Forensicare

VLRC Stalking Consultation

Forensicare Submission

Forensicare

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Background

This submission is made by the Victorian Institute of Forensic Mental Health (Forensicare). Forensicare has unique expertise in the assessment, treatment and understanding of stalking and has been an international leader in practice and research with people who stalk since the mid-1990s. Due to Forensicare's close collaboration with the Centre for Forensic Behavioural Science (CFBS), this submission may have some overlap with the CFBS submission.

The Victorian Institute of Forensic Mental Health (Forensicare)

Forensicare, is a statutory agency responsible for the provision of adult forensic mental health services in Victoria. Forensicare was established in 1997 and is governed by a Board that is accountable to the Minister for Health. In addition to providing specialist clinical services, Forensicare is mandated (under the Mental Health Act 2018 [Vic]) to provide research, training, and professional education, and does so via its joint auspicing of the CFBS with Swinburne University of Technology.

Forensicare provides inpatient, prison-based services, and community services, as well as expert evidence for Victorian Courts. These services are delivered through:

- Thomas Embling Hospital: a 136 bed secure forensic mental health hospital that provides acute and continuing care in separate male and female units and a mixed-gender rehabilitation unit;
- Prison Mental Health Services: a 141 bed specialised forensic mental health service with programs and outpatient services located across Melbourne Assessment Prison, Dame Phyllis Frost Centre, Metropolitan Remand Centre, Port Phillip Prison, Ravenhall Correctional Centre and regional prisons; and
- Community Forensic Mental Health Service (CFMHS): the service delivery arm of Forensicare's outpatient and community-based programs is located in Clifton Hill. Services are evidence-based and include effectively assessing, treating and managing high-risk consumers aimed at improving outcomes for individuals and contributing to increased community safety.
- Court services: Forensicare clinicians provide pre-sentence reports to all Victorian Courts at the request of the Court and assessments related to the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic). Forensicare also provides advice and support to court users who may need mental health treatment via the Mental Health Advice and Response Service (MHARS) in seven metropolitan Magistrates' Courts and the Melbourne County Court.

Overview of Forensicare's stalking expertise

Forensicare provides services across the justice, health, and forensic mental health systems to people who stalk. Forensicare is unique in Australia and internationally in providing a specific assessment and treatment service for this cohort. Forensicare started providing an outpatient-based assessment and treatment service to both people who stalk and victims of stalking in the mid-1990s, soon after Victorian anti-stalking laws were enacted in January 1995. In 2002, these services were formalised into a 'Stalkers' Clinic' that both provided assessment and treatment of people who stalk and facilitated research into this problematic behaviour. In 2004, the Stalkers' Clinic was amalgamated with equivalent clinics for people who threatened, engaged in harmful sexual behaviour, or were physically violent to create the Problem Behaviour Program (PBP) which operates in the CFMHS.

Since 2004, the PBP has provided highly specialised forensic psychological and psychiatric assessment and treatment services for people who would otherwise not be able to access assessment or interventions to reduce risks associated with their behaviour. Uniquely, the PBP does not require that people have a mental illness, or that they have formal involvement with the criminal justice system, to be accepted as clients. This means that PBP clients are referred from a wide range of agencies, including Courts, Corrections Victoria, mental health services, private health providers, community and legal sector agencies, and self-referrals. Consequently, Forensicare has a very broad view of the variety of stalking that exists in the Victorian community, not only within the criminal justice system.

Since 2004, referrals of people for stalking behaviour have accounted for approximately one third of all PBP clients (McEwan, MacKenzie & McCarthy, 2014; McEwan & Darjee, 2021). This has given Forensicare a unique opportunity to develop specific expertise with this group, and to pursue a program of research into understanding, assessing and treating stalking, in collaboration with the Centre for Forensic Behavioural Science at Swinburne University of Technology. Of note:

- Since 1995, Forensicare clinicians, working in collaboration with students and academics from Monash and Swinburne Universities, have authored over 150 peer-reviewed journal articles and book chapters on stalking, in addition to three books and two validated risk assessment guides for assessing stalking behaviour.
- In 2010, the Australian Research Council funded a five-year, $554,000, joint project by Forensicare and the Centre for Forensic Behavioural Science (then at Monash University) to validate risk assessment tools developed by Forensicare staff, and to investigate the development of a standardised psychological treatment protocol for stalking behaviour.
- The stalking expertise of Forensicare clinicians was also fundamental to the development of the Victorian Fixated Threat Assessment Centre, a specialist unit where forensic mental health and police staff work together to assess and manage risks associated with fixated behaviour, which is often identified in the context of a stalking episode.

This body of research, and the clinical excellence that both underpins and flows from it, has made Forensicare an internationally renowned source of expertise on people who stalk and their behaviour for almost three decades.

Finally, the Victorian Fixated Threat Assessment Centre (VFTAC) is a joint Victoria Police and Forensicare early intervention initiative, to assess and manage problematic behaviours by lone individuals. VFTAC provides a structured and coordinated approach to serious threats of violence posed by people with complex needs, which can include stalking behaviours. The main objective of the centre is to identify and intervene before a crisis has occurred. This intervention will reduce the potential risk to not only those who are the object of the fixation, but also to the fixated person and the wider community. It provides additional risk mitigation strategies for these individuals and enhanced oversight of complex and concerning cases. The VFTAC is well-placed where stalking behaviours may impact on public figures, to refer and ensure linkage to appropriate treatment. In practice, this will generally include area mental health services for assertive treatment of mental illness when this is present, as well as the PBP if the person satisfies eligibility criteria.

Terms of reference to be addressed in this submission

This submission considers the terms of reference about which we have specialist knowledge and in which Forensicare has a role in the delivery of specialist services for people who stalk. In particular, we address the terms of reference relating to:

- The law on stalking, harassment or similar conduct; and
- Sentencing practices and available sentencing options.

Specifically, we offer responses to the following questions posed by the VLRC in their Stalking Consultation Paper:

2. Should a risk assessment framework be developed to help police and courts identify the course of conduct and manage risk of serious harm in the context of stalking. If so, how should it work?

3. What might help agencies to identify the risk of serious harm in a stalking situation? For example, should there be special training or guidelines, or expert advice?

10. Should courts be able to order respondents to personal safety intervention order applications to attend treatment programs? If so, what kinds of programs and in what circumstances?

19. Should the court be able to request specialist risk assessment reports for stalking? If yes, in what circumstances?

24. How responsive are rehabilitation and reintegration interventions to the diverse needs of people who commit stalking?

25. Could specialist courts and programs help address some of the issues that may occur alongside stalking behaviour? If so, how?

26. How well are prison and post-prison rehabilitation or reintegration measures working for people who have committed stalking? How can they be improved?

27. Are there relevant learnings from the reforms to the family violence system that could be applied to the way that the system responds to people who commit stalking?

For ease, these questions have been grouped into two broad themes that shape the rest of our submission: Assessment and Intervention and Risk Management. Throughout the report, specific recommendations arising from our responses to the VLRC Consultation Paper questions are highlighted in bold text.

Assessment

Stalking is a complex and multi-faceted behaviour that is committed by a wide range of people in many different circumstances. Because of this, it is essential to develop a full and nuanced understanding of the situation to help inform interventions to reduce the behaviour and its associated risks. There is no 'one size fits all' response to stalking, because no two stalking situations are the same. This section is divided into discussion of three different types of assessment important to facilitating effective responses to stalking.

Assessing the presence of stalking

A key challenge when designing any response to stalking is recognising the behaviour so that further assessment and management can take place. There are barriers to recognising stalking at every possible intervention step. For instance:

- People who are stalked frequently do not identify their experience as stalking (Brandt & Voerman, 2020)
- Police struggle to identify patterns of behaviour as stalking (Lynch & Logan, 2015; Ngo, 2019)
- when the behaviour is prosecuted alternative charges are often used (HMIC, 2017).

This means that the stalking is not recognised at court or by correctional services, and so does not receive specialist assessment or treatment through the correctional system. Even outside the criminal justice system, stalking is frequently not recognised because people do not understand what the behaviour actually is or fail to take it seriously until it involves explicit threats or violence (Scott & Sheridan, 2010).

The problems identifying stalking at every point of the criminal justice and mental health response makes it essential that any organisation wishing to respond to stalking take a behavioural approach to identifying the problem rather than relying on the person being stalked identifying it 'correctly' or relying on the presence of a stalking charge. This is true regardless of whether an agency offers a frontline service (e.g., police, mental health, or victim support services) or a tertiary service (e.g., courts, forensic mental health, or correctional services). Problems recognising stalking have been highlighted as a key challenge for policing agencies right around the world, but also plague prosecutorial responses, and courts (HMIC, 2017). Failure to accurately identify stalking at the earliest opportunity means that victim safety will not be sufficiently prioritised, necessary risk assessment and management will not be targeted towards cases causing significant harm, and the person who is stalking will not be offered relevant services to help them stop the behaviour.

At Forensicare, clients who are assessed and treated for stalking are frequently charged with multiple discrete offences rather than a stalking charge. Anecdotally, the most common charges laid in lieu of stalking are:

- contravening an intervention order (or persistently contravene an intervention order);
- threats;
- assault; and
- using a carriage service or telecommunications service to menace or harass.

Typically, stalking clients will come to the PBP with a cluster of these charges involving the same victim, allowing the intake worker and/or clinician to identify the presence of a stalking episode and shape the assessment accordingly. Where a stalking charge is not present, the intake worker or assessing clinician identifies stalking based on a pattern of repeated, unwanted intrusive behaviour that has persisted for at least two weeks and appears to have caused fear or distress for the target(s). This behavioural definition captures the key elements of the construct of stalking. The two-week minimum duration is drawn from research suggesting that two weeks is a useful threshold to differentiate shorter, self-limiting forms of harassment from stalking episodes that are likely to persist without intervention (Purcell, Pathé, & Mullen, 2004). In addition, we ensure that the behaviour is not occurring during a continuing relationship. Where there is such a relationship, the behaviour is understood as intimate partner abuse rather than stalking, leading to different assessment and risk assessment approaches, and to different risk management recommendations (see McEwan, Shea, Nazarewicz, & Senkans, 2017; McEwan, Simmons, Clothier, & Senkans, 2020 for discussion).

In other jurisdictions, such as the United Kingdom, there has been a concerted education campaign for police, frontline workers, and the general community using the acronym FOUR to help people identify stalking (see, e.g., https://www.nottinghamshire.police.uk/site-page/stalking). FOUR stands for: Fixated, Obsessive, Unwanted and Repeated. Like the more informal Forensicare approach, the FOUR acronym provides a heuristic that seeks to draw the decision-maker's attention to the key criteria indicating that stalking may be present, so the case can then be further assessed in an informed way. The FOUR acronym has the benefit of going beyond just behavioural definition with 'obsession' and 'fixation' trying to capture the key issue that drives highly persistent stalking episodes; i.e., the way that the person who is stalking thinks and feels. This kind of general approach to establishing a common understanding of how to identify stalking has much to commend it as it raises awareness across the board and contributes to a shared understanding of what stalking is.

With this evidence base in mind, we now turn to the relevant VLRC Consultation Paper question regarding identification of stalking:

2. Should a risk assessment framework be developed to help police and courts identify the course of conduct and manage risk of serious harm in the context of stalking. If so, how should it work?

A risk assessment cannot identify a course of conduct, it merely prioritises cases for further response once stalking has been identified. To identify a situation as stalking, **it is recommended that police, prosecutors and courts (and other helping agencies with a primary role in responding to stalking) develop systemic, embedded ways of identifying whether stalking is present when cases present with certain features.** Part of this process is ensuring that staff are aware of their duty to identify stalking and that they have sufficient knowledge of what stalking is. However, to ensure consistency and longevity, such a process cannot rely on individual knowledge alone and must also be embedded into the systems and procedures that govern organisational responses to stalking behaviour.

For police, such an embedded process might involve identifying triggers that responding officers can use to commence a simple assessment for the presence of a stalking episode. Such triggers could involve people reporting particular types of victimisation (e.g., an assault, a threat, someone following them or loitering near them, unwanted or intimidating communication, whether online or offline).

Where these trigger behaviours are identified, the police officer must then ask a set of additional questions (potentially framed as a decision tree) that will let them identify stalking behaviour. For example:

1. Has the same person said or done things other than this particular example that make you feel uncomfortable or concerned? (Provide examples of common stalking behaviours that the person can endorse or not; telephone calls, text messages, approaches, online contact, following, loitering etc.)
2. Have you ever felt fearful for your own safety or the safety of others because of this person's pattern of behaviour?
3. Has this person's behaviour caused you to feel significant distress or worry, even if you weren't fearful?
4. What is your relationship to the person doing these things?

If the person answers question 1 and either of questions 2 or 3 positively, stalking should be considered present, triggering a set of further actions including gathering further information about the stalking episode (such as its duration and the number and nature of stalking behaviours), conducting a stalking risk assessment, commencing risk management where necessary, and pursuing a criminal investigation if appropriate. If question 1 is answered negatively (i.e. there is only a single unwanted behaviour), then police can respond to that behaviour as a discrete event using civil or criminal options. Depending on the answer to question 4, the report may or may not also trigger a family violence response.

It is recommended that Victoria Police, Courts, Corrections Victoria, Youth Justice and other agencies with primary responsibility for responding to stalking be required to implement internal systems for identification and evidence-based assessment and risk assessment of stalking. This should mimic the systems that have been established over recent years to identify family violence and assess risk (in general approach rather than specific strategies). This system would form an essential first step in ensuring that subsequent risk management reflects the nature of risk present in the case, and that cases at substantially increased risk could be referred for multi-agency management (see Intervention and Risk Management section below).

Ideally, within the criminal justice system, identification of stalking cases would be undertaken by police as first responders as part of a system of identification and assessment, with a 'stalking flag' assigned to the case if it met certain criteria. This could be similar to the current family violence flag recorded by police using the Family Violence Report, but use evidence-based criteria for defining stalking such as the presence of five or more unwanted intrusions over a period of at least two weeks outside of the context of a continuing relationship (McEwan, Simmons, et al., 2020). This 'flag' could then carry through to the court, drawing their attention to the presence of stalking even when alternative charges have been laid. The stalking flag could trigger processes for a review of current risk at court (similar to current risk assessment processes at specialist family violence courts), and consideration of risk management strategies at court (e.g. remote hearings, safety plans for court appearances). The flag could also then be communicated to Corrections Victoria, making them less reliant on the presence of a stalking charge to initiate their own proceedings such as making referrals to Forensicare or initiating internal assessment and intervention in prison settings. For risk assessment and management purposes it is somewhat irrelevant whether or not the behaviour has been charged

as stalking, as long as the course of conduct itself is recognised, the risk assessment and management response can occur. **It is recommended that consideration be given to how this kind of 'stalking flag' could be implemented in a reliable way to facilitate identification of stalking throughout the criminal justice system.**

Stalking risk assessment

Reflecting the multi-faceted nature of stalking behaviour, risk in stalking situations is also multi-faceted and goes beyond physical violence to include the risk of severe psychological harm associated with the cumulative impact of a persistent stalking episode, and the risk that someone who has stopped stalking might start again (Mullen et al., 2006). A sizeable body of research about stalking risk assessment has developed over the past 25 years. This research has highlighted the different risks associated with stalking, identified risk factors for different risk outcomes, and has developed and tested both screening and comprehensive risk assessment instruments (McEwan, 2021). Forensicare's clinicians have been at the forefront of this research and have authored some of the risk assessment tools that are in use around Australia and internationally within policing, mental health, correctional and other agencies[1].

Three risk assessment instruments have been developed specifically for stalking. All three instruments have been developed using the structured professional judgment approach. Two comprehensive risk assessment tools were published in the late 2000s: Guidelines for Stalking Assessment and Management (SAM; Kropp, Hart, & Lyon, 2008) and the Stalking Risk Profile (SRP; MacKenzie et al., 2009). These instruments are suitable for specialist practitioners who have direct access to interview the person who is stalking, who can gather collateral information about the stalking situation, and who can make informed judgements about the presence and relevance of mental illness in the situation. More recently, a brief triage tool, the Screening Assessment for Stalking and Harassment (SASH) was published (McEwan, Strand, MacKenzie, & James, 2017). This is not a risk assessment tool per se, but is designed to inform quick judgments by frontline assessors about the appropriate level of concern and response, given limited information about a stalking case. All three instruments have been subject to some scientific validation. McEwan (2021) provides an overview of this research and concludes:

> "Each of the three extant tools present strengths and weaknesses for threat assessors and managers, though all of them are likely more useful than pure reliance on [unstructured] professional judgment or "gut feeling". The SAM and SRP both require greater knowledge of stalking to use, more training, and more comprehensive information about the stalking case, but the risk judgments they produce are consequently more informative for subsequent management of risk than are concern judgments made using the SASH. The SAM is designed for a wider range of users and includes risk factors specific to the victim, which may add to the kinds of risk management strategies that it can inform. However, at present the weight of evidence

[1] Forensicare has no ownership of or financial interest in the stalking risk assessment instruments authored by its employees, specifically the *Stalking Risk Profile* or the *Screening Assessment for Stalking and Harassment.*

> suggests that, when used as instructed in the manual and by raters with limited experience with stalking, the SAM may have issues with reliability and validity that argue against its use. While the SRP has not demonstrated similar issues with reliability or validity, it has only a single validation study at present, meaning that it is too soon to draw firm conclusions about its utility.
>
> The SASH is a quite different tool, and one that may be more useful for frontline threat assessors to help them make immediate decisions about prioritizing cases for further investigation and management. The SASH is quicker to score than the other two tools owing to its limited number of risk factors, and it can be scored from more limited information. It also includes instructions for repeated use in the same case over time, allowing for monitoring of changes in concern after implementation of management strategies. Like the SRP and SAM, the risk factors in the SASH relate to increased risk of both persistent stalking and stalking-related violence, meaning that cases can be prioritized on either basis. The major limitation of the SASH at present is the fact that it has only been evaluated in a single study within the Netherlands National Police. While the predictive validity in that study was promising, the relatively poor reliability of the concern judgments made by police raters suggests that reference to the SASH manual and/or training in the instrument is required if the instrument is being used by a range of different raters within the same organization."
>
> McEwan (2021)

Evidence-based and validated approaches to stalking risk assessment already exist, though further research is required to validate these tools more comprehensively in different settings (McEwan, 2021). Rather than trying to develop a new risk assessment framework, **Victorian agencies responding to stalking should use existing risk assessment instruments to guide their work, and support research to ensure these approaches are valid in a variety of settings.** It should be noted that some agencies (e.g., Corrections Victoria) currently use well-validated but non-specific risk assessment instruments, such as the Level of Service Inventory Revised Screening Version (LSI-R:SV; a risk assessment for general offending) in stalking cases. At present there is no evidence for or against the validity of such approaches to stalking risk assessment. However, our anecdotal experience from referrals of stalking cases from Corrections Victoria indicates that many people who we would consider to be at increased risk of future stalking are assessed as low risk on the LSI:R-SV. The Centre for Forensic Behavioural Science is currently undertaking research to examine the validity of the Level of Service Inventory and related tools in stalking cases.

Even when an appropriate risk assessment tool is applied, the instruments themselves are only one part of effective risk assessment. Just as important is the system in which the tools are used, and how that system ensures that the correct cases are prioritised for more intensive interventions to manage risk and bring the stalking to halt. As described in the previous section, a stalking risk assessment instrument will only be useful if stalking can be routinely identified by responding agencies, allowing the risk assessment to be applied. Equally, risk assessment is only useful if cases identified as being at higher risk then go on to receive effective risk management. In the ideal scenario, a risk assessment

instrument like the SASH would be used to quickly prioritise cases that require more than a routine risk management response to maximise victim safety. Those prioritised as being at highest concern should receive more urgent management but also go on to receive a more comprehensive risk assessment that can inform a coordinated multi-agency management response where that is required (see *Intervention and Risk Management* section).

3. What might help agencies to identify the risk of serious harm in a stalking situation? For example, should there be special training or guidelines, or expert advice?

Stalking is by definition harmful and so should receive a response regardless of whether a risk of serious harm is identified. Responses do need to be tiered so that appropriate levels of information and support are offered in cases where the risk of serious harm is lower, while more intensive risk management and treatment of the person who is stalking is applied in cases where the risk of serious harm is higher. Serious harm in this context should be defined broadly as the risk of very persistent stalking, the risk of physical violence (including sexual violence), or the risk of recommencing stalking.

Identifying the risk of serious harm requires each agency that might be presented with stalking cases to have a way of identifying the presence of stalking and assessing risk. To facilitate a response to as many stalking situations as possible, further work should be undertaken to identify agencies who routinely provide responses to either people who are stalked or people who commit stalking. Obvious stakeholders include:

- People who are being stalked
- Police (including police prosecutors)
- Courts
- Victim support services (e.g., WIRE, Mensline, Victims of Crime helpline, etc.)
- Family violence sector agencies (e.g., Orange Door and associated organisations)
- Community legal services (including Aboriginal and multicultural legal services)
- Victorian Legal Aid
- Public and private mental health providers (for both adults and young people)
- General Practitioners
- Community Health agencies (including Aboriginal and multicultural health services)
- Workplaces (particularly human resources departments)
- Ombudsman offices and complaints bodies
- Child Protection
- Office of the Public Prosecutor
- Corrections Victoria
- Youth Justice
- Professional regulatory bodies (e.g., AHPRA, Victorian Legal Services Commissioner)

There will likely be other agencies and professional groups who routinely come into contact with stalking situations beyond those listed here.

In Victoria, when stalking involves someone targeting a former intimate partner, the case will usually be diverted into the family violence response system. This accounts for approximately half of stalking situations that exist in the community. However, stalking of strangers and acquaintances (e.g.,

neighbours, work colleagues, clients of professionals, etc.) does not enter the family violence service system and at present there is no system in place that allows for routine risk assessment and case management of higher risk cases. Other cases that are likely to fall through the cracks of the family violence response system involve stalking by people with other family relationships to the victim (e.g., siblings, parental relationships, etc.), or where the primary target of the stalking is not a former partner, but those associated with them such as their former partner's new partner or their family and friends. These latter two groups will also need to be captured by any response to stalking that sits outside of the family violence service system.

Given the breadth of different organisations and individuals who are likely to have to respond to stalking, and the different weight that will be placed on stalking by these different agencies, the most effective way of helping agencies to identify stalking and then conduct risk assessments would be to **differentiate the required risk-related response by whether the organisation has a primary or secondary responsibility to responding to stalking behaviour.** For organisations who have a primary responsibility to manage stalking behaviour and reduce risks to the community, internal procedures would be required to facilitate identification and routine risk assessment and management of stalking cases (e.g., Victoria Police, Corrections Victoria, Youth Justice, Courts, forensic mental health, public mental health providers). Cases assessed as being a very high risk of negative outcomes could then be brought to a multi-agency risk management panel for further attention (see Intervention and Risk Management section for further detail). For other organisations and individual practitioners where stalking is an issue of secondary concern to their purpose, but likely to be identified if attention is paid, access to a central information point would be the most efficient way of providing the kind of information that can help to identify and manage stalking situations and make necessary referrals to an agency with primary responsibility for management.

It is recommended that a staffed central information point for stalking is established in Victoria to provide risk screening and advice at the earliest opportunity, to people who are stalked. As discussed above, many people will not approach the police in the early phases of being stalked but they may turn to friends, family members and the internet for information and advice. A central information point (like the National Stalking Helpline in the UK or Stop Stalking in Germany) can provide passive information (e.g., via a website) and active assistance directly to people who are being stalked and to professionals who are trying to assist them. Active assistance can be provided directly, through a staffed helpline that can undertake preliminary risk screening (using a validated tool) and provide safety advice, as well as more general advice about stalking. If appropriate information sharing procedures were implemented, such a helpline could also link organisations or individuals who contact them to agencies with primary responsibility for managing stalking, such as Victoria Police or general or forensic mental health services. Such a service could also increase awareness of stalking by running training for public and private organisations about recognising and responding effectively to stalking.

It is recommended that the central information point be established as part of a broader service that can also provide direct case-based victim advocacy and support for stalking victims across the State. While Forensicare has not previously provided direct treatment and support services to stalking victims for some years, we would be keen to engage closely with a victim support and advocacy service, recognising the importance of expert multi-agency work in this space. It is our view that such a service

should not be developed by or appended to an agency whose primary role is to respond to violence against women or intimate partner abuse. While a stalking central information point should obviously have good knowledge of family violence responses and be able to refer people to appropriate family violence services, ex-intimate stalkers make up fewer than half of stalking situations in the community. It is therefore essential that stalking is kept separate to family violence responses so that stalking situations that do not involve former intimates, or which involve male victims, receive an equivalent service response. Stalking of strangers and acquaintances is a substantially different phenomenon to stalking of former intimates, with different risk factors for violence and persistence, different risk management strategies, and quite different needs for multi-agency work. The evidence base of a stalking central information point should be specific to stalking and not drawn from the core philosophies that underpin family violence sector responses, which have a markedly different approach that gives insufficient attention to the important and proven role of mental disorder and situational factors in stalking.

Mental health assessment and assessment for the Court

Over 70% of people whose stalking behaviour attracts the attention of the criminal justice system have a diagnosable mental illness, and the majority have had prior contact with mental health services (McEwan, Harder, Brandt, & de Vogel, 2020; Nijdam-Jones, Rosenfeld, Gerbrandij, Quick, & Galietta, 2018). Research involving Forensicare clients, and from international samples, suggests that those who stalk strangers and acquaintances (i.e., non-intimates) have extraordinarily high rates of psychotic disorder, with prevalence estimates from 26% to 50%. Even among those who stalk former partners, psychotic disorders are thought to be present in approximately 10% of cases (McEwan & Strand, 2013; Mohandie, Meloy, McGowan, & Williams, 2006). These figures should be contrasted with rates of psychotic disorder of approximately 0.5% in the broader Australian community (Morgan et al., 2011). Personality disorder is common among all stalkers, with 40% to 50% meeting diagnostic criteria at the time of forensic mental health assessment, while substance use disorders and mood disorders are also frequently diagnosed (McEwan et al., 2020; McEwan and Strand, 2013; Nijdam-Jones et al., 2018). Co-morbidity of mental illnesses is the norm rather than the exception among people who stalk (Nijdam-Jones et al., 2018), and people who stalk are at substantially higher risk of suicide than other community members and offender groups (McEwan, Mullen, & MacKenzie, 2010).

While it is highly prevalent among those who stalk, mental illness is thought to directly cause stalking in a relatively limited number of cases. The most direct relationship discussed in research is stalking behaviour driven by delusional beliefs about the victim that are secondary to a psychotic illness. Research conducted at Forensicare has demonstrated that those who stalk in the context of such beliefs were significantly more likely to stalk for longer duration than those without such beliefs (McEwan, Daffern, MacKenzie, & Ogloff, 2017). In such cases, effective mental health care should be a first line response as it is likely to be the most effective strategy to stop the stalking behaviour. Such cases account for a minority of stalking situations, though it is impossible to say exactly what proportion (in samples recruited from the Problem Behaviour Program, approximately 15% have a delusional belief about the victim that drives the stalking).

In a far greater number of cases, the symptoms of mental illness or disorder complicate rather than directly cause the stalking behaviour. Many situations that trigger the onset of some stalking episodes (such as the breakdown of a relationship) also precipitate the onset or exacerbation of symptoms of mental disorder (e.g. a major depressive episode, substance use disorders, or a period of acute emotional dysregulation and suicidality in someone with personality disorder). The symptoms of these disorders or illnesses make it more difficult for the person to cease stalking, and may increase the risk of serious outcomes, but treating the illness alone will likely not stop the stalking behaviour. Consequently, assessing for the presence and role of mental illness or disorder in stalking behaviour is essential. Such assessments are highly specialised and require diagnostic ability and a thorough understanding of stalking behaviour. In a policing context such assessments are necessary wherever a psychotic disorder is suspected, as criminal justice interventions are unlikely to end the stalking episode. In a court context they should be conducted prior to sentencing so the court can take the role of mental illness into account in sentencing and in imposing conditions on orders.

With this evidence-base in mind, we now turn to the relevant VLRC Consultation Paper questions regarding assessment of stalking:

19. Should the court be able to request specialist risk assessment reports for stalking? If yes, in what circumstances?

Victorian courts can already request specialist assessment and risk assessment reports in stalking cases from Forensicare and do so routinely. The majority of such reports are requested by the Magistrates' Court of Victoria, reflecting the fact that the majority of stalking cases are heard in the Magistrates' Court. However, the request for a report is at the discretion of the presiding Magistrate and there are not currently any stalking-specific guidelines for when such reports should be required.

Given the high prevalence of major mental illness, particularly psychotic disorders, among those who stalk strangers or acquaintances, **it is recommended that a request for a specialist pre-sentence forensic mental health assessment should be routine in cases involving stalking by a stranger or acquaintance, and recommended in cases involving ex-partners.** Such reports could be requested from Forensicare through existing pre-sentence report procedures. This would both ensure that the Court could place appropriate assessment and treatment conditions on a sentence, and also ensure that sentencing principles arising from Verdins and Brown are addressed. Where a major mental illness is identified as a key causal factor in the stalking behaviour, such a report can facilitate linkages with mental health care in either prison or as part of a community-based sentence. Provision for increased referrals for pre-sentence reports would require additional resourcing; Forensicare can provide guidance about meeting this need dependent on the VLRC recommendations.

25. Could specialist courts and programs help address some of the issues that may occur alongside stalking behaviour? If so, how?

Where a specialist assessment identifies high risk of ongoing stalking behaviour and links that risk to the presence of factors that may be changed through intervention, therapeutic court approaches may be appropriate. There are a number of existing approaches that could be integrated with a response to stalking:

- Judicial monitoring: Where the stalking is assessed as being primarily caused by the symptoms of a mental disorder, judicial monitoring to facilitate engagement with mental health services (or forensic mental health) services for treatment may be an appropriate approach. This could, in some cases, be achieved through something like the Assessment and Referral Court (ARC), though it must be emphasised that merely the presence of a major mental illness does not necessarily mean that the illness is causing stalking, so this needs to be assessed first. There will be a larger number of cases where the illness requiring intervention is a severe personality disorder. These clients are unlikely to receive appropriate treatment through their local area mental health service, meaning specialist services like Spectrum or Forensicare may need to be the relevant treating agency.
- Court Integrated Services Program (CISP): The services offered by CISP would be suitable in many stalking cases. However, the standard CISP response would need to be augmented with additional risk assessment to monitor ongoing stalking behaviour, and potentially to manage risk of further stalking of service providers. While this is not actually a significant risk in many cases, it must routinely be considered. There are also a small group of people who stalk whose presentation is highly complex and associated with significant personality disorder. It may be appropriate in these cases for CISP to link clients to Forensicare even prior to sentencing, though this has complexities that are considered further below.

It is not recommended that a specialist stalking court be established as this would mean that expertise is available to only some, not all people accessing the courts for stalking. This would be a particular problem for those in regional areas. Moreover, the challenges in identifying stalking mean that undoubtedly many stalking cases would still end up in mainstream courts. **It is recommended that the greatest impact for the greatest number of cases would be achieved by assigning a portfolio within Court Services Victoria (and potentially a lead Magistrate) with responsibility for developing and implementing policy and practice changes to improve court responses to stalking**.

It must be noted that these kinds of interventions are only available to cases that have made it to court, which is a minority of stalking cases. It is equally important that steps are taken to improve interventions and risk management at earlier stages in the criminal justice and mental health systems.

Intervention and Risk Management

Responding to stalking behaviour requires different approaches, some targeting the person who is stalking, some the broader situation, and some the person who is being stalked. This means that it is typical that stalking is managed by multiple different agencies, even when there is no communication between those involved. A key principle of effective intervention in stalking cases is that more management and treatment are directed towards cases that are assessed as being of greater concern or risk of serious harm, while those assessed as being of standard concern or risk receive a routine level of intervention (McEwan, 2021; Purcell & McEwan, 2018). This does not mean that standard cases receive no response, only that the response they receive is less intensive and urgent, and not as tailored to their specific circumstances. In this section we focus primarily on intervention and risk management strategies directed towards the person who is stalking, as this is where Forensicare has considerable expertise and can play a practical role in the Victorian service system.

Risk management in stalking cases

Risk management is focused on immediate and medium-term preventative strategies to reduce the stalking behaviour and maintain the safety of those who are being targeted. Management often makes use of legal controls on the person who is stalking, such as intervention orders, bail conditions, and mental health assessment and treatment orders. Accordingly, management is often the primary responsibility of police and general mental health services. However, effective risk management is only possible when guided by an informed assessment, of both the stalking behaviour and the person who is stalking, to ensure the strategies chosen have the greatest chance of success. For example, obtaining a personal safety intervention order in a case where the stalking is driven by delusional beliefs is not only unlikely to stop the stalking, but it may also lead the person being stalked to incorrectly believe that effective management is in place. Far more appropriate in this kind of case would be diversion and referral to general mental health services, with notification to the local Forensic Clinical Specialist (https://www.forensicare.vic.gov.au/our-services/community-forensic-mental-health-services/forensic-clinical-specialist-program/) to ensure that the case receives an appropriate forensically-informed response. However, this cannot be done without a proper assessment and risk assessment. On this basis, **it is recommended that agencies and organisations with primary responsibility for managing stalking are required to develop and implement evidence-based case identification, case assessment, and risk assessment procedures that facilitate informed and tailored risk management of stalking cases.** In a small number of cases, such an approach will conclude that the risk of serious harm to the victim is so imminent or so difficult to manage effectively in the community that the initial management strategy should involve control and containment via powers under mental health or criminal legislation (Mullen et al., 2006).

Risk management is obviously also relevant for individual practitioners or services such as Forensicare who provide psychological and psychiatric treatment to those who stalk. For these services, management always involves working with the person who is stalking, and other involved support agencies, to implement effective behaviour management and safety plans that put immediate boundaries around their contact with the victim. Management can also include reporting clients to police where this is deemed necessary due to concerns about increased or imminent risk, or the presence of past unlawful behaviour that caused significant harm.

While implementing systems to support informed risk management with individual organisations will go a long way towards reducing the harms associated with stalking behaviour, there are some cases where collaborative risk management and multi-agency work by practitioners with specialist expertise is required. These cases are usually highly complex, with mental illness and personality disorder in the person who is stalking, stalking behaviour that is highly persistent and non-responsive to standard interventions, and characteristics that raise concern about the potential for catastrophic violence. Inevitably these kinds of cases require rapid risk management responses from multiple agencies at the same time, all working towards the shared goal of maintaining the safety of the victim(s) and the person who is stalking. Management in these cases is also made complex by the fact that it must be ongoing rather than ‘one off’ and could involvement management of multiple different simultaneous stalking episodes by the same person.

Internationally, best practice approaches for managing these kinds of complex and high-risk stalking cases have been to establish formal units or groups that can support multi-agency assessment and intervention. These take different forms, but the most common approach is a multi-agency risk panel or clinic where specialist staff from a range of organisations meet regularly (weekly or fortnightly), bringing high risk cases that have been brought to their attention through the internal processes within their organisation. Organisations such as police, forensic mental health, community corrections, and victim advocacy and support services have specialist staff who attend the clinic and together provide assessment of the stalking case, advice and consultation to teams working with the stalker or victim, investigative advice for police, formulation of the stalking behaviour that can be used to guide risk management, and referrals to appropriate intervention services. An example of such services is the Hampshire Constabulary Stalking Clinic, which was established in 2012 and is part of the Multi-Agency Stalking Intervention Project (MASIP) in the United Kingdom (Tompson, Belur, & Jerath, 2020). Funding via MASIP allowed the Hampshire clinic to extend their work to provide a treatment service for people who stalk via the broader forensic mental health service which consults to the clinic. At Hampshire, the clinic is staffed full time by a stalking co-ordinator from the Hampshire Constabulary, a victim advocate lead, a clinical and forensic psychologist, a support worker, and an occupational therapist. Additional part-time staff include a detective inspector, a probation officer and a consultant forensic psychiatrist. Other unfunded partners often attend clinic meetings where relevant.

Forensicare strongly recommends that consideration be given to establishing a state-wide multi-agency high risk panel in Victoria to provide assessment and management guidance for high risk, ongoing stalking situations. Forensicare would be keen to lead the development of such a clinic, with co-leadership from Victoria Police and partnership with Corrections Victoria. Ideally there would also be partnership with a specialist stalking victim advocacy and support organisation, if one were developed (see previous recommendation). Forensicare has existing relationships with Victoria Police and Corrections Victoria that could be leveraged to help establish this kind of clinic. The clinic would benefit from Forensicare's long-standing expertise in stalking behaviour, and the existence of the Problem Behaviour Program, which can provide specialist assessment and treatment services to people who stalk (something that did not exist in any of the MASIP trial sites prior to that project commencing in 2016).

It is Forensicare's view that this kind of multi-agency clinic or panel would provide better use of resources than a specialist multi-agency unit like the Stalking Threat Assessment Centre (STAC) that was established in London. Victoria is more similar to Hampshire in that there is a single forensic mental health service covering the entire jurisdiction, meaning there is already some level of coordinated response across the state. Part of the reason that STAC was established as a co-located unit embedded within the police service was because London had no centralised forensic mental health trust, meaning STAC needed to be able to advise different agencies across the whole of London, justifying the establishment of a centralised unit. This is not true in Victoria, where there is a single forensic mental health service that has good existing linkages with Area Mental Health Services, Victoria Police and Corrections Victoria. Having a clinic or panel approach also encourages the development of internal processes, expertise and accountability mechanisms within each partner organisation while also providing the level of multi-agency specialist collaboration that is required in

the highest risk stalking cases. The risk of a single centralised unit is that stalking becomes the remit of that unit and does not receive a response in other parts of the partner organisations. For such a clinic to be effective, it would need to be accompanied by a process within Victoria Police that could identify and prioritise the highest risk stalking cases for a centralised police risk management response, including bringing those cases to the multi-agency panel when required.

Treatment of stalking behaviour

Stalking, like most forms of complex human behaviour, can emerge from an array of psychological, social, and cultural influences (Mullen, Pathé, & Purcell, 2009). The motivations for stalking are variable, ranging from a desire to initiate or reconcile a relationship to exacting revenge for a real or perceived hurt, through to pursuing an idealised love with a stranger or celebrity. Stalking can be driven by anger, by hope, by passion, by delusion, or a mix of these. If we accept that stalking is a disturbed or disordered behaviour that reflects an array of psychosocial influences on the perpetrator's motivations, this permits the possibility that techniques that modify such influences may in turn reduce the offending behaviours. That mental health professionals have developed techniques to reduce various forms of obsessional, harmful, and self-defeating behaviour is therefore pertinent (McEwan, MacKenzie, & McCarthy, 2014; Warren, Mackenzie, Mullen, & Ogloff, 2005). Furthermore, the evidence is clear that a significant proportion of those who persistently stalk have mental disorders that contribute, to varying degrees, to the behaviour (McEwan & Strand, 2013; Mullen, Pathé, Purcell, & Stuart, 1999; Nijdam-Jones et al., 2018). In these cases effectively managing the mental disorder is a critical part of any response to reduce (if not eliminate) the stalking behaviours. Given the range of factors that underlie stalking, the treatment of those who stalk requires a flexible approach that considers not only psychosocial factors that contribute to the perpetrator's behaviour (including problematic personality characteristics, deficits in interpersonal and social skills, substance use, and psychopathology) but also contextual factors that motivate and sustain the offending.

Treatment programs for people who stalk have not developed at the same pace as programs for violent and sexual offenders, possibly partly due to their diversity, but also likely because this group goes unidentified in correctional settings. The absence of validated treatment options is concerning, given the high rates of recidivism in this group.

There have been only two published studies of programmatic interventions for stalkers, both of which used Dialectical Behaviour Therapy (DBT) to treat a sample of people referred by New York courts for stalking (Rosenfeld et al., 2019; Rosenfeld et al., 2007). The second of these studies was a randomised controlled trial, the gold standard for treatment evaluation. There was no significant treatment effect of DBT, though the authors noted that this could be because the control treatment was also effective. Comparing recidivism rates to those in previous research, the authors suggested that the rate was lower than would be expected at 30% (in contrast to rates of approximately 50% using similar measurement methods).

In the absence of specific programs for people who stalk, some may be appropriately referred to treatment programs for higher risk violent or sexual offenders. It is likely that programs for violent and sexual offenders are not appropriate for the majority of stalkers whose behaviour does not

involve sexual or physical violence (McEwan, 2021). Stalkers of former intimates account for somewhere between half and two-thirds of people whose stalking attracts criminal justice attention. It is possible that treatment programs for intimate partner abuse offenders may be appropriate for this group, though there is little research directly comparing the two, and the minority of relationships characterised by abuse go on to involve post-relationship stalking (McEwan, 2021). Moreover, there is no good evidence that the feminist informed behaviour change programs like those provided in Victoria actually produce change in offenders' abusive behaviour, let alone stalking (Babcock et al., 2016; Eckhardt et al., 2013; Gondolf, 2004).

While the there is no specifically validated approach to treating people who stalk, there are best practice guidelines. Drawing on their own experience and the previous work of other experts in this field, Purcell and McEwan (2018) specified that:

1. Treatment should be shaped by a thorough assessment of the specific needs of the stalker, the interpersonal context in which the stalking emerged, and the function of the behaviour for the individual.
2. Treatment should focus on remediating the stalker's behaviour using cognitive behavioural approaches rather than primarily addressing underlying personality or attachment disorders.
3. Where the stalker suffers from a psychotic disorder that incorporates delusional beliefs about the victim, pharmacological intervention by psychiatry is the first-line treatment response, followed by psychological and other interventions as appropriate.
4. Ex-intimate stalking and intimate partner violence are linked, but not necessarily the same construct. Intimate partner violence should always be assessed in ex-intimate stalking cases; however, stalkers may have some different or additional treatment needs.
5. Rehabilitative treatment needs to be balanced with appropriate legal sanctions designed to protect the stalking victim and deter the stalker from further behaviour. Often legal sanctions are also the only way to ensure that stalkers attend rehabilitative treatment.

These principles are very consistent with the way psychological and psychiatric treatment of people who stalk is approached at Forensicare. Treatment at the PBP is evidence-based, adhering to Bonta and Andrews' (2016) risk, needs and responsivity principles and using structured risk assessment to identify clients who present as being at higher risk of continued problematic behaviour, and so are appropriate for behaviour-specific treatment. Every episode of treatment is preceded by a comprehensive assessment (including risk assessment), to determine the need for treatment and the key issues that appear to be driving the stalking behaviour. Treatment is offered individually, with some clients also referred to group-based skills building groups (e.g., emotion regulation, relationship skills). However, the core treatment needs thought to relate to their offending behaviour are targeted in individual therapy sessions with a specialist psychologist. The modality of treatment, although somewhat eclectic, is based on cognitive behaviour therapy and relapse-prevention approaches. Relevant risk factors (i.e., 'criminogenic needs') that may be pertinent treatment targets are identified from the risk assessment tools, supplemented with functional analyses of the problem behaviour.

A high level of expertise is required to work with stalkers, given the frequent presence of co-morbid mental disorder, and the effects that this can have on behaviour. Treatment is oriented towards the cessation of the problem behaviour and the formulation is used to prioritise treatment targets and responsivity factors. This allows treatment plans to focus on the client's criminogenic needs, but also to be individualised and tailored to the context of the specific problem behaviours (McEwan & Darjee, 2021). The core targets for treatment in most stalking cases are emotional dysregulation, offence-supportive cognition, cognition and emotion associated with relationships, rumination, and developing and practicing new skills for responding to triggering events. Treatment has no standard time frame and many people who stalk require long periods of time at the commencement of treatment focused on helping them to develop motivation to change their behaviour, while managing risk. There are not substantial differences for treatment of female and male stalkers at Forensicare (women making up approximately 10% of stalking clients), with treatment being guided by a comprehensive case formulation that takes into account client-specific needs. Clients who attend for treatment at the PBP are deemed to have completed treatment once they have progressed in their treatment goals to a satisfactory level, as agreed upon by both the clinician and client.

Whilst in some cases Forensicare does provide treatment to individuals with pending charges, difficulties are associated with this. These include concern about Forensicare treatment being used inappropriately at court, either to gather information to aid prosecution or as a mitigating factor by the defence. This is a serious problem because treatment is most likely to help in bringing the stalking episode to a close and assist in preventing harm if clients can access it prior to the court process being resolved. Ideally, Forensicare could accept referrals from Victoria Police of people assessed as being at high risk (including through the aforementioned multi-agency high risk panel), but with the caveat that information from treatment should not be used in subsequent court proceedings.

We now turn to relevant questions from the Consultation Paper:

24. How responsive are rehabilitation and reintegration interventions to the diverse needs of people who commit stalking?

At present in Victoria, rehabilitation interventions are not routinely tailored to the diverse needs of people who commit stalking. There are no specific treatment pathways – either in prison or the community – for people convicted of stalking or related offences. For those in the community, some are referred to Forensicare by Corrections Victoria, though referrals are not routine, and depend on the nature of the person's other offending behaviour and whether stalking is recognised in the absence of a stalking charge. There are often also considerable delays in accessing specialist assessment or treatment at Forensicare, as stalking cases are first referred internally to the Forensic Intervention Service (FIS) within Corrections Victoria to be reviewed, before being referred on to Forensicare if they do not meet FIS criteria for serious offending warranting intervention (noting that this review does not include the use of a specialist assessment or stalking risk assessment protocol). This process means that people can remain on Community Corrections Orders for months before actually receiving any specialist assessment. **It is recommended that stalking cases that do not have accompanying charges for serious offending (as outlined in the *Corrections Act 1986* (Vic) s 104AA)**

should be immediately referred by the Corrections Victoria case manager to Forensicare for specialist assessment (regardless of their Corrections Victoria risk assessment result), with cases not accepted by Forensicare being referred on to FIS for review. Those with serious offences in addition to stalking would continue to be referred to FIS first, then on to Forensicare at the earliest opportunity. This would facilitate more timely assessment and maximise time available while on correctional orders to engage in specialist treatment for stalking, which is not available within Corrections Victoria.

When clients are referred to Forensicare for specialist assessment and treatment for stalking behaviour, treatment is as responsive as possible to the needs of the client. However, the limited nature of the Problem Behaviour Program's staffing means that waitlists are long (currently at least 2 months, but frequently longer), and stalkers make up only one third of clients who must be prioritised for treatment. A 2015 evaluation of outcomes for 824 PBP clients (26% referred for stalking) demonstrated that:

- 66% of clients who attended the PBP for assessment did not have subsequent charges during the follow-up period. Clients averaged 4.9 charges in the two years prior to PBP contact, which dropped significantly to an average of 2.5 charges in the two years after PBP contact.
- Clients who completed treatment reoffended significantly less often and more slowly than clients who were either not recommended for treatment or who were recommended but dropped out of treatment.
- There was a significant reduction in the number of outpatient contacts following service provision from the PBP. Even for those clients who were only seen for an assessment, there was a reduction in inpatient admissions and CATT contact.
- Most PBP clients found their participation in the program was a positive experience where they felt supported.

McCarthy et al. (2015)

Further, within the prison system, individuals with stalking charges are not able to access specialist PBP treatment because this falls outside PBP's remit. Prison-based Forensicare services currently are not resourced, or do not hold have the specialist expertise, to provide such specialist interventions.

Outside Forensicare, there are limited specialist options for stalking treatment. As noted, Corrections Victoria does not currently provide specific interventions for stalking behaviour (though some clients would receive individual psychological treatment if they were also considered a serious violent or sexual offender). There are a handful of private psychologists who provide treatment services for stalkers, but these practitioners are difficult to identify and access, and expensive as offending treatment will not be covered by Medicare (which is limited to treatment for mental illness). Private treatment is also not appropriate for all clients, given risk issues for the clinician in a private setting.

It must also be remembered that the vast majority of people who stalk are never sentenced to an order that compels them to attend treatment for their behaviour. Approximately 20% of people referred to the Problem Behaviour program for stalking do not come through the criminal justice

system but are referred by general mental health services, private practitioners, or occasionally, self-referred. Forensicare views providing assessment and treatment services to these individuals to be a central part of the organisation's role, however, the growing number of referrals from Corrections Victoria places at risk our ability to provide an ongoing service to people outside the criminal justice system and certainly prevents expansion of service provision to this group. **It is recommended that additional resourcing be provided to the PBP to allow Forensicare to offer more specialist services to people whose stalking behaviour does not attract criminal justice attention, but who present to community health, support services and other social services with stalking behaviour.**

26. How well are prison and post-prison rehabilitation or reintegration measures working for people who have committed stalking? How can they be improved?

It is difficult to know how many people who stalk are sentenced to imprisonment, as the majority of stalkers are not charged with stalking, but with alternative offences (and a substantial minority of people who are charged with stalking engage in behaviour that would not be considered stalking by most people; MacKenzie & James, 2011). The closest estimate can be drawn from Sentencing Advisory Council statistics on sentences for stalking offences.[2]
These suggest that just over one third of people who are convicted of stalking in the Magistrates' Court are imprisoned (noting that nearly 95% of stalking convictions occur in the Magistrates' Court). Even among the third of people sentenced to prison for stalking in Victoria, over 80% of sentences are for less than 12 months, meaning they will generally not enter treatment programs for offending behaviour. The frequency with which remandees are released directly from court following sentence is unknown, though this has increased dramatically over the past two years, meaning this group receives no treatment or monitoring at all in the community, regardless of risk of future stalking (which usually goes unassessed).

Therefore, at present it is impossible to say how prison and post-prison rehabilitation or reintegration measures work for people who have committed stalking. There is no way of knowing which offenders in prison have actually committed stalking beyond the very small number of stalkers who actually have stalking charges (noting that some of these individuals will have been charged for a pattern of behaviour occurring over minutes or hours, which is inconsistent with common understandings of what constitutes a stalking episode).

To improve prison-based services for people who stalk, it is recommended that a stalking flag be introduced by Corrections Victoria and that stalking is identified using behavioural criteria rather than charges alone. Depending on whether Victoria Police implemented a similar system, it may be possible to simply carry across a flag on the Victoria Police system through court and to Corrections Victoria so that stalking is easily identified even when alternative charges are used. Consideration might also be given to funding capacity for in-reach services from the PBP to enable Forensicare to provide assessment and treatment to identified cases in prison. This is particularly relevant for those serving short sentences or who do not have a potential parole period.

[2] https://www.sentencingcouncil.vic.gov.au/sacstat/magistrates_court/6231_21A.html

10. Should courts be able to order respondents to personal safety intervention order applications to attend treatment programs? If so, what kinds of programs and in what circumstances?

Given the absence of evidence for programmatic effect, courts must be careful when compelling individuals who have not been found guilty of any offence to attend treatment for problematic behaviour. Not all individuals would require treatment, though it certainly might be warranted in some cases, but this would undoubtedly require some sort of assessment and again, given the number of PSIO applications and orders, the level of resourcing for the actual benefit achieved may not be worthwhile. Referrals would also need to be made with the consent of the individual being referred, given there would be no conviction allowing an order to compel treatment. It is quite possible that individuals who would most benefit from treatment are those who are least likely to consent.

A primary issue is what kinds of treatment might actually be appropriate, with limited availability of services or practitioners that could provide appropriate assessment and intervention. As previously discussed, programs for intimate partner abuse are not appropriate for stranger or acquaintance stalkers, and arguably would not be appropriate for all ex-intimate stalkers. Moreover, wait lists for men's behaviour change programs are already very long, and adding more people to those lists would reduce access to those programs for men for whom such treatment is more clearly indicated.

Where major mental illness is thought to be present, MHARS clinicians could be asked to undertake an assessment at court, and make recommendations to the court. MHARS clinicians could also refer the person to their local Area Mental Health Service through liaison with the Forensic Clinical Specialist, with subsequent referrals to Forensicare occurring via existing procedures.

> There is also the very vexed issue of whether someone who may be subject to ongoing criminal investigation for stalking behaviour can properly engage in any sort of treatment for that behaviour when there is the potential that material from treatment could be subpoenaed and used against them at court. Kelly (2020) critiqued coercive treatment provisions in the UK *Stalking Protection Order Act* on this very basis, noting that coercive treatment requirements "do not sit comfortably with the prospect of the recipient contesting a future criminal trial" (p. 423). Unless provisions were made to protect the content of the treatment from use in subsequent criminal proceedings, such treatment would be unlikely to be of significant benefit to the individual, and it would be exceedingly difficult for the treating clinician to manage the limits of confidentiality.
>
> In the absence of a criminal conviction justifying coercive intervention, risk management may be indicated at the time of PSIO application (depending on the case), but coercive treatment is likely to be a step too far. **It is Forensicare's view that effective and timely risk management would be better facilitated through the kind of high-risk multi-agency panel recommended earlier in this submission rather than through the court at the time of PSIO application.**
>
> Such a clinic or panel could operate more rapidly than a court, with weekly or fortnightly meetings and referrals for assessment and treatment could be more targeted and informed by a wider range of information from multiple agencies. Given the partner organisations in such a clinic, it may be possible to facilitate treatment in a non-coercive manner through multi-

agency referrals, reducing the challenges of engagement with the person who is stalking. It may be appropriate, should it continue to be possible to seek PSIOs without any police involvement, that the court could refer a PSIO application to police if it meets certain risk-related criteria, thereby bringing the case into police stalking assessment and risk management processes and allowing it to be referred to the high-risk panel, should that be warranted. However, this would require the Magistrates' Court to be able to assess risk in all stalking-related PSIO applications, which seems impossible given the volume of PSIO applications. It may nevertheless be possible to resource the existing MHARS (Mental Health Assessment and Response Service, in which Forensicare clinicians are embedded in a range of urban Magistrates' Courts and the County Court) to have both skill and capacity to provide evidence-based assessments of risk and thus advice to the Court on potential future interventions.

References

Babcock, J., Armenti, N., Cannon, C., Lauve-Moon, K., Buttell, F., Ferreira, R., . . . Jordan, C. (2016). Domestic violence perpetrator programs: A proposal for evidence-based standards in the United States. *Partner Abuse, 7*(4), 355-460.

Bonta, J., & Andrews, D. A. (2016). *The psychology of criminal conduct* (6th ed.): Taylor & Francis.

Brandt, C., & Voerman, B. E. (2020). The Dutch Model: A new approach to policing stalking. In H. C. Chan & L. Sheridan (Eds.), *Psycho-criminological approaches to stalking behavior: An international perspective.* (pp. 247-268). Sussex, UK: Wiley.

Eckhardt, C. I., Murphy, C. M., Whitaker, D. J., Sprunger, J., Dykstra, R., & Woodard, K. (2013). The effectiveness of intervention programs for perpetrators and victims of intimate partner violence. *Partner Abuse, 4*(2), 196-231.

Gondolf, E. W. (2004). Evaluating batterer counseling programs: A difficult task showing some effects and implications. *Aggression and Violent Behavior, 9*(6), 605-631.

HMIC. (2017). *Living in fear - the police and CPS response to stalking*. Her Majesty's Inspectorate of Constabulary Report. Retrieved from: https://www.justiceinspectorates.gov.uk/hmicfrs/publications/living-in-fear-the-police-and-cps-response-to-harassment-and-stalking/

Kelly, R. (2020). The problematic development of the Stalking Protection Order. *Modern Law Review 83(2)* 406–427.

Kropp, P. R., Hart, S. D., & Lyon, D. R. (2008). *Guidelines for stalking assessment and management (SAM)*. Vancouver, BC: ProActive Resolutions Inc.

Lynch, K. R., & Logan, T. K. (2015). Police Officers' Attitudes and Challenges With Charging Stalking. *Violence and Victims, 30*(6), 1037-1048. doi:10.1891/0886-6708.VV-D-13-00085

MacKenzie, R. D. and D. V. James (2011). Management and treatment of stalkers: Problems, options, and solutions. *Behavioral Sciences & the Law* 29: 220-239.

MacKenzie, R. D., McEwan, T. E., Pathé, M. T., James, D. V., Ogloff, J. R. P., & Mullen, P. E. (2009). *Stalking risk profile: Guidelines for assessing and managing stalkers*. Melbourne: StalkInc. & Centre for Forensic Behavioural Science, Monash University.

McCarthy, J.,McGrail, J., McEwan, T., Ducat, L., Norton, J., & Ogloff, J.R.P. (2015). Evaluation of the Problem Behaviour Program: A Community Based Program for the Assessment and Treatment of Problem Behaviours. Melbourne, Victoria: Forensicare and Centre for Forensic Behavioural Science, Swinburne University of Technology.

McEwan, T. E. (2021). Stalking threat and risk assessment In J. R. Meloy & J. Hoffman (Eds.), *International Handbook of Threat Assessment* (2 ed.). Oxford: Oxford University Press.

McEwan, T. E., Daffern, M., MacKenzie, R. D., & Ogloff, J. R. P. (2017). Risk factors for stalking violence, persistence, and recurrence. *The Journal of Forensic Psychiatry & Psychology, 28*(1), 38-56. doi:10.1080/14789949.2016.1247188

McEwan, T. E., & Darjee, R. (2021). The Problem Behaviour Program: Threat Assessment and Management in a Community Forensic Mental Health Context. In J. R. Meloy & J. Hoffman (Eds.), *International Handbook of Threat Assessment* (2 ed.). Oxford: Oxford University Press.

McEwan, T. E., Harder, L., Brandt, C., & de Vogel, V. (2020). Risk Factors for Stalking Recidivism in a Dutch Community Forensic Mental Health Sample. *International Journal of Forensic Mental Health, 19*(2), 127-141. doi:10.1080/14999013.2019.1661885

McEwan, T. E., MacKenzie, R. D., & McCarthy, J. (2014). The Problem Behaviour Program: Threat assessment and management in community forensic mental health. In J. Meloy & J. Hoffman (Eds.), *International Handbook of Threat Assessment*. New York: Oxford University Press.

McEwan, T. E., Mullen, P. E., & MacKenzie, R. (2010). Suicide amongst stalkers. *Journal of Forensic Psychiatry & Psychology, 21*(4), 514-520. doi:10.1080/14789940903564370

McEwan, T. E., Shea, D. E., Nazarewicz, J., & Senkans, S. (2017). Re-assessing the link between stalking and intimate partner abuse. *Partner Abuse, 8*(3), 223-250.

McEwan, T. E., Simmons, M., Clothier, T., & Senkans, S. (2020). Measuring stalking: the development and evaluation of the Stalking Assessment Indices (SAI). *Psychiatry, Psychology and Law*, 1-27. doi:https://doi.org/10.1080/13218719.2020.1787904

McEwan, T. E., & Strand, S. (2013). The role of psychopathology in stalking by adult strangers and acquaintances. *Australian and New Zealand Journal of Psychiatry, 47*(6), 546-555. doi:10.1177/0004867413479408

McEwan, T. E., Strand, S. J. M., MacKenzie, R. D., & James, D. V. (2017). *Screening Assessment for Stalking and Harassment. Guidelines for Application and Interpretation*: Melbourne, Australia: StalkInc. Pty Ltd.

Mohandie, K., Meloy, J. R., McGowan, M. G., & Williams, J. (2006). The RECON typology of stalking: Reliability and validity based on a large sample of North American stalkers. *Journal of Forensic Sciences, 51*(1), 147-155. doi:10.1111/j.1556-4029.2005.00030.x

Morgan, V.A. et al. (2011). *People living with psychotic illness, 2010*. Canberra: Australian Government Department of Health.

Mullen, P. E., Mackenzie, R., Ogloff, J. R. P., Pathé, M., McEwan, T., & Purcell, R. (2006). Assessing and managing the risks in the stalking situation. *Journal of the American Academy of Psychiatry and the Law, 34*(4), 439-450.

Mullen, P. E., Pathé, M., & Purcell, R. (2009). *Stalkers and their victims* (2nd ed.). New York, NY: Cambridge University Press; US.

Mullen, P. E., Pathé, M., Purcell, R., & Stuart, G. W. (1999). Study of stalkers. *The American Journal of Psychiatry, 156*(8), 1244-1249.

Ngo, F. T. (2019). Stalking: an examination of the correlates of subsequent police responses. *Policing: An International Journal, 42*(3), 362-375.

Nijdam-Jones, A., Rosenfeld, B., Gerbrandij, J., Quick, E., & Galietta, M. (2018). Psychopathology of Stalking Offenders: Examining the Clinical, Demographic, and Stalking Characteristics of a Community-Based Sample. *Criminal Justice and Behavior, 45*, 712-741. doi:10.1177/0093854818760643

Purcell, R., & McEwan, T. E. (2018). Treatment approaches for stalking. In J. L. Ireland, C. A. Ireland, & P. Birch (Eds.), *Violent and Sexual Offenders: Assessment, treatment and management* (2nd ed., pp. 428-444). London, UK: Routledge.

Purcell, R., Pathe, M., & Mullen, P. E. (2004). Editorial: When do repeated intrusions become stalking? *Journal of Forensic Psychiatry & Psychology, 15*(4), 571-583. doi:10.1080/14789940412331313368

Rosenfeld, B., Galietta, M., Foellmi, M., Coupland, S., Turner, Z., Stern, S., . . . Ivanoff, A. (2019). Dialectical behavior therapy (DBT) for the treatment of stalking offenders: A randomized controlled study. *Law and Human Behavior, 43*(4), 319-328. doi:10.1037/lhb0000336

Rosenfeld, B., Galietta, M., Ivanoff, A., Garcia-Mansilla, A., Martinez, R., Fava, J., . . . Green, D. (2007). Dialectical behavior therapy for the treatment of stalking offenders. *The International Journal of Forensic Mental Health, 6*(2), 95-103. doi:10.1080/14999013.2007.10471254

Scott, A. J., & Sheridan, L. (2010). 'Reasonable' perceptions of stalking: the influence of conduct severity and the perpetrator–target relationship. *Psychology, Crime & Law, 17*(4), 331-343. doi:10.1080/10683160903203961

Tompson, L., Belur, J., & Jerath, K. (2020). *Multi-Agency Stalking Intervention Program (MASIP) evaluation final report*. Retrieved from London:

Warren, L. J., Mackenzie, R., Mullen, P. E., & Ogloff, J. R. P. (2005). The Problem Behavior Model: The Development of a Stalkers' Clinic and a Threateners' Clinic. *Behavioral Sciences and the Law, 23*(3), 387-397.