

# Departmental Disclosure Statement

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Crimes Legislation (Stalking and Harassment) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

November 2024

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## Part One: General Policy Statement

Stalking behaviours can be hard to recognise, can escalate quickly and pose a threat of serious harm to victims. Current criminal justice settings do not adequately respond to stalking. This Bill will address stalking in New Zealand by introducing a new stalking and harassment offence and other supporting amendments to ensure the harm victims experience is recognised and prosecuted effectively. These amendments will ensure fair-labelling of stalking and enabling more effective criminal justice responses to stalking and harassment behaviours.

To achieve its objectives, the Bill amends-

- the Crimes Act 1961 to create a stalking and harassment offence
- the Harassment Act 1997 to repeal the existing criminal harassment offence
- the Sentencing Act 2002:
  - allow restraining orders and orders under the Harmful Digital Communications Act 2015 to be made when sentencing an offender convicted of stalking
  - introduce new aggravating factors that recognise the unique circumstances associated with stalking and breaching a restraining order
- the Family Violence Act 2018 to expand the definition of psychological abuse to include stalking
- the Arms Act 1983 to disqualify offenders convicted of stalking in the last 10 years from holding a firearms licence
- the Evidence Act 2006 to prevent self-represented defendants charged with the new offence from being able to personally cross-examine alleged victims.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>Thorburn, N., &amp; Jury, A. (2019). <i>Relentless not romantic: Intimate partner stalking in Aotearoa New Zealand</i>. Wellington: Women's Refuge NZ. Accessible at <a href="https://womensrefuge.org.nz/wp-content/uploads/2019/11/Intimate-Partner-Stalking-.pdf">https://womensrefuge.org.nz/wp-content/uploads/2019/11/Intimate-Partner-Stalking-.pdf</a></p> <p>Te Tāhū Hauora   Health Quality &amp; Safety Commission (2024) <i>Summary of findings from Family Violence Death Review data relating to stalking: January 2020 – June 2024</i>. Accessible at: <a href="#">Stalking Findings FVDR 2020-2024 FINAL 25.10.2024</a></p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>The Ministry of Justice produced a regulatory impact statement (RIS) on 26 September 2024: <i>“Establishing an Offence of Stalking”</i>.</p> <p>The RIS can be found and downloaded from the Ministry of Justice’s and Treasury’s website: <a href="https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/">https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/</a></p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
<p>The RIS above did not meet the threshold for receiving an independent opinion on its quality from the RIA Team based in the Treasury.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>YES</b>
<p>Consultation with the Chief Victims Advisor identified a further amendment that could be made to the Evidence Act 2006 that would provide additional protection for stalking victims, specifically to prevent defendants from personally cross-examining victims. This amendment was not analysed in the regulatory impact statement.</p>	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
Analysis of the expected benefits and costs for the policy is available in the RIS (see pages 20, 21, 22, 23)	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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New Zealand's international commitments have been considered by Ministry of Justice officials in the policy development of the proposals including the Convention on the Elimination on All Forms of Discrimination Against Women.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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The Ministry of Justice has carried out Treaty of Waitangi analysis on the policy proposals in this Bill in accordance with Cabinet Office requirements, to determine implications for the rights and interests of Māori protected by the Treaty of Waitangi and whether the effect of the Bill on those rights and interests are consistent with the Treaty of Waitangi.
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Due to timing constraints, officials have not met with whānau, hapū, iwi Māori to understand how the Bill will impact Māori. This impact could be seen as engaging our partnership obligations and so the lack of consultation could be seen to be inconsistent with Article 3 of Te Tiriti o Waitangi.
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The Select Committee process will allow for submissions from the public including iwi Māori.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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The Bill will be vetted for consistency with the New Zealand Bill of Rights Act 1990 by Crown Law Office.
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Advice provided to the Attorney-General by the Crown Law Office is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <a href="http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights">http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights</a>
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
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The Bill creates a new offence of stalking and harassment in the Crimes Act 1961 with a maximum penalty of 5 years imprisonment. The Bill also repeals the current criminal harassment offence in the Harassment Act 1997.
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<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>NO</b>
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The Ministry of Justice was the lead agency for developing these provisions, and the relevant policy teams were consulted during policy development and drafting of the Bill.
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## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
Stalking is inherently privacy intrusive. The Office of the Privacy Commissioner supports the intent of the proposed changes as it protects victims from both active and passive intrusions of privacy e.g. recording or tracking of an individual which can be done from a distance but can cause significant fear and distress to the victim.	

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
During policy development the Ministry of Justice consulted widely across the public sector. The detail of this consultation is set out in Appendix One.  There was some engagement with the Coalition for the Safety of Women and Children to understand victims' experiences of stalking and what behaviours should be captured by the new offence. More widespread external consultation with the general public or other groups was not carried out due to time constraints and Ministerial direction.	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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### Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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### Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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## **Appendix One: Further Information Relating to Part Three**

### **External consultation – question 3.6**

The Bill has been informed by discussions with New Zealand Police, Ara Poutama-Department of Corrections, Ministry for Women, Te Puna Aonui, Crown Law Office, and Office of the Privacy Commissioner. Officials also had early conversations to aid in the development of the policy with the Coalition for the Safety of Women and Children and Family Violence Mortality Review.

The following agencies were consulted on the policy: New Zealand Police, Ara Poutama - Department of Corrections, Ministry for Women, Te Puna Aonui, Te Puni Kōkiri, Te Arawhiti, Ministry for Pacific Peoples, Ministry for Ethnic Communities, Oranga Tamariki – Ministry for Children, Ministry for Social Development, Office of the Privacy Commissioner, Whaikaha – Ministry of Disabled People, Inland Revenue Department, Ministry of Education, Accident Compensation Corporation, Crown Law Office, and New Zealand Customs Service. The Chief Victim Advisor was also consulted.

The Ministry of Health, Treasury, Ministry of Business, Innovation and Employment, Ministry for Regulation, Ministry for Primary Industries, Serious Fraud Office, and Department of Internal Affairs and the Department of Prime Minister and Cabinet were informed of the policy.