



Netsafe submission on the Crimes Legislation (Stalking and Harassment) Amendment Bill

1. Netsafe strongly supports the proposed amendments to New Zealand's stalking and harassment laws. Our submission is informed by our extensive experience as New Zealand's independent, non-profit online safety charity and as the Approved Agency under the Harmful Digital Communications Act 2015 (HDCA). We have witnessed how digital technology both empowers individuals and, when misused, facilitates persistent stalking, harassment, and cyberbullying. Below, we present our detailed position.
2. Netsafe is New Zealand's independent, non-profit online safety charity. Taking a technology-positive approach to the challenges digital technology presents, we work to help people in New Zealand take advantage of the opportunities available through technology by providing practical tools, support and advice for managing online challenges.
3. We are an independent non-profit organisation adjacent to Government and law enforcement, supported by the public and private sector, and with a focus on online safety. Netsafe provides free support, advice and education seven days a week through a helpline, our website and face to face service delivery across New Zealand.
4. Netsafe is also the Approved Agency under the Harmful Digital Communications Act 2015 (HDCA). One of the purposes of the HDCA is to deter, prevent, and mitigate harm caused to individuals by digital communications. Netsafe's functions as the Approved Agency are set out in section 8 of the HDCA. Those functions include:
 - a. to receive and assess complaints about harm caused to individuals by digital communications
 - b. to investigate complaints
 - c. to use advice, negotiation, mediation, and persuasion (as appropriate) to resolve complaints
 - d. to establish and maintain relationships with domestic and foreign service providers, online content hosts, and agencies (as appropriate) to achieve the purpose of the Act
 - e. to provide education and advice on policies for online safety and conduct on the Internet.

5. Complaints that Netsafe is unable to resolve can be pursued in the District Court which has the power to make binding orders under the HDCA.
6. In FY23/24 Netsafe received over 6000 HDCA reports. A significant proportion of these were complaints related to online harassment, bullying and stalking. Behaviours or actions reported to us have included disclosure of sensitive personal information and doxxing, non-consensual intimate image abuse (e.g. posting real or manipulated images including AI generated content), online threats and intimidation, the creation of fake profiles and accounts, impersonation, catfishing, targeting of individuals close to the primary victim including family and work colleagues, false complaints to employers or professional bodies, hacking of accounts etc.
7. In many instances stalking and harassment reported to us occurs in the context of a former intimate relationship, but it also includes individuals who may never have met in person but have at one point in time interacted online.
8. Much of the abuse described above is perpetrated online, which in contemporary society is where many people, and in particular certain marginalised communities and young people may spend their time. So advice to simply block, or not go online may be ineffective and unhelpful.
9. While the Harassment Act 1997 was an important first step in addressing abusive harassing behaviours, over time it has become evident that the current legal framework does not adequately capture the persistent, cumulative, and evolving nature of stalking. The rise of digital communication has given perpetrators new tools, leading to an alarming increase in online stalking incidents as described above. Numerous victims report that, despite certain behaviour being technically covered under the Harassment Act, the justice response remains insufficient. This gap leaves real people exposed to prolonged fear, psychological distress, and in some cases, physical harm.
10. We agree that the placement of the offence within the law, and in particular the Crimes Act, is important as it sends a clear message about its seriousness both to perpetrators but also to law enforcement. We have many examples of law enforcement referring victims of stalking to Netsafe simply because there is an online element to a complaint.
11. While Netsafe plays a critical role in providing digital safety advice and support, there appears to be a misunderstanding of the true nature of stalking harm. Stalking is not an isolated issue but rather part of a broader pattern of persistent, multifaceted abuse that requires a coordinated and comprehensive law enforcement response, including appropriate criminal responses. The current law enforcement approach may indicate that frontline staff are either not fully aware of the range of legal tools available to address the

digital dimensions of stalking or are constrained by limited resources, leading them to pass responsibility to other organisations that are not mandated to enforce criminal law. We therefore welcome the greater awareness and focus these amendments will bring.

12. Stalkers also often use the anonymity which technology can provide to abuse their victims with impunity. While this may impede investigation and prosecution there are tools available such as the ability to unmask individuals by way of orders under the HDCA. Courts are already empowered under s19(2)(b) to order online content hosts to release the identity of the author of an anonymous or pseudonymous communication to the court. And police are already empowered under s11(1)(d) of the HDCA to bring civil proceedings for such an order if the digital communication constitutes a threat to the safety of an individual. It is vital therefore that the new powers and focus this Bill will bring are integrated into existing justice tools and responses.
13. Similarly it is vital to ensure there is specialised expertise to handle stalking cases, particularly those involving complex online behaviours, for example, comprehensive training programs and increased funding to modernise police practices in this area, including cooperation with law enforcement in other jurisdictions to investigate and prosecute cross border cases.
14. Netsafe also welcome the fact the Bill makes it clear that a specified act can be done by or through any means. This technology neutral future proofing is important. We already know that AI facilitated abuse, such as non-consensual intimate deepfakes, has markedly increased since generative AI technology has been made more widely available and accessible in the last two years. Netsafe commissioned research on the potential effects generative AI might have on pre-existing online harms. The research noted in particular the risks GenAI would have on the ability of perpetrators to target victims through this technology.
<https://cdn.sanity.io/files/8y8wsx0z/production/6411b2a32441fd296eb5207849a69b5c3c70e070.pdf> see Annex 7 in particular).
15. Netsafe also welcomes the fact that Courts may make orders under the HDCA upon conviction of a defendant without victims separately needing to pursue this. As above however, Netsafe would urge greater preventative use of the HDCA by law enforcement which is already possible (see s11(1)(d)). Similarly, while it is hoped this Bill will lead to an improved law enforcement response, at the same there needs to be end-to-end support for victims including adequate funding of victim services and where appropriate, ACC cover.
16. As regards creating a coherent harassment and stalking law, we note the discrepancy in between the number of specified acts required under the civil regime in the Harassment

Act (two) versus the number required under the new proposal (three). We think this inconsistency between two different pieces of legislation which deal with the same behaviours will have the effect of complicating any law enforcement response and we would urge Parliament to ensure consistency. We note, for example, that under the HDCA, Communication Principle 5 is based on harassment as defined in the Harassment Act. But should harassment under CP 5 now be interpreted as two or three specified acts? Would Police, were they to bring proceeding under s11(1)(d), only be able to do so on the basis of two or three specified acts?

17. Finally, the implementation of this new offence will require a careful balancing act and appropriate prosecutorial discretion to ensure legitimate freedom of expression is not inadvertently curtailed, and that the new offence is not unduly weaponised. To that end the proposed warning system in new section 216O(3) is a welcome addition

Netsafe
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