
Submissions on the Crimes Legislation (Stalking and Harassment) Amendment Bill by the Auckland Women Lawyers' Association

- 1 The Auckland Women Lawyers' Association (**AWLA**) welcomes the opportunity to submit on the proposed amendments to the Crimes Act 1961 (**Crimes Act**) to introduce stalking as a criminal offence in Aotearoa through enactment of the Crimes Legislation (Stalking and Harassment) Amendment Bill (**Bill**).
- 2 AWLA is a representative charitable organisation for lawyers identifying as women in the Auckland region. Our constitution sets out, inter alia, the following objectives:
- 3 To advocate for and work toward the reform of the law and its administration, particularly as it affects women and children; and
- 4 To participate as a collective body in matters of interest to the legal profession.
- 5 Accordingly, AWLA has a professional interest in the manner in which stalking is criminalised in Aotearoa, particularly because stalking disproportionately affects women.
- 6 AWLA supports the intent and spirit of the Bill in outlawing stalking. It considers that the proposed amendments will serve to protect future victims and reduce harm. However, AWLA recommends amendments to further enhance victim protection and expand the definition of stalking under the Bill.
- 7 These submissions respond to the Bill, specifically:
 - (a) identifying concerns with the current legal framework;
 - (b) examining the proposed Bill;
 - (c) commenting on the proposed legislative changes; and
 - (d) recommending additional measures to strengthen protections for stalking victims.

Concerns with the Current Legal Framework

- 8 Currently, Aotearoa lacks a comprehensive legislative framework addressing the full range and patterns of behaviours that constitute stalking. This results in some stalking behaviours escaping prosecution, leaving victims without police protection and often requiring civil action. Civil action, however, has proven ineffective in addressing stalking and may inadvertently escalate perpetrator violence.
- 9 AWLA acknowledges that aspects of stalking-related behaviours are currently addressed through various legislative instruments, including:
- 10 **Crimes Act:** This Act addresses crimes against persons, property, and public order. However, until this Bill, it lacked a specific provision addressing stalking as a distinct offence, despite including provisions for assault and threatening behaviour.

- 11 **Harassment Act 1997 (Harassment Act):** This Act defines “harassment” in section 4, including acts such as watching, loitering, following, and interfering with property. However, it primarily provides civil remedies, such as restraining orders, rather than criminal prosecution. Additionally, it does not address family violence and is designed primarily for acquaintance or gang-related stalking.
- 12 **Family Violence Act 2018 (Family Violence Act):** This Act recognises family violence as a pattern of behaviour encompassing physical, sexual, and psychological abuse that is coercive, controlling, or harmful. While it enables victims to seek protection orders, it remains a civil rather than a criminal response to stalking.

Proposed Bill

- 13 AWLA supports amending the Crimes Act to explicitly criminalise stalking, defining it as a distinct offence and empowering police to prosecute offenders.
- 14 AWLA endorses the Bill’s proposed list of stalking behaviours and specified acts.
- 15 The Bill inserts section 216O into the Crimes Act to define stalking and harassment, thereby establishing stalking as an offence under section 216Q.
- 16 The Bill also expands the definition of psychological abuse under the Family Violence Act and extends the abilities under the Harassment Act to include stalking and harassment.

AWLA Comments on Proposed Amendments

- 17 AWLA supports key aspects of the Bill, including:
 - (a) the definition of stalking;
 - (b) the option for police to notify alleged offenders; and
 - (c) amendments to other relevant enactments.

Definition of Stalking

- 18 *Section 216O* of the Bill defines stalking as engaging in a specified act (as defined in section 216P) at least three times within 12 months. AWLA proposes amending this to require only two instances of specified acts within 12 months to constitute a pattern of behaviour.
- 19 Currently, the Bill counteracts section 3 of the Harassment Act, which only requires two acts within a 12 month period to be classified as harassment. AWLA proposes that the Bill should reflect the current definition of harassment and prevent inconsistency with the application of both the Bill and the Harassment Act. AWLA maintains that reducing the threshold to two specified acts will better protect victims.
- 20 Unlike the Bill and the Harassment Act, the Family Violence Act does not impose a minimum number of incidents to establish abuse but instead considers whether there

is a “pattern of behaviour.” Therefore, there is precedent for a less restrictive definition of stalking. However, AWLA recognises that as the Bill introduces harsher punishments than the Family Violence Act (being three to five years imprisonment), it is appropriate to have certainty surrounding an offender’s behaviour that is classified as stalking under section 216O.

- 21 Section 216O requires that Person A must know their behaviour is likely to cause fear or distress. AWLA submits that this is an overly subjective criterion and this should be amended to “know or ought to know” to cover cases involving denial or delusional offenders. AWLA recognises that not every offender will “know” that their behaviour will cause fear or distress, but the circumstances of the offending may indicate that the offender ought to have known that their behaviour was likely to cause fear or distress. Therefore, amending the definition to “know or ought to know” will ensure these offenders do not escape prosecution by simply alleging that they did not know.
- 22 While AWLA approves all acts listed as “specified acts” under section 216P of the Act, it recommends an expansion of the definition. Currently, any acts (defined as a specified act) directed towards the victim’s associates such as friends, employers or employees are not covered by the definition. AWLA submits that the definition of “specified acts” should be expanded to include victim’s associates to ensure that offenders do not escape prosecution simply by causing fear and distress by targeting their victim’s associates.

Police Notification to Perpetrators

- 23 AWLA does not support Police powers under section 216O(2)(3) to notify an alleged perpetrator in writing that their behaviour may constitute an offence, without a requirement for Police to consult with and obtain informed consent from the complainant, where reasonable.
- 24 Further, AWLA submits that section 216O(2)(3) should be amended to require Police to inform the complainant, in writing, that a written warning has been issued to alleged offenders.
- 25 This notification may embolden alleged offenders, as they become aware they are causing distress, or it may escalate their behaviour. The provision, as it is currently drafted, risks placing victims in further danger.
- 26 AWLA recommends amending the Bill to require Police:
 - (a) to inform the complainant, in writing, that a written warning has been issued to alleged offenders; and
 - (b) to require Police to consult with and obtain informed consent from the complainant before issuing a written warning to the alleged offender, where reasonable and practicable, in the circumstances.
- 27 AWLA also encourages the implementation of new policy considerations and guidelines encouraging Police to obtain informed consent from complainants with respect to issuing written warnings and to consult with complainants.

Amendments to Other Enactments

- 28 AWLA supports the Bill's proposed amendments to other enactments including the following:
- (a) **Arms Act 1983:** The Bill proposes to amend section 22H of the Arms Act 1983, to prohibit any person being charged with a crime under section 216Q of the Bill to be prohibited from owning a gun for 10 years. AWLA supports this amendment and would support a longer period of prohibition.
 - (b) **Harassment Act:** The Bill proposes to repeal section 32(4) of the Harassment Act with respect to vexatious proceedings, meaning that this section will apply to criminal proceedings. As the specified acts outlined in section 216P of the Bill are wide-ranging, AWLA supports the protection against vexatious litigants to allow further protection to be given to victims and prevent perpetrators using the Bill against victims. AWLA also supports amending section 123I of the Crimes Act to ensure that preparators who have been charged under section 216Q of the Bill may be subject to a restraining order if the Court is satisfied that the grounds in section 16(1) of the Harassment Act have been met.
 - (c) **Sentencing Act 2002:** AWLA supports amending section 9 of the Sentencing Act 2002 to include, as an aggravating factor, that the offender was subject to a restraining order under the Harassment Act and/or that the offender's behaviour towards the victim (other than the offender's behaviour resulting in the offence) involved persistent or repetitive behaviour that was likely to cause the victim fear or distress .
 - (d) **Family Violence Act:** AWLA supports amending the definition of psychological violence under the Family Violence Act to include any acts defined as specified acts in section 216P of the Bill.
- 29 AWLA proposes that the Bill further amends the Harassment Act and/or the Sentencing Act 2002 to provide an ability for Judges to order that an offender charged under section 216Q either:
- (a) Undertake an assessment for a non-violence programme; and
 - (b) Attend a non-violence programme provided by a service provider that an assessor determines to be an appropriate non-violence programme for the offender.

AWLA Recommendations

- 30 AWLA largely supports the Bill but recommends the following amendments:
- (a) Amend section 216O:
 - (i) to define stalking as engaging in a pattern of behaviour involving at least two specified acts within 12 months, where the perpetrator "knows or ought to know" it will cause fear or distress; and

- (ii) to require Police to inform the complainant, in writing, that a written warning has been issued to alleged offenders; and
 - (iii) to require Police to consult with and obtain informed consent from the complainant before issuing a written warning to the alleged offender, where reasonable and practicable, in the circumstances.
- (b) Expansion of the definition of a “specified act” under section 216P to include acts directed at the victim’s associates (e.g., friends, employers, employees) due to their connection to the victim.
 - (c) Introduce provisions in the Harassment Act or Sentencing Act 2002 to empower Judges to make orders for offender rehabilitation through non-violence programmes.
- 31 AWLA appreciates the opportunity to contribute to this important legislative reform and urges the government to adopt these recommendations to enhance victim protection and ensure robust enforcement against stalking in Aotearoa.
- 32 AWLA welcomes the opportunity to make oral submissions on the Bill.

Nāku noa, nā



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