

Women's Refuge Brief: Intimate Partner Stalking in New Zealand

Purpose

1. The National Collective of Independent Women's Refuges (NCIWR) is Aotearoa New Zealand's largest provider of services to victims of family violence. NCIWR also houses a family violence research unit. This briefing will outline findings from NCIWR's 2019 research into stalking and recommend legislative, policy, and operational improvements that, if undertaken, will improve outcomes for victims of partner stalking.

Background

2. Last year, NCIWR's policy and research team produced multi-method research into partner stalking based on over 700 stalking victims' experiences. This precipitated a shift away from viewing stalking as rare and random, and toward acknowledging it as a pattern of cumulative harm with devastating consequences. For victims to be safe, partner stalking must be recognised as a threat to victims' safety and prosecuted equivalently to other forms of high-risk abuse.
3. Partner stalking is often invisible, and is an extended pattern of unwanted contact, monitoring, pursuit, or aggression that causes cumulative harm to the victim. While it may include physical and sexual violence, it relies on sequences of unwanted acts that, taken alone, may seem inconsequential. Nearly two thirds of Women's Refuge's clients are stalked. Like strangulation, it is a common precursor to intimate partner homicide¹², and is also associated with escalating violence and victims' persistent distress, dread, and debilitating fear.
4. As with strangulation, stalking merits a purposeful law enforcement and justice response. Our research evidenced ways that legislation and police approaches relating to stalking were insufficient to a.) identify partner stalking as criminal, and b.) offer an effective justice response.

Legislative setting

5. As expert understanding of stalking has drastically evolved, so too must our national response to it. While criminal law technically covers many aspects of stalking, this rarely translates to victims accessing safety or justice. Actions that collectively form a sequence of stalking are covered by multiple Acts. For example, many episodes of stalking correspond to specific offences in the Crimes Act (e.g. property crimes or computer crimes) or the Harmful Digital Communications Act, and so even if prosecuted, their role in an overall pattern of stalking is not catered for³. In comparable jurisdictions, similar gaps have been identified following high-profile homicides that were preceded by reported but non-prosecuted stalking. Consequent law reform and police efforts in these jurisdictions led to a sustained rise in reporting and conviction rates⁴.

Harassment Act 1997

6. The criminal provision in the Harassment Act 1997 (HA) most closely aligns with stalking. However, the HA is not fit-for-purpose for family violence; provisions are instead framed to address acquaintance/gang stalking, and do not cater for the perpetration of tactics by partners.

¹ Roberts, K. (2005). Women's experience of violence during stalking by former romantic partner: Factors predictive of stalking violence. *Violence Against Women*, 11, 89-114. doi:10.1177/1077801204271096

² Schlesinger, L. B. (2002). Stalking, homicide, and catathymic process: A case study. *International Journal of Offender Therapy and Comparative Criminology*, 46, 64-74. doi:10.1177/0306624X02461005

³ King, R. (2017). Digital Domestic Violence: Are Victims of Intimate Partner Cyber Harassment Sufficiently Protected by New Zealand's Current Legislation? VUWLR.

⁴ Malsch, M., Groenen, A., de Keuser, J., & Vervaeke, G. (2009). Dealing with Stalking: Police Intervention or Court Decision? *International Review of Victimology*, 16, 51-65.

7. NCIWR notes there are typically fewer than 100 HA prosecutions per year for partner stalkers, contrasting starkly with prosecutions for similarly high-risk forms of partner violence.
8. During the period where victims are being harassed, pursued, intimidated, or monitored but cannot yet demonstrate a discernible risk of violence, victims are discriminatorily excluded from civil orders of safety. A restraining order is a civil provision under the HA which prohibits the respondent from further unwanted contact or harassment. Victims are ineligible if the person harassing them is a partner/family member. The only alternative for these victims is to apply for a protection order, which requires an evidenced risk of violence, unlike applications for restraining orders which need only meet the lower threshold of evidenced risk of harassment.

Harmful Digital Communications Act 2015

9. As with the HA, the Harmful Digital Communications Act (HDCA) creates barriers for victims of family violence. The Act:
 - a. demonstrates a gender-blind view of digital crime that privileges ‘harm caused by any or many’ (e.g. bullying or catfishing) over harm caused by one partner’s pattern of abuse;
 - b. does not adequately cater for offences involving surveillance/monitoring, forced digital access, or degrading digital content as these do not constitute ‘communication’;
 - c. only allows for recognition of abusive behaviour as criminal if it both *actually causes* harm and *would cause harm to a reasonable person*, which is subjectively interpreted by decision-makers with variable comprehension of gendered violence; and
 - d. creates barriers for access to justice through relying on the discretion of a (non-family violence expert) third-party agency to determine the legitimacy of complaints and to facilitate informal redress. This means if victims’ stalking experiences include both in-person and digital tactics, they must then participate in multiple civil and criminal pathways knowing that these stalking components will not be viewed as a complete picture and will usually not lead to prosecution.

Family Violence Act 2018

10. Stalking is not featured in the Family Violence Act (FVA) and the term ‘harassment’ does not encompass surveillance and monitoring behaviour or intrusive contact. Amending this to include and define stalking will improve how these tactics are considered by judicial decision-makers.

Law Enforcement Setting

11. The 2019 NCIWR research⁵ identified that decisions not to report stalking are influenced by victims’ anticipation of unhelpful police and justice responses. This is supported by international evidence that sets out ways in which inadequate responses deter future reporting⁶⁷.
12. The options police currently have for responding to partner stalking do not hold stalkers accountable or make victims safer. In addition, otherwise competent policing is hindered by widespread misconceptions about partner stalking. Police may not be equipped to easily classify stalking either in terms of risk or criminal offending⁸. The unreasonable onus on victims to articulate and present evidence of stalkers’ behaviour also then precludes their access to justice.

⁵ Thorburn, N., & Jury, A. (2019). Relentless so romantic: Intimate partner stalking in Aotearoa New Zealand. Women’s Refuge: New Zealand.

⁶ Sheridan, L. Findings from www.stalkingsurvey.com (2005). Paper presented at the 29th International Congress on Law and Mental Health, Paris, France.

⁷ Sheridan, L., & Roberts, K. (2011). Key questions to consider in stalking cases. *Behavioural Sciences and the Law*, 29, 255-270. Doi: 10.1002/bsl.966

⁸ Sinclair, H. C. (2012). Stalking myth-attributions: examining the role of individual and contextual variables on attributions in unwanted pursuit scenarios. *Sex Roles*, 66, 378_391. doi: <http://dx.doi.org/10.1007/s11199-010-9853-8> Sinclair, H. C., & Frieze, I. H. (2000). Initial courtship behavior and stalking: how should we draw the line? *Violence and Victims*, 15, 23_40.

13. Amending law enforcement strategies in conjunction with legislative reform provides the greatest potential to address partner stalking, as evidenced by the effectiveness of the police-led strategy to combat strangulation. Without effective responses, victims are condemned to endure debilitating fear of severe violence, perpetual dread about future episodes or escalations, and the ever-increasing daily burden of risk mitigation as they attempt to manage the impacts of stalking alone.

Policy Recommendations

14. It is imperative to address the systemic gaps that manifest in poor outcomes for victims of partner stalking by acting on the recommendations below to improve these outcomes. Consistent reporting, identification, and prosecution of partner stalking require:
- a. a shared conceptual understanding;
 - b. consistent police identification and prosecution of stalking;
 - c. a safety-oriented response to victims, and
 - d. a legal framework that is fit for purpose for partner stalking.

Responsible Agency	Policy Recommendation
Justice (with the JVBU)	Establish a government-led cross-agency ‘think tank’ to develop and implement legislative, law enforcement, and practice initiatives to lead the national response to stalking, based on the response to strangulation.
Justice	Amend the Harassment Act to: <ol style="list-style-type: none"> 1. remove the ineligibility clause preventing victims of harassment by partners from accessing restraining orders; and 2. Align the description of eligible ‘acts’ that constitute criminal harassment to reflect those used in partner contexts.
Justice	Amend the Family Violence Act to explicitly include stalking either as a primary category of family violence or as a subset of psychological abuse, with an appropriate definition.
Justice	Review the Harmful Digital Communications Act with the intention to: <ol style="list-style-type: none"> 1. Amend the subjective threshold applied by judges; and 2. Expand the scope of harmful behaviours to include abusive content, patterns of intimidation, and intrusive monitoring/surveillance behaviour that extends beyond ‘communication’.
Social Development	Deliver public awareness campaigns using relatable scenarios of physical and digital partner stalking.
Police	Deliver a police policy and training package developed in consultation with Women’s Refuge and made mandatory for all frontline police. This will cover identification of stalking, immediate safety responses to victims, prosecution potential, recording and review of stalking cases, and evaluation of effectiveness.
Police	Designate a specialist police team with technological capability and sufficient capacity to proactively respond to stalking components of partner violence both forensically and to support victims’ privacy and freedom.