the introduction of the strangulation offence.	<b>Medium</b> Raised by Police
	<b>One-off –</b> Training and guidance resources	<b>Medium</b> Unconfirmed	<b>Medium</b> Raised by Police
Department of Corrections	<b>Ongoing –</b> Increase in number of people incarcerated, on home detention, community detention and intensive supervision.	<b>Approximately \$7 million-\$15.8 million</b> total (prison, home detention, community detention and intensive supervision). Difference of \$6.6M-\$15.3M from status quo.	<b>Medium</b> Internal modelling based on public and Corrections data.
Ministry of Justice including Courts	<b>Ongoing –</b> Regulatory stewardship and monitoring of policy. Increase in hearings. Increased length of hearings and potential scheduling conflicts. Training and education to staff on responding to stalking.	<b>Medium</b>  Increase from 46 charges (25 convictions) for criminal harassment to 162-365 charges (107-240 convictions) for stalking and harassment.	<b>Medium</b> Regulatory stewardship is standard practice. Modelling based on public and Corrections data.
	<b>One-off –</b> Training and guidance resources to staff. Guidance resources.	<b>Low</b>	<b>Low</b>
Non-government organisations	<b>One-off –</b> Setup, training costs associated with new guidance.	<b>Low</b>	<b>Low</b>
<b>Total monetised costs</b>	<i>Available monetised costs are associated with increases in the prison population.</i>	Approximately \$7 million-\$15.8 million	<b>Medium</b>
<b>Non-monetised costs</b>	<i>One-off costs associated with adapting to new legislation, guidance. Ongoing costs associated with more offending, continuing training.</i>	<i>Medium</i>	<i>Low</i>

Additional benefits of the preferred option compared to taking no action			
Victims of stalking	<b>Ongoing</b> – access to funded services as recognised victim of crime	<b>Medium</b>	<b>Medium</b>
	<b>One-off</b> – Reduced costs, opportunity costs and harms associated with cessation of offending	<b>Medium</b>	<b>Low</b>
Perpetrators of stalking	<b>Ongoing</b> – Tailored defence to properly restrict liability, increase confidence in legitimate work/behaviour.	<b>Medium</b> Services will need to be funded out of baselines	<b>Medium</b> Raised by Police
Law enforcement (e.g. Police)	<b>Ongoing</b> Tailored defence to properly restrict liability, increase confidence in legitimate work/behaviour.	<b>Medium</b>	<b>Medium</b> Raised by Police
Department of Corrections	Data not available	Data not available	Data not available
Ministry of Justice including Courts	<b>Ongoing</b> – Reduced costs associated with reduction in parallel claims for restraining, HDCA orders.	<b>Medium</b>	<b>Low</b>
Non-government organisations	<b>Ongoing</b> – Limited as out of baselines. Tailored defence to properly restrict liability, increase confidence in legitimate work/behaviour.	<b>Medium</b>	<b>Low</b> Raised by Police
<b>Total monetised benefits</b>	Data not available	Data not available	Data not available
<b>Non-monetised benefits</b>	<i>Ongoing costs associated with confidence through tailored defence</i>	<i>Medium</i>	<i>Medium</i>

93. Data to consider the marginal impacts of this policy is limited. Key sources include modelling provided by the Ministry and comments from agencies during the development of the policy. Although Police and other agencies identified several potential costs and benefits, officials have not been able to confirm these or their probable financial impact at this time.

94. Ministry modelling is based on the following:
- a. Numbers for stalking and harassment are for three years after the introduction of the offence to take account of the criminal justice process including:
    - i. The one-year period for the pattern of behaviour, followed by
    - ii. The average time a criminal harassment trial takes, followed by
    - iii. The estimated average sentence length for the offence.
  - b. The offence has a maximum penalty of 5 years imprisonment.
  - c. The lower bound assumes that 200 people are proceeded against for stalking and harassment.
  - d. The upper bound assumes that 450 people are proceeded against for stalking and harassment.
  - e. Costs for different sentences are provided by the Department of Corrections directly or through their 2022/23 annual report.

## Section 3: Delivering an option

### How will the new arrangements be implemented?

95. The proposed changes will require legislative amendments to the Harassment Act 1997 and the Crimes Act 1961, with supporting amendments made to the Sentencing Act 2002, the Family Violence Act 2018 and the Arms Act 1983.
96. The Minister of Justice intends to introduce legislation to the House in December 2024. Subject to parliamentary processes, a Bill could be passed by 1 November 2025. The Ministry will work with relevant agencies to ensure that the Bill comes into force at an appropriate time to allow for implementation.
97. Three government agencies will be required to undertake key implementation activities to bring the offence into force. In particular:
- a. New Zealand Police implementation activities will include:
    - o making necessary changes to operational policies, guidelines and documentation (such as for issuing notices, investigating and charging);
    - o providing communications and training to staff;
    - o updating IT systems (such as offence codes); and
    - o developing operational guidance on what constitutes taonga, specifically (interfering with taonga is a specified behaviour in the proposed offence).
  - b. Ministry of Justice implementation will generally include:
    - o administering the legislation containing the new offence;
    - o providing communications to the judiciary and legal profession;
    - o providing communications and training to court staff;
    - o providing communications to its relevant contracted service providers and non-governmental organisations on the creation of the new offence;
    - o providing communications to the Firearms Safety Authority
    - o creating and updating relevant court processes; and
    - o updating IT systems (such as offence codes).
  - c. The Department of Corrections will be responsible for managing any persons sentenced to imprisonment. Implementation activities will include ensuring sufficient prison capacity for those sentenced to imprisonment following conviction.
98. The Firearms Safety Authority will be responsible for ensuring that a person convicted for the new offence is disqualified from holding a firearms licence for 10 years.

99. There are no stalking specific support services available for victims or rehabilitative services for perpetrators. However, non-governmental organisations already provide a wide range of support for victims and whānau.
100. Existing research, while sparse and reliant on overseas experiences, indicates that legal changes alone may not impact criminal justice responses. The research notes that challenges with evidentiary requirements, lack of specialised training for the actors in the justice systems and continued under-reporting are likely contributing factors.<sup>118</sup>
101. Further work to consider the wider response may offer opportunities to engage with Māori on effective responses, given that they appear to be disproportionately affected and have made general proposals about effective service delivery.<sup>119</sup>

#### *Funding for implementation*

102. The Minister of Justice has directed that implementation of the new offence is to be funded out of agencies' baselines.
103. During consultation on this policy proposal, agencies raised the importance of a comprehensive implementation package to a successful roll out of a new offence. This is also supported by limited evidence from international jurisdictions suggesting that legislative change alone is not effective to improve the criminal justice response to stalking.<sup>120</sup>
104. Agencies referred to the strangulation offence<sup>121</sup> as a particularly successful example of implementation done well. Implementation of the strangulation offence occurred alongside wider family violence law changes and benefited from a substantial Government investment in family violence and sexual violence services. This included funding for a 'holistic system response' to ensure victims could access specialist clinical help and perpetrators were held to account.<sup>122</sup> Evidence from overseas jurisdictions indicates that a lack of such surrounding operational support can undermine the effectiveness of stalking offences.<sup>123</sup>
105. Agency baselines do not include funding for specialised training, support services or public information campaigns. The Ministry considers there is a risk that a lack of funding to support implementation through such measures may limit the effectiveness of the offence and therefore also reduce its effectiveness as a tool to improve public confidence in the criminal response to stalking.
106. However, the Ministry can implement the parts of these proposals it is responsible for within its baseline funding. No additional funding is being sought at this time, though officials will need to undertake further analysis to fully understand the implications to any increase in new orders and prosecution numbers.
107. New Zealand Police has advised that their financial implications are yet to be determined, but it is likely the new offence would require resourcing for training and ICT-related costs. ICT changes will be needed to ensure the new offence and notices (described in paragraph 15.5) can be recorded on Police's National Intelligence Application database. ICT costs may also be incurred for an electronic training module.

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<sup>118</sup> Bouffard, L.A. et al. (2021) at footnote 55; [Download.ashx \(suzylampugh.org\)](#) at 4.4; [Canada's laws on stalking crimes inadequate: experts | CTV News](#); [Intimate-Partner-Stalking-.pdf \(womensrefuge.org.nz\)](#) at 21.

<sup>119</sup> Te Puna Aonui (2021) *Community Analysis Paper: Tangata Whenua* (2021); and Ināia Tonu Neri (2019) *Hui Māori Report*.

<sup>120</sup> Note that this appears to be the experience overseas. See Bouffard, L.A. et al. (2021) at footnote 55. [Download.ashx \(suzylampugh.org\)](#) at 4.4; [Canada's laws on stalking crimes inadequate: experts | CTV News](#); [Intimate-Partner-Stalking-.pdf \(womensrefuge.org.nz\)](#) at 21.

<sup>121</sup> In 2018, strangulation or suffocation became a new offence with a maximum penalty of 7 years imprisonment.

<sup>122</sup> Joint Venture Budget 2020 Family Violence and Sexual Violence Announcement, available at [10-MAY-FINAL-Budget-2020-FVSV-Summary-of-Initiatives.pdf \(justice.govt.nz\)](#)



108. They also note that the proposal could impact on already limited resources if it results in an increased number of complaints. Complaints will not always result in convictions but require frontline police to prioritise calls for service and investigatory efforts.
109. Additionally, modelling indicates there is likely to be an increase in those receiving a sentence of imprisonment for stalking compared to the status quo. Should the prison population increase because of these changes, additional resourcing would be needed to ensure there is capacity in Corrections infrastructure and that frontline staff are supported to manage additional people safely and effectively. An estimate as guidance for the custodial marginal costs would be that 100 additional prisoners in the network would cost an additional \$12m dollars per annum.<sup>124</sup>
110. The Department of Corrections has advised that impacts on the prison population cannot be considered in isolation as network capacity and resourcing needs to be assessed across the entire prison network. Future prisoner network funding decisions will need to be made to ensure there is capacity in Corrections infrastructure and that frontline staff are supported to manage additional people safely and effectively.

### How will the new arrangements be monitored, evaluated and reviewed?

111. Based on current regulatory responsibility, the Ministry will have responsibility for monitoring, evaluating and reviewing these options.
112. The Ministry collects data on charges, convictions and sentencing outcomes for all offences. The Ministry will use this data to monitor the use and attrition rates of the new stalking offence, as well as the number of civil orders made at sentencing. Police will also use its existing systems to collect information about callouts, charges and prosecutions to monitor use of the new offence. Reported case law will also be able to be used to monitor the effectiveness of the new offence and other amendments.
113. As outlined earlier, the scope of this work has largely been limited to the criminal law only. This means officials have been unable to consider wider changes to the civil harassment regime. Creation of the new offence will lead to inconsistencies between the civil and criminal regime, as there will be different definitions of harassment and stalking.
114. In monitoring the use of the new offence, the Ministry will consider how best to reconcile the two offences in the future as part of its regulatory stewardship role.
115. There are two ongoing Waitangi Tribunal inquiries on the operation of the criminal justice system. While those inquiries have not concluded they have identified that te Tiriti o Waitangi obliges the Crown to respond to the overrepresentation of Māori in the criminal justice system.<sup>125</sup> The implications of those inquiries will need to be monitored.<sup>126</sup>

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<sup>124</sup> This represents a high-level estimate without time adjusted for factors such as inflation and does not include consideration of capital investment and associated expenditure that may be required to invest in any additional new capacity to meet the projected increase in prisoner population.

<sup>125</sup> WAI 2700 'The Mana Wāhine Kaupapa Inquiry', see [Wai 2700, 2.5.024\(a\).pdf \(justice.govt.nz\)](#); WAI 3060 'Te Rau o Tika Justice System Kaupapa Inquiry', see [Te Rau o te Tika: the Justice System Inquiry | Waitangi Tribunal](#).

<sup>126</sup> See paragraph 116.