



Centre for Forensic
Behavioural Science

Submission to the Victorian Law Reform Commission Stalking Consultation

Prepared for the Victorian Law Reform
Commission

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This document is a submission of the Centre for Forensic Behavioural Science, Swinburne University of Technology. The views expressed in this document do not necessarily represent those held by the University more widely.

The case examples provided in this submission have been anonymised by altering key identifying information and combining information from difference cases where appropriate.

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We acknowledge the Traditional Owners of country throughout Australia and recognise their continuing connection to land, waters and culture. We pay our respects to their Elders past, present and emerging.

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Executive summary and recommendations

This submission is made by the Centre for Forensic Behavioural Science (CFBS), Swinburne University of Technology. The CFBS has unique expertise in the areas of forensic mental health and forensic behavioural science research. Its aims include understanding, predicting, and ultimately reducing offending and violence by people with mental illness or problem behaviours; and improving the legal system through empirical research and policy analysis.

This submission highlights the fact that to address stalking effectively, system change, not only changes to the law, are required. There is a need to ensure that agencies with responsibility for responding to stalking and protecting people who are stalked have processes to ensure recognition, risk assessment and appropriate risk management of people. As the submission makes clear, while there is some overlap between family violence and stalking; the dynamics typically differ and the reforms to the family violence system will not effectively address the stalking situation. This is particularly true from risk assessments and risk management of stalkers. Given the nature and harm caused by stalking, there is a need to provide information and support to victims of stalking, particularly those who experience non-family stalking, for which very few resources exist. The reforms will benefit from the inclusion of protective approaches in court. Given the complexity and breadth of stalking, there is a need for multi-agency cooperative responses for the highest risk cases. Notwithstanding the advances in research and practice that have been made in Victoria, further research funding is required that can assist with the development and evaluation of effective interventions for people who stalk. Finally, Forensicare has demonstrated

a significant degree of expertise as the specialist service in assessing, treating, and assisting in the management of stalker. However, additional funding would be required to expand the services to meet the broader needs identified in this submission.

Stalking is pervasive in the community, with approximately one in six people experiencing stalking during their lifetime. It is a complex phenomenon with a wide range of offender motivations and victim-perpetrator relationships. There is a lack of awareness of and knowledge about what stalking is in the general community as well as amongst agencies such as police, victim support services and courts. Whilst stalking is a crime in Victoria, many people are unaware of this or do not have an accurate idea of what constitutes the offence of stalking. This lack of awareness is a significant barrier to early recognition and timely and effective intervention, and to the effective use of the law to prevent harms from stalking.

Limitations in police and wider systemic responses to stalking behaviour have been observed right around the world and documented clearly for over two decades. All of this research and policy work has concluded that while a good stalking law is essential, understanding and application of the law by police, and appropriate policies for a graduated response to stalking are equally as important.

Stalking is harmful behaviour, both for those who experience it and those who perpetrate it. People who experience stalking should be able to rely on a professional response when they disclose that they are being stalked. They are entitled to practical and procedural advice, this includes having ready access to accurate and easy to

understand information about stalking, the potential risks involved and how to access legal and support services. Whilst systems have been developed to deal with family violence related stalking, no such systems exist for non-family violence related stalking and no specific support is available for people who experience non-family violence stalking.

People who experience stalking may present to a wide variety of agencies and organisations, including but not limited to, police, courts, and victim support services. A professional response to stalking cases should always, regardless of agency, be centred around victim safety. This means stalking should be identified and information gathered effectively so screening for elevated concern or risk can take place at the earliest possible opportunity to maximise the ability to resolve lower concern cases rapidly and protect victims of higher concern cases from harm. Comprehensive risk assessments are not required in all cases but will be needed where there is the need for detailed risk management plans that can guide intervention over time.

Stalking cases vary in complexity and risk. Having formal mechanisms to facilitate multi-agency cooperation will provide the best opportunity to effectively manage stalking cases that present the greatest risk of harm to victims and the community. While only the higher risk cases require formal multi-agency management, resolution of most stalking cases will be through intervention from multiple different agencies. Developing systems to respond to people who are stalked and people who stalk, and link them in with necessary supports, will be the most effective way of ensuring that harms are reduced, and that the safety and wellbeing of people being stalked is prioritised.

The criminal justice system is frequently not responsive enough to people who are being stalked. Police, who are the first point of contact with this system, need to shift from reactive responses focused on criminal investigation to preventative responses focused on harm reduction. Central to this is responding not just to individual incidents but recognising the course of conduct and actively trying to prevent cases from continuing and/or escalating. This requires a parallel approach that gives equal weight to criminal investigation and risk management appropriate to the level of risk/concern that is present in a given case.

Personal Safety Intervention Orders (PSIOs) in stalking cases are currently recommended without due consideration to whether they are appropriate and what the effects of such an order might be. In certain cases, a PSIO can increase the risk to the person being stalked and in others they are likely to have no effect on the person who stalks. Using PSIOs indiscriminately wastes court resources, potentially places victims in a more dangerous situation and does not stop the stalking. PSIOs can be useful if they are viewed as one of a suite of tools and strategies that the legal system has at its disposal to deal with stalking cases and they are used in a targeted way.

Where PSIOs are initiated in stalking cases, they should be initiated by police, so they are part of a system of targeted risk management. This will require consideration of supports and advocacy for victims who do not feel comfortable approaching police themselves, including people from Aboriginal and Torres Strait Islander backgrounds. Any police or court-related processes that encourage direct contact between a complainant and respondent should be avoided in cases identified as stalking. This includes mediation, and in-court procedures such as cross-examination and giving evidence.

Recommendations

Recognising and reporting stalking and victim support

1. Establish a Victorian stalking resource centre to provide easily accessible public information about all forms of stalking. For this to have the greatest impact, it should include both online static information (in multiple languages) and a telephone or online helpline (including chat functionality) staffed by people with specific expertise where people who are being stalked (and professionals who are dealing with stalking) can access information and general advice and guidance, some level of preliminary risk screening, and referrals to other services. A resource centre provides a central location for individuals and organisations to go to seek information about stalking, and access preliminary risk screening. Such centres can also provide training and locally tailored resources (e.g., infographics, pamphlets etc.) for other organisations to use in internal awareness raising (e.g., universities, workplaces).
2. A stalking resource centre would operate most effectively if embedded within a service that can provide advocacy and support to victims of stalking to assist them to manage the impacts of the stalking and navigate the criminal justice system. Such a service should be designated for victims and operate state-wide (via video conference in the main, with some ability to travel to victims in certain circumstances). A central role for such a service would be to provide clear advice and guidance for people about what various public and private agencies can do for them, what the process is (for example with regards to reporting to police), what they can expect and what may be expected of them if they choose to report the stalking. An advocacy service could also assist people in reporting to police who are wary of doing so.
3. If such a service is established, it should be established with partnerships with university groups who can collaborate on research and service evaluation. The Centre for Forensic Behavioural Science would be strongly supportive of establishing such a relationship with any victim support and advocacy service to build on Victoria's existing expertise in stalking. This would provide the opportunity to both develop new knowledge about stalking victimisation, what works for victims of stalking, and that back into improving practice within the service.
4. Consider whether there is a role for a recurring stalking awareness and information campaign (such as the 'National Stalking Awareness Week' in the UK) to provide a focal point for organisations to communicate about their strategies and to raise awareness and provide information to the general community.

Risk assessment, case management and multi-agency cooperation

5. Require organisations with a primary responsibility for responding to stalking and preventing harm (e.g., police, courts, mental health services, corrections) to implement a system that supports recognition, valid risk assessment, and risk management in stalking cases. Such a system should consist of the following elements:

- a. Knowledge of stalking and systems that will ensure recognition and understanding; this can be achieved through professional development, training, the creation of triggers to implement a decision-tree that can classify a case as stalking or not, and a way to access or refer to more extensive expertise if necessary.
 - b. The ability to assess stalking cases in ways that facilitate prioritisation/handling according to concern; this can be achieved through adopting validated screening tools and developing appropriate responses depending on the current level of concern (for example: referral to other services, more comprehensive risk assessment, safety planning).
 - c. Effective methods of responding to stalking according to the assessed level of concern/risk that maintain safety and resolve the stalking situation. This can be achieved through case management and multi-agency cooperation, both of which will be discussed in more detail below.
6. Establish an advice and advocacy service for people who are stalked that can link them with relevant support agencies and ensure cases that need to be referred to police are at the earliest possible opportunity.
 7. Establish a multi-agency Cooperative Stalking Service that can coordinate activity around the victim and perpetrator in the highest risk cases to ensure that cooperative risk management takes place. Such a clinic would require partnership from relevant agencies including Forensicare, Victoria Police, Corrections Victoria and ideally a specialist victim advocacy service.
 8. Investigate whether existing exemptions to the information and health information privacy principles could be used to facilitate information sharing, monitoring and management of stalking cases and maintain the safety and wellbeing of victims. If so, develop written guidance for agencies to assist them in disclosing and collecting information to manage stalking risk in accordance with existing privacy laws. If not, consider whether specific information sharing provisions for stalking cases need to be legislated.
 9. Investigate whether there are resources available to support pre-sentence interventions for people who are identified as being at increased risk of further stalking. This includes resources within the Magistrates' Court of Victoria for judicial monitoring and MHARS assessment, within CISP for case management, and within Forensicare's specialist assessment and treatment services for people who stalk.
- ### Criminal justice responses to stalking
10. Victoria Police should establish a Code of Practice for responding to stalking. This Code should emphasise the need to prioritise the safety of the person reporting stalking over and above the need to investigate and arrest or charge. This will require work within Victoria Police to ensure that officers are not penalised for spending time on these harm reduction and preventative responses rather than arrests and charges. Such a Code could draw on elements of the Victoria Police Code of Practice for the Investigation of Family Violence which emphasises the primary considerations of assessment of risk, prioritising victim safety, and finally the most effective means of holding perpetrators to account.

11. Use knowledge of best practice from research and examples from countries where they've enacted a policing response for stalking, such as the UK, the Netherlands and even the way the FV units investigate FV-related stalking in Victoria to inform a best practice model of policing. Such a model suggests specialist local teams to provide useful case management in cases at elevated risk, and a centralised highly expert team that can manage and facilitate multi-agency responses to the highest risk cases is best-practice internationally.
12. Digital forensic expertise needs to be used more widely to comprehensively investigate cyber-aspects of stalking cases and frontline police officers require a better understanding of cyberstalking and how to collect evidence in such cases
13. The Office of Public Prosecutions, and the unit that manages prosecutions within Victoria Police, should develop specific guidance for charging and pursuing stalking charges. This should include guidance on how stalking laws interact with and sit beside other state and Commonwealth laws, such as Use Carriage Service to Harass or Menace (section 474.17 of the Commonwealth Criminal Code contained in schedule one of the Crimes Act 1914 (Cth)) and Contravention of personal safety intervention order (PSIO Act 2010 (100)).
14. Court Services Victoria should investigate mechanisms that would allow cases where there is a history of stalking behaviour to be flagged and linked over time so that the court can more easily detect and put in place measures to prevent it being used as part of a campaign of harassment.
15. Given the complexity of reasons for stalking, and the high rates of recidivism, Victorian courts should be encouraged to request a specialist assessment, including risk assessment, of people who appear before them for stalking. There may be specific situations in which a report should be the default option. These are:
 - a. Where the person has stalked a stranger or an acquaintance
 - b. Where there is a history of previous stalking convictions involving other victims
16. Given the majority of people appearing before the courts for stalking behaviour are not actually charged with stalking, courts should implement a screening process (similar to that recommended for Victoria Police) so that potential stalking cases are identified and routinely referred for specialist risk assessment and recommendations. This screening could be required of prosecutors as part of the submission of charges in cases where the charges are for:
 - a. Persistent breach of intervention order or multiple breaches of intervention order
 - b. Carriage service or telecommunications service to menace/harass
17. If these recommendations are implemented, Forensicare is particularly well placed to conduct the assessments; however, additional resources would be required to enable Forensicare to undertake these assessments in a timely way to inform the court.

Personal safety intervention orders (PSIOs) and court processes

18. Applications for PSIOs should be required to go through a screening system to identify stalking cases. Such a screen could be applied by police, by court registrars or as part of an online system, with those identified as experiencing stalking diverted to contact either the stalking victim support service and/or their local police station. Such a screening system would need to be developed and piloted before being introduced to ensure that it is sufficiently accurate in capturing all cases that are deemed to be stalking, while excluding as many as possible of those where stalking does not appear to be present.
19. Consideration should be given to making PSIOs in stalking cases only able to be initiated by police. If implemented in conjunction with previous recommendations about police responses, this would ensure that PSIOs are part of a system of targeted risk management, rather than a default option. This will require consideration of supports and advocacy for victims who do not feel comfortable approaching police, including people from Aboriginal and Torres Strait Islander backgrounds. The previously recommended victim support and advocacy service could provide assistance in these cases so PSIOs are accessible.
20. Consider the introduction of courtroom procedures that reduce contact between complainants and the accused in stalking cases. Strategies adopted as part of the recommendations of the Royal Commission into Family Violence will be relevant, such as remote witness facilities, and prohibitions on direct cross-examination by the accused.

Offender interventions

21. Specific funding to support research into effective treatments for people who stalk is required. Forensicare and the Centre for Forensic Behavioural Science are uniquely positioned to undertake such research given our long history of research with people who stalk, existing assessment and treatment pathways, and our demonstrated ability to translate research in this area into practice.
22. Referral pathways to assessment and treatment for people in the criminal justice system should be reviewed to ensure that people are able to access specialist assessment and treatment in a timely way.
23. It is essential to improve pathways into treatment for people whose stalking has not brought them into contact with the criminal justice system. Victoria is unique internationally in already having a specialist service that provides such treatment, but its availability is limited by current resources. Further resourcing of the PBP to advertise this service and provide early intervention could assist in preventing persistent stalking cases from causing harm to the Victorian community.

Background

The Centre for Forensic Behavioural Science (CFBS), Swinburne University of Technology

The CFBS is Australasia's leading centre in the areas of forensic mental health and forensic behavioural science research, teaching and practice development. The aims of the CFBS include: understanding, predicting, and ultimately reduce offending and violence by people with mental illness or problem behaviours; and improving the legal system through empirical research and policy analysis.

Forensic behavioural science concerns the study of factors that underlie offending and human behaviour in the legal system. Forensic behavioural scientists are interested in understanding how individual characteristics interact with the environment to produce criminal behaviour, and what might be done to prevent such behaviour. Our work informs practice in the field of forensic mental health including the disciplines of psychology, psychiatry, mental health nursing, health sciences, social work, and occupational therapy. These professionals are responsible for the assessment and treatment of those who are, or have the propensity to become, mentally disordered, and whose behaviour has led, or could lead, to offending. More broadly, forensic behavioural science concerns the way in which offenders are identified and managed by law enforcement, courts and criminal justice systems. It includes both clinical and experimental approaches to understanding the legal system.

The CFBS brings together academics, clinicians, researchers and students from a variety of disciplines. The specialist areas of psychology,

psychiatry, social work, law, nursing, and occupational therapy are all represented. The CFBS was originally established as a centre in collaboration with Monash University and Forensicare in 2006. In 2014 the CFBS relocated to Swinburne University of Technology, while still being auspiced by Forensicare. Additional relationships exist through affiliations and contracts established with industry partners, such as Victoria Police, the Adult Parole Board of Victoria, Corrections Victoria, the Department of Justice and Regulation, the Department of Health and Human Services, and international agencies and organisations. A key focus of the Centre is to transfer academic and clinical excellence into practice in the health, community services and criminal justice sectors.

CFBS expertise in stalking

The CFBS is internationally recognised as a centre of stalking research and practice expertise. Distinguished Professor James Ogloff AM, who is the Director of the CFBS, holds a conjoint appointment as Executive Director of Psychological Services and Research for Forensicare. Associate Professor Troy McEwan is also a Senior Psychologist at Forensicare. Some other staff hold cross appointments between the CFBS and Forensicare. Staff from the Centre have been leaders in this field since the 1990s, with a program of stalking research that has led to the publication of more than 150 peer-reviewed journal articles and book chapters, three books and two risk assessment instruments. This program of research into stalkers and their victims has been strongly underpinned by seven completed doctoral theses over the past twenty years building new knowledge about stalking in areas as diverse as the prevalence and nature of

stalking victimisation; psychological characteristics of stalkers; stalking risk assessment; and community attitudes towards stalking. This research has had a strongly applied focus, with CFBS researchers being employed as psychologists and psychiatrists at Forensicare and establishing Forensicare's Problem Behaviour Program (which provides specialist assessment and treatment of people who stalk) and the Victorian Fixated Threat Assessment Centre (a joint police and mental health unit tasked with assessing and managing threat posed by fixated people).

Since the formation of the CFBS in 2007, research to improve understanding and responses to stalking has formed a major part of the Centre's outputs. In 2010 the CFBS was awarded \$554,000 from the Australian Research Council to undertake research into stalking risk assessment and treatment in partnership with Forensicare over a period of four years. In addition to conducting applied research with people who stalk, staff from the CFBS translate their research into practice through their training of practitioners as varied judicial officers, mental health practitioners, police, corrections staff and many others in Australia and internationally. The CFBS has strong links with leading stalking practitioners and researchers from around the world, collaborating on research into stalking in the United Kingdom, Sweden, the Netherlands and the United States.

Outline of submission

The Centre for Forensic Behavioural Science seeks to address the Terms of Reference requesting that the VLRC "identify barriers to current law effectively responding to stalking, harassment and similar conduct" (p. viii).

It is our strong view that reforms to improve Victorian responses to stalking should focus more heavily on the systems and processes that create barriers to effective implementation of Victoria's anti-stalking laws, rather than on changes to the law itself. Therefore, this submission is structured around five key areas that each present barrier to more effective responses to stalking, and ultimately to ensuring the safety and wellbeing of people who are stalked. These areas are:

- Recognising and reporting stalking and victim support
- Risk assessment, case management and multi-agency cooperation
- Investigating stalking
- Criminal justice responses to stalking
- Interventions with people who stalk

Drawing on our experience working and conducting research with both people who stalk and people who are stalked, our focus is primarily on the role that improved knowledge, systems and multi-agency working could play in better responses to stalking in Victoria. Each major section of the submission is broken into sub-sections focusing on different questions posed by the VLRC in their June 2021 Stalking Consultation Paper. Each sub-section presents a review of relevant research and practice, key implications, and then recommendations relevant to the VLRC's Terms of Reference and questions. Throughout the submission and we provide case examples to help highlight the heterogeneity of stalking situations, the challenges faced by people who are stalked when seeking help, and the complexities in assessing and managing stalking-related risks.

Introduction

The nature and prevalence of stalking

Stalking is defined as a pattern of targeted, repeated, and unwanted intrusive acts that can be reasonably expected to cause apprehension, distress, or fear in the victim (Mullen et al., 2008). Stalking behaviours range from the innocuous to the extreme; from unwanted communication and unwanted approaches to monitoring, destruction of property and physical assault (Quinn-Evans et al., 2021). Stalking can take place online (cyberstalking) and in person, via third parties and facilitated by modern technology (GPS-trackers, apps).

A stalking episode can last anywhere from several days to several years or even, in some extreme cases, decades (McEwan et al., 2009). People who stalk can be ex-partners (who account for just under half of all stalking cases) or other family members; acquaintances, such as neighbours, colleagues, clients or patients; or complete strangers (McEwan & Strand, 2013; Clarke et al., 2016; Spitzberg & Cupach, 2014; Storey, 2016). Stalking can impact significantly on the mental health and wellbeing of people who are being stalked and is prevalent amongst those who commit stalking (Korkodeilou, 2017; Logan, 2020; Nijdam-Jones et al., 2018).

International epidemiological research suggests that stalking affects between 17% and 30% of women and 4% and 12% of men in industrialized nations during their lifetime, with variation in estimates depending on the definition, sample, and method of inquiry. Victims are typically female (70–80%) and stalkers typically male (80–85%), with 10–20% of cases involving stalkers and victims of the same gender; most of these cases being male–male (Australian Bureau of Statistics, 2017; Pathé & McEwan, 2014).



Letter from a man stalking a woman with whom he would like a relationship:

'I wish I could tell you that there was a logical explanation or a tangible reason for my obsession with you, that has been going on for so long. But I can only repeat myself and list all those things that have affected me so deeply. The things that make me want to be part of your life, even if it is as the blackest page in your life, as your stalker.

Maybe I just want you to think about me every day or, preferably, every hour. Even if this is all I can achieve. I don't care what you think of me as long as you think of me; that I exist, that you know me and won't forget me.

That must be it, because how else can you explain why I have been harassing you for months with stupid emails, messages and requests via the digital highway. There is no doubt that you are the person who hates me the most and harbours the greatest resentment towards me. And it seems that this is something I have wished for.

I cannot explain my behaviour, I wish I could. It is not in my nature to harass, threaten and manipulate, yet it seems to come naturally. It really makes me sick.

Of course, I know what effect my emails and the comments they contain have on someone else, you especially. Despite this I have constantly deliberately sought out and crossed the boundaries. Even the threat of prosecution couldn't stop me. I just kept going as long as I possibly could.

I am yours forever. In good times and bad it seems.'¹

Stalking as a crime

In many jurisdictions stalking constitutes a crime, although the precise legal definition and criteria are jurisdiction dependent (Van der Aa, 2018). The first modern stalking law was introduced in California in 1990, and then around most of the Anglophone world, much of Europe, and parts of Africa and Asia throughout the 1990s and 2000s (though not without controversy in many jurisdictions (Van der Aa, 2018), including Australia (Dennison & Thomson, 2005).

From a legal perspective, it is challenging to legislate against stalking because it commonly includes behaviours that are, in and of themselves, innocuous. Although some stalkers are overtly threatening or violent, most of the acts that constitute stalking are part of everyday interactions: telephone calls, emails, social media communication, sending gifts, waiting for someone at their home, or visiting them at work.

¹ Taken from: Voerman, B.E & Brandt, C. (2016). *Eerste Hulp Bij Stalking. Praktische tips voor slachtoffers, hulpverleners en politie*. Utrecht: De Tijdstroom. (Translation: 'Standing up to Stalking. Practical tips for victims, mental health professionals and police').

It is the unwanted repetition and intrusive nature of these acts over time that develop into a menacing course of conduct that instils fear and distress in the target(s). As noted by McEwan and colleagues (2007), stalking is qualitatively different from, for example, the legitimate pursuit of a complaint or acceptable attempts to reconcile a failed relationship, but it has proved difficult for legislators to specify where such legitimate pursuit ends and when criminal sanctions are warranted (see also Ogilvie, 2000). In Victoria, the crime of stalking is defined under Section 21A of the Crimes Act (1958). Section 21A was enacted in 1995 and subsequently amended in 1997, 2003 and 2011.

Stalking laws, no matter how well designed, cannot in and of themselves stop stalking. Any law needs to be properly understood, applied and acted upon by those in the legal system to be effective. International research suggests that the major challenge for ensuring an adequate criminal justice response to stalking is in the implementation of laws, not necessarily the laws themselves. For victims of stalking, police are generally the first point of contact with the justice system (MacKenzie & James, 2011). It is therefore crucial that police officers understand stalking and how to respond and properly apply the law. Research has shown that police officers find stalking complex to understand and respond to (Lynch & Logan, 2015). Stalking is therefore under recorded (Brady & Nobles, 2017) or mis-recorded (HMIC, 2017) with victims often simply being told to keep a record of events and come back if the behaviour doesn't stop or escalates (Brandt & Voerman, 2020). Even when stalking is recognised, the criminal justice system can be unresponsive to the needs of victims of stalking (Van der Aa & Groenen, 2010).

Victims report to police because they want the stalking to stop, but the focus is too often on what is needed to successfully charge and prosecute the stalker and not enough on the current needs and safety of the person reporting (Brandt & Voerman, 2020). Risk to stalking victims is not routinely assessed and managed and victim care during the criminal justice process can be poor (HMIC, 2017).

Summary

Stalking is a common and damaging behaviour in modern society, as recognised by the introduction of legislation criminalising this behaviour across Australia in the 1990s. However, the presence of stalking laws is only the first step in ensuring adequate responses to this behaviour to protect victims and prevent harm (Taylor-Dunn et al., 2018). Regardless of how well stalking is defined in law, understanding what stalking is and effective implementation of legislation by police, prosecutors, and courts present significant challenges to ensuring that stalking receives a response that simultaneously ensures the safety of people who are stalked, denounces the behaviour as unacceptable, and ensures that people who stalk receive appropriate assessment and interventions to reduce the risk of it occurring again.

Recognising and reporting stalking and victim support

Recognising and reporting stalking

VLRC Question 1. What are the factors that influence whether people who experience stalking report their experiences to police? Are there barriers to reporting that need to be addressed?

VLRC Question 28. What are the barriers that some victim survivors experience when seeking help for cyberstalking?

Stalking can be difficult to recognise and understand, both for people experiencing it and professionals dealing with it (Brandt & Voerman, 2020). For many people who experience stalking, police are the first point of contact with the legal system. However, to report stalking to the police, people must first realise they are being stalked. Because stalking generally develops over time and many of the individual acts that constitute stalking do not in and of themselves cause fear or distress, people may not realise they are being stalked and/or may not perceive what is occurring as potentially criminal behaviour (Phillips et al., 2004). This is one reason that many people experience dozens or even hundreds of unwanted intrusions before the issue is reported to police – it is the cumulative effect of a pattern of behaviour, or an escalation in its perceived severity, that eventually causes sufficient concern that the person turns to police for help (Taylor-Dunn et al., 2018). During this time, and even after reporting to police, people often try to solve the problem themselves, either by ignoring it in the hope that it will stop, by changing their own routines, or by trying to reason with the stalker (Campbell & Moore, 2011; Voerman & Brandt, 2016).

Even when people do realise that they are being stalked, there can be other reasons they

hesitate to report it to the police. If the person stalking is an ex-partner, a colleague, a family member or former friend and there are shared friends, colleagues, family and /or children, the person being stalked may not want negative consequences associated reporting the stalker to the police (e.g., becoming involved in legal proceedings, causing harm to the person who is stalking). People who are stalked also often report feelings of guilt or shame that stop them from reporting it, and there may be fear of making the stalking worse (Pathé, Mullen & Purcell, 2001; Voerman & Brandt, 2016). Reyns and Englebrecht (2010, 2014) showed that people who experienced the stalking behaviour as more serious, who were afraid and who acknowledged the behaviours as stalking, were more likely to report to police.

Research shows that when people do report stalking to the police, they are usually unaware of what police can and should do for them and their experiences are often negative. Police are seen as unsupportive (Galeazzi, 2009; Dressing et al., 2020) and people reporting stalking feel blamed and not taken seriously (Taylor-Dunn, 2017). Even when police do take the report seriously, their responses are often considered ineffectual (Dressing et al., 2020).

There is a lack of knowledge about stalking, which can result in people being told there is nothing the police can do at this time or that no crime has been committed (HMIC, 2017; Pathé, Mullen & Purcell, 2001). People who have been stalked report that police often focus on threats of harm or violence and do not act if these are not present (Korkodeilou, 2020). In Victoria, it is our experience that police frequently advise

people to obtain a personal safety intervention order (PSIO) as a first response, even when there is ample evidence of a course of conduct causing psychological harm (see also MacKenzie & James, 2011). People who have these sorts of negative experiences when reporting to police may not report future stalking incidents and/or escalations of stalking behaviour (Taylor-Dunn et al., 2017).



Stuart is a dentist and has been receiving multiple letters at his practice over about three weeks that are addressed to him but come from someone he has never met. The letters are abusive and accuse him of malpractice but are not particularly coherent. The letters have gradually become more frightening, referencing Stuart's family and cultural background and saying that people like him should not be allowed to live. Stuart is left feeling worried and has changed how he works in the practice to ensure that no one is ever there alone.

Stuart goes to the police after two weeks but is told that there is nothing that police can do at this point as no crime has occurred. Unsatisfied, he attends a different police station where the officer is sympathetic to his situation and recommends that he take out a PSIO so that if there is another letter, police can act upon this as a contravention or the order. She tells Stuart that she will investigate whether there is some law that could be applied in this case but does not provide any advice on how to maintain his safety, or that his colleagues and family.

In many ways, cyberstalking is comparable to "offline" stalking and the negative impact of cyberstalking on victims' well-being appears to be similar to that of offline stalking² (Dressing et al., 2014, Sheridan and Grant, 2007). For victims of cyberstalking, as for victims of offline stalking, victims who experienced more overtly aggressive behaviour were more likely to report to police (Fissel, 2021). It is important to note that most cyberstalking cases consist of a combination of offline and online behaviours.

The strongest evidence for this comes from Dreßing, Gass, Schultz & Kuehner (2020) who conducted two epidemiological studies of stalking in Mannheim, Germany, the first in 2003 and the second in 2018. These studies showed that while the incidence of using emails to stalk tripled over 15 years, and while additional questions about different forms of cyberstalking were added in 2018, the overall prevalence of stalking was unchanged across the two studies.

2 For a comprehensive review of the cyberstalking literature see: Kaur, P., Dhir, A., Tandon, A., Alzeiby, E.A. & Abohassan, A.A. (2021) A systematic literature review on cyberstalking. An analysis of past achievements and future promises, *Technological Forecasting and Social Change*, 163, Article 120426.

The authors concluded that in the vast majority of cases cyberstalking is “an adjunct” (p. 351) to other stalking methods rather than a separate phenomenon. This conclusion is consistent with earlier similar research suggesting that ‘Cyberstalking may be viewed as simply another phase in an overall stalking pattern or it may be viewed as a regular stalking behaviour using new, high-technology tools’ (Boon & Sheridan, 2002, p.202).

Where cyberstalking is different is that it appears to receive more limited attention from police with victims often simply told to ‘stop using social media’ (Taylor-Dunn et al., 2017, p.8). Wei-Jung (2020) suggests three reasons for this. The first is that police lack knowledge and awareness of cyberstalking, which means they do not recognise it. The second is that there can be jurisdictional issues if the stalker lives in another state or country, making police and prosecution are less likely to pursue and investigation or charges (despite the fact that in Victoria the stalking law operates extra-territorially). The third is that it can be difficult to trace someone’s identity from their online presence, particularly if a stalker is skilled at using the internet to hide their identity. Todd, Bryce and Franqueira (2020) found that digital evidence is often not collected or used in stalking cases and concluded that there is a demonstrable need for frontline police officers to have an understanding of cyberstalking, so they can ‘effectively handle digital evidence from the point of first response’ (p.92).

One reason for these inadequate responses to stalking (whether it involves online or offline behaviour) may be common misperceptions about stalking. There is a significant body of research examining perceptions of and beliefs about stalking in the general community and

among police (e.g., Gavin & Scott, 2016; Scott et al., 2014; McKeon, McEwan & Luebbers, 2015; Chan & Sheridan, 2020; Scott, Nixon & Sheridan, 2013; Kamphuis et al., 2005; Lynch & Logan, 2015; Weller, Hope & Sheridan, 2013). This research shows that both the general community and professionals are prone to misperceptions about the nature, impact, risk and severity of stalking, which in turn influences whether they perceive stalking to be present. In general, people incorrectly rely on extreme behaviours that are crimes in and of themselves (e.g., threats or physical violence) to determine whether stalking is present. Positively, this research has also shown that people who have received specialist training or information about stalking tend to have fewer misperceptions about the behaviour (Harmon et al., 2004). These findings highlight that knowledge is key to aiding recognition of stalking and facilitating an appropriate societal and criminal justice response (Menard & Cox, 2016; Ogilvie, 2000; Brady & Nobles, 2017; HMIC, 2017).

Logic dictates that early recognition and intervention in stalking cases could prevent cases from persisting and escalating, and so maximise the safety and wellbeing of those affected. There is evidence that early interventions can be useful in stopping certain stalking cases (Van der Aa & Groenen, 2010). For example, a police-initiated warning or ‘stop conversation’ in the very early stages of a stalking episode can be instrumental in ending the stalking when targeted towards appropriate, lower risk cases (Brandt & Voerman, 2020; Ngo, 2020; Storey & Hart, 2011). An analysis of police data in the Netherlands showed that in over half of cases where police initiated a ‘stop conversation’ with a stalker, there were no further reports of stalking (personal communication, Bianca Voerman, July 6 2021).

However, these kinds of responses require both the person who is being stalked, and the police tasked with investigating and responding stalking to have sufficient knowledge about the subject matter to make informed decisions. This is simply not the case in Victoria at present, and the lack of knowledge extends into support agencies (particularly for victims of stalking by strangers or acquaintances) and courts.

Key message

There is a lack of awareness of what stalking is and that it can be a criminal offence amongst the general public and agencies such as police, victim support services and courts. This lack of awareness is a significant barrier to early and effective intervention, and the effective use of the law to prevent harms from stalking.

Victim support

VLRC Question 21. How can we improve victim services so that people who experience stalking have their needs met?

VLRC Question 23. How can we better integrate victim services with relevant public and private services and systems so that people are supported while they are being stalked?

VLRC Question 29. If a person suspects that they are being kept under surveillance using cyberstalking, what kind of help do they need to ensure that they are safe?

VLRC Question 3. What else 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?

We will touch on aspects of victim support throughout this submission, focussing on support from police as this is our primary area of expertise. The emphasis on support for victims reflects the fact that adequate support for people being stalked should be a key consideration from first report until the time that the stalking situation is resolved. Multiple studies have demonstrated the detrimental effects that stalking has on victims (Pathe & Mullen, 1997; Purcell et al., 2005; Kamphuis et al., 2003) and when they seek help, a poor response is likely to exacerbate those effects (Taylor-Dunn et al., 2017; HMIC, 2017). Most people who report

stalking simply want the stalking to stop; they want to be taken seriously and for the police and other helping agencies to bring the stalking to an end (Taylor-Dunn et al., 2017; Pathe, 2002).

Being stalked does not make people experts in stalking or in how to respond in the most effective way (Storey & Hart, 2011). This means that there is a need for practical information and advice for the person who is being stalked from the moment that they become aware of what is occurring. Moreover, people usually seek help (from police or other agencies) when the stalking is ongoing, and often when it has recently escalated (Voerman & Brandt, 2016).

This compounds the need for immediate information and practical advice, including on safety planning, how to collect evidence in a safe way, and strategies for mitigating the negative psychological effects that stalking can have (Boehnlein et al., 2020). If the person stalking is using or is suspected of using technology to stalk, people need advice on how they can check if this is occurring in addition to information on how to increase their online and physical safety.

Once someone has decided to report stalking to police, they also need to be provided with procedural information about the legal process. One of the key challenges for people who are

being stalked is that they feel they have no control over the situation (Voerman & Brandt, 2016), and lack of understanding of the criminal justice system can exacerbate these feelings. Having basic information about what police will do and why, how a case progresses through the legal system, and what they can expect at each stage of the process from police and the courts is essential information that is not difficult to provide, but not routinely given. In our experience people who are being stalked are often very understanding of the limitations of a criminal justice response if they feel they've been taken seriously and provided with adequate information and support.



'When I was being stalked the police were absolutely my best friend, regardless of how strange that may sound. They took me seriously and that was just what I needed. I had started to doubt myself, but they never doubted me. They did everything possible to help me. I could call the detective who was my contact at any time and when I did, he lost no time in reacting to my report.

I shared everything with the police. All at once they knew all there was to know about my life. I held nothing back; even the most embarrassing details were discussed. I was vulnerable and honest, and I think that helped. It allowed them to make a clear evaluation of the situation and they did their very best for me. They persevered throughout the entire time I was stalked. They continued to advocate prosecution for the stalker and to take measures to make him stop. This was not the case with other services/authorities I had to deal with.

The detectives kept me updated throughout their investigation. They discussed the steps they intended to take with me and kept me informed of all progress.

One thing I learned was the need to be assertive: to be honest about things you find unpleasant or frightening. Sometimes they came up with ways to deal with the stalker that put me in a difficult or insecure position. We discussed these things together.'³

³ Taken from: Voerman, B.E & Brandt, C. (2016). *Eerste Hulp Bij Stalking. Praktische tips voor slachtoffers, hulpverleners en politie*. Utrecht: De Tijdstroom. (Translation: 'Standing up to Stalking. Practical tips for victims, mental health professionals and police').

Victim advocacy services can also play an important role in helping someone who is being stalked understand their role in the criminal justice system and how they can respond to the stalking in ways that help to reduce the behaviour and its impacts. Being stalked is a frustrating, frightening experience. The stalker repeatedly crosses legal, moral and emotional boundaries while the person on the receiving end must keep themselves under control at all times lest they be perceived as contributing to the situation. Advocacy services can not only provide an understanding ear but can link people with mental health services that have an understanding of stalking and its detrimental effects. Importantly, such services can provide necessary practical advice and guidance on what (not) to do and explain why these things are important and assist with safety planning (Pathe, Mullen & Purcell, 2001; Voerman & Brandt, 2016).

While there are victim support services for family violence related stalking cases, no such specialist supports currently exist in Victoria for victims of non-family violence related stalking. Moreover, victims of stalking by a family member who is not an intimate partner, or where the person being stalked is not female, will find it difficult to access many family violence services due to their client volume and limited resources. Some people can access victims of crime helplines and similar supports, but these organisations do not have the specialist knowledge of stalking that allow them to give the kind of safety and wellbeing information, and linkages to appropriate services, that are available for people subject to family violence-related stalking.

When considering the kinds of information and supports needed by people who are being stalked it is essential to not be bound to existing models of victim support and advice that have been developed for family violence.

Stalking occurs in a wide variety of situations and advice that is accurate and appropriate in family violence contexts where there is an ongoing relationship between victim/survivor and perpetrator will not be appropriate for stalking situations where there is no current relationship, and potentially never has been. While family violence resources may be adequate for those who are stalked by former intimate partners or other family members (though noting that such supports are generally not available for males or those who are targeted outside of an intimate relationship), such resources will not be appropriate for many of those stalked by strangers or acquaintances.

There are international examples of best practices approaches to these issues so that the needs of people who are being stalked are met more effectively. In the Netherlands, police created an information folder in several languages that could be handed out to people reporting stalking with, amongst other things, links to support agencies. A similar information package was developed by the charity Action Against Stalking in Scotland. In the UK, there are independent stalking advocates, who can provide advice, support and advocacy services to victims and who can take part in multidisciplinary case management meetings (see: <https://veritas-justice.co.uk/stalking-advocacy-services/> and <https://www.aurorand.org.uk/news/stalking-advocate/>).

Unfortunately, at present these services do not have strong relationships with local universities and so their work over many years has not resulted in research or evaluation that can be communicated to and translated into practice in other sites. This is a significant shortcoming as there is insufficient knowledge about what works to assist victims of stalking to cope effectively with the situation and to help bring the stalking to an end.

Key message

People who are being stalked deserve to be taken seriously and receive a professional response. They are entitled to practical and procedural advice to help them stay safe and navigate the criminal justice system, and should be able to access support services that have some knowledge of stalking (including cyberstalking). At present in Victoria, these kinds of responses are not available in any routine way to those who are stalked by someone other than a former intimate.

Recommendations

1. Establish a Victorian stalking resource centre to provide easily accessible public information about all forms of stalking. For this to have the greatest impact, it should include both online static information (in multiple languages) and a telephone or online helpline (including chat functionality) staffed by people with specific expertise where people who are being stalked (and professionals who are dealing with stalking) can access information and general advice and guidance, some level of preliminary risk screening, and referrals to other services. A resource centre provides a central location for individuals and organisations to go to seek information about stalking, and access preliminary risk screening. Such centres can also provide training and locally tailored resources (e.g., infographics, pamphlets etc.) for other organisations to use in internal awareness raising (e.g., universities, workplaces). Multiple examples of such resource centres exist internationally: The Survivors Trust <https://www.thesurvivorstrust.org/faqs/>; Action Against Stalking [Our story | Action Against Stalking | Scotland; home_en - StopStalking \(stop-stalking-berlin.de\)](#); Suzy Lamplugh Trust [About stalking | Suzy Lamplugh Trust](#); SPARC [The Stalking Prevention, Awareness, and Resource Center | SPARC \(stalkingawareness.org\)](#); and Office for Victims of Crime https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/helpseries/HelpBrochure_Stalking.html.
2. A stalking resource centre would operate most effectively if embedded within a service that can provide advocacy and support to victims of stalking to assist them to manage the impacts of the stalking and navigate the criminal justice system. Such a service should be designated for victims and operate state-wide (via videoconference in the main, with some ability to travel to victims in certain circumstances). A central role for such a service would be to provide clear advice and guidance for people about what various public and private agencies can do for them, what the process is (for example with regards to reporting to police), what they can expect and what may be expected of them if they choose to report the stalking. An advocacy service could also assist people in reporting to police who are wary of doing so.

Recommendations (continued)

3. If such a service is established, it should be established with partnerships with university groups who can collaborate on research and service evaluation. The Centre for Forensic Behavioural Science would be strongly supportive of establishing such a relationship with any victim support and advocacy service to build on Victoria's existing expertise in stalking. This would provide the opportunity to both develop new knowledge about stalking victimisation, what works for victims of stalking, and that back into improving practice within the service.
4. Consider whether there is a role for a recurring stalking awareness and information campaign (such as the 'National Stalking Awareness Week' in the UK) to provide a focal point for organisations to communicate about their strategies and to raise awareness and provide information to the general community.

Risk assessment, case management and multi-agency cooperation

Assessing stalking risk

VLRC Question 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?

VLRC Question 3. What else 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?

There is a significant body of research about the risks of and risk factors associated with stalking (McEwan, 2021; James & Sheridan, 2019). Risk in stalking is multifaceted and goes beyond the risk of physical violence to include the risk that the stalking will continue, and the risk that once stopped, it will recommence in the future. We know from our colleagues' work with people being stalked that they are most often concerned about whether the stalker is going to be violent towards them or their loved ones and whether the stalking is going to persist (Mullen et al., 2008). From a criminal justice system perspective, the risk of recidivism, or recurrence, is also relevant as it relates to sentencing options and the need for offender treatment (McEwan et al., 2017). This is discussed in more depth in the section on Offender Interventions.


Physical and, to a lesser degree sexual, violence is relatively common in stalking situations, with rates varying between 20% and 50% in most samples (depending on sampling location and composition: Dressing, Kuehner, & Gass, 2005; Mason et al., 2019; McEwan et al., 2021; McEwan, Mullen, MacKenzie, et al., 2009; Mohandie, Meloy, McGowan, & Williams, 2006; Purcell,

Pathé, & Mullen, 2002; Rosenfeld & Harmon, 2002; Thompson, Dennison, & Stewart, 2013). Most violence that is identified as occurring during stalking episodes does not involve serious injury. However, stalking can involve very severe and even fatal violence. In samples drawn from community forensic mental health settings in Australia, the United States and the Netherlands, approximately 5% of referrals involve serious violence (defined as violence causing injury or use of a weapon McEwan, Daffern, et al., 2017; McEwan et al., 2019; McEwan, Mullen, MacKenzie, et al., 2009; Rosenfeld & Harmon, 2002).

It is important to note that despite claims from some researchers that up to three quarters of intimate partner homicides are preceded by stalking (McFarlane, Campbell, & Watson, 2002; Monckton-Smith, Szymanska, & Haile, 2017) these studies conflate stalking and intimate partner abuse during the relationship. Such behaviour might be more usefully conceptualised as coercive control rather than stalking. It is unknown how many homicides are actually preceded by stalking once intimate partner abuse during relationship is excluded.

Ongoing research at the CFBS suggests that approximately 5% of reported homicides in Victoria between 1995 and 2015 have evidence of stalking prior to the homicide from court records. It is also important to note that just because a behaviour is common in homicide cases, this does not make it a good risk factor for homicide. There are tens of thousands of stalking cases in Australia each year and the overwhelming majority of them do not end in homicide, meaning that the presence of stalking alone is not a good risk factor for homicide. This does not mean that stalking cases at increased risk of physical violence cannot be identified with some measure of accuracy (acknowledging that there will always be error) but assessing the risk of homicide itself is not possible given how infrequently it occurs.

The risk of violence in a stalking situation is obvious and concerning, but the risk of harm from a persistent stalking episode must not be underestimated. The psychosocial effects of stalking are well documented and include anxiety, sleep disorders and depression (Dressing et al., 2020; Taylor-Dunn et al., 2017). People who are stalked become fearful and lose trust in other people, thereby isolating themselves ever further (Korkodeilou, 2017, 2020). Victims describe the constant threat and anticipation of further harassment as making them feel powerless (Johansen et al., 2016; Voerman & Brandt, 2016).



'I cannot begin to describe what it feels like to be unable to shake off the idea that you could be attacked in the street at any time. It feels like walking around with a target painted on your back and, in the end, you are alone, and no one can protect you.

While I was being stalked, I became more and more isolated. I was afraid to just pop out to the shops or go for a walk. At one point I had even given up using my bicycle for a few months because he was always following me. He would corner me with his car when I was on my bike. The idea of leaving my house had me flat on the sofa hyperventilating with fear. Suddenly he appeared everywhere I was, and I thought perhaps he could follow me using the Find my iPhone function on my phone. You become paranoid and see ghosts wherever you look.'⁴

4 Taken from: Voerman, B.E & Brandt, C. (2016). *Eerste Hulp Bij Stalking. Praktische tips voor slachtoffers, hulpverleners en politie*. Utrecht: De Tijdstroom. (Translation: 'Standing up to Stalking. Practical tips for victims, mental health professionals and police').

Identification and effective information gathering

It is important to differentiate between frameworks for identifying stalking and gathering necessary information about it, and risk assessment. It can be useful for agencies to have a standardised framework to help them identify when stalking might be present, and then gather information about the stalking that is necessary to provide useful advice to the person being stalked, and to inform later risk assessment. However, this kind of framework is not a risk assessment itself, and specific approaches for stalking risk assessment are discussed further below.

People who are being stalked can present to various agencies: police, mental health, victim support services, child protective services, housing, local council, etc. They may describe the behaviour they are experiencing as stalking, but often people report particular behaviours that are causing them fear or distress or a particular incident that has caused them to seek help. It is therefore important that the person receiving the report knows to ask about a potential course of conduct to ascertain if stalking is present. Once stalking is reported and recognised, it needs to be immediately assessed with the victim's safety in mind. This requires adequate knowledge on the part of the professional receiving the report, but also a system that will allow professionals to screen for the presence of stalking and level of risk or concern.

Approaches for identifying stalking will differ depending on the agency involved. In agencies or organisations that have a primary responsibility for responding to stalking (e.g., police, corrections, courts, mental health, stalking

helpline, security units), there is an argument for having a standardised system to guide information seeking so that stalking is routinely identified. For example, this might involve having certain triggers for using a structured framework or decision tree that can guide the assessor to identify the key components of stalking (e.g., repetition, unwanted nature of contact, fear/distress in the target) and determine whether stalking is present or not. Where stalking is present, they can then go on to gather further information about the stalking episode and conduct an initial screening for risk/concern. In organisations for whom responding to stalking is a secondary concern (e.g., human resources departments, ombudsmen's offices, general helplines, private mental health, professional bodies, solicitors, local councils, housing organisations, complaints bodies, religious and cultural organisations and associations) the most effective strategies are likely to be twofold. First, increasing awareness of stalking through targeted awareness campaigns as part of awareness campaigns for the general community will be useful. Second, requiring that some of the organisations (e.g., general mental health services, human resources departments, professional associations and regulatory bodies, ombudsman's offices and complaints bodies) have formal guidance and policies and principles for responding to stalking will likely go some way towards ensuring that there are pathways for people who are stalked to access assistance (Jutasi & McEwan, in press).

In addition to implementing a standard information gathering framework for organisations who are primary responders to stalking, it is essential that this information is recorded in an accessible and communicable way. Research has shown that people who are

being stalked report that having to repeatedly explain what is happening to them to a new person as frustrating and stressful and contributes to failure to report stalking (Van der Aa & Groenen, 2010; Brandt & Voerman, 2020). Because stalking is not a discrete event, requiring victims to repeatedly speak to different people who have no knowledge of their previous police reports, also means information is fragmented and potentially lost, including information that could be crucial to assessing the level of risk or concern. It is therefore considered best practice for people who are identified as being stalked to be assigned a contact within the agency they are reporting to who knows the case. This can be supplemented by IT systems that ensure that stalking victims are flagged so that summary information is easily accessed as soon as a further report is made. This can be complex in criminal justice systems that are typically incident based rather than facilitating recording of a course of conduct that persists over time. However, creating flags in police systems and court records that allow easy identification of the course of conduct and the need to respond in kind is essential to ensuring that changes in risk can be monitored and risk management adapted appropriately.

Structured risk assessment

Structured assessments for assessing the ranges of risks present in stalking situations exist and all have been subject to some level of validation (see McEwan, 2021, for review). These assessment instruments range from a quick set of 10-16 questions that can be used to conduct

an immediate threat assessment based on limited information (ideal for frontline settings such as police, helplines victim support services, child protection and workplace security settings), to comprehensive structured professional judgement guidelines that require specialist knowledge and training (ideal for forensic mental health and specialist assessments and advice in the criminal justice system such as courts, corrections and policing). Due to the heterogeneity of stalking situations, it is unlikely that an actuarial (e.g., a mathematically derived) risk assessment instrument will be developed, and all existing stalking risk assessment instruments are rationally derived. The three stalking-specific instruments that exist are:

- The Screening Assessment for Stalking and Harassment (McEwan et al., 2017)
- The Stalking Risk Profile⁵ (MacKenzie et al., 2009)
- The Guidelines for Stalking Assessment and Management (Kropp et al., 2008)

While more research into these instruments is required, there is little justification for developing a new risk assessment instrument to guide Victorian responses to stalking. Rather, embedding existing brief validated instruments into information gathering frameworks so they can provide an initial screen and highlight cases that require more thorough assessment and management is a useful first step.

5 Troy McEwan is a co-author of the Stalking Risk Profile and the Screening Assessment for Stalking and Harassment and James Ogloff is a co-author of the Stalking Risk Profile. Neither receive any direct financial benefit from sales of the guidelines. Troy McEwan and Cleo Brandt both receive income for facilitating training in the Stalking Risk Profile.

Responding to risk assessment

All reports of stalking require some response, but the nature of that response should be differentiated by the level of risk or concern that is present in a given case. Cases that prompt more concern or are assessed as presenting a higher risk of negative outcomes should receive proactive risk/case management in addition to routine responses that the organisation does in every case (e.g., criminal investigation, providing information to the person reporting, etc.). Cases presenting the greatest level of concern require the most urgent response to prevent harm.

This means that any case identification and risk assessment framework operating at the frontline should take place in a tiered system. This would involve relatively rapid information gathering and screening for immediate concern at the first level using an appropriately validated instrument. Cases screened as being of standard concern go on to receive a routine response and very basic preventative responses (e.g., providing information to the person report, possibly a stop conversation or PSIO), while those at elevated concern receive additional ongoing case management to manage risk (with varying degrees of urgency) and potentially further specialist comprehensive assessment to guide subsequent interventions. The highest risk stalking cases will require some level of multi-agency cooperation to manage effectively and prevent harm to the person being stalked (discussed further below).

In contexts that do not involve immediate frontline responses to people being stalked (e.g., courts, corrections, forensic mental health), comprehensive risk assessment is required to provide expert evidence to identify which people might require additional intervention to prevent future stalking and harm to the community. It must be borne in mind that high risk in this context can mean high risk of continued stalking (and violence during the stalking) and/or high risk of a recurrence of future stalking involving a different victim.

Key message

Risk assessment in stalking cases is possible and should be separated from identification of stalking and effective information gathering. There are existing tools with preliminary validation that could be adopted for this purpose, though further research into the validity of these tools in different settings is required.

Screening for elevated concern or risk should take place at the earliest possible opportunity to maximise the ability to resolve lower concern cases rapidly and protect victims of higher concern cases from harm. Comprehensive risk assessments are not required in all cases but will be needed where there is the need for detailed risk management plans that can guide intervention over time.

Recommendations

5. Require organisations with primary responsibility for responding to stalking and preventing harm (e.g., police, courts, mental health services, corrections) to implement a system that supports recognition, valid risk assessment, and risk management in stalking cases. Such a system should consist of the following elements:
 - a. Knowledge of stalking and systems that will ensure recognition and understanding; this can be achieved through professional development, training, the creation of triggers to implement a decision-tree that can classify a case as stalking or not, and a way to access or refer to more extensive expertise if necessary.
 - b. The ability to assess stalking cases in ways that facilitate prioritisation/handling according to concern; this can be achieved through adopting validated screening tools and developing appropriate responses depending on the current level of concern (for example: referral to other services, more comprehensive risk assessment, safety planning).
 - c. Effective methods of responding to stalking according to the assessed level of concern/risk that maintain safety and resolve the stalking situation. This can be achieved through case management and multi-agency cooperation, both of which will be discussed in more detail below.

Case management, information sharing and multi-agency cooperation

VLRC Question 3. What else 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?

VLRC Question 5. In the family violence intervention order system, information sharing is allowed. Should there be a similar framework for information sharing between agencies providing services for stalking? If so, how should it work?

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

Case management in stalking situations

Management of ongoing risk in any stalking situation requires a responsible person in the managing organisation (a case manager), and a evidence-based approach for assessing how much and what kind of case management is required.

Effective case management in a stalking situation requires a designated person being responsible for oversight of the case, who can conduct ongoing assessments about the level of concern that is present in the case over time. Although stalking clearly carries with it several possible risks for victims, from an ongoing case management perspective, it makes more sense to focus on current 'level of concern' than on the wider level of risk for those at the frontline. A comprehensive risk assessment can provide information about the overall likelihood of further similar behaviour and identify specific factors that are thought to be related to that behaviour. Conducting such assessments can be time consuming and requires a reasonable amount of information about the presence of a wide range of risk factors, so the ultimate risk judgement is made based on an appropriate level of evidence.

Assessing immediate level of concern is a more flexible concept. Concern does not connote any judgement about the likelihood of future behaviour, merely that there is increased concern that something might occur based on what is known at a given point in time. Because of this, concern judgements can be made relatively quickly based on limited information that is available at an initial report and are flexible enough to account for changing circumstances and as information is gathered (Meloy et al. 2011). Cases that are low concern can immediately be provided with routine responses, while those causing more concern are prioritised for further investigation and management, including comprehensive risk assessment where that is needed. As the situation changes, concern level may also quickly change, and a case may move from being low concern to higher concern and so receive additional preventative management to prevent adverse outcomes (Meloy et al., 2011; McEwan et al., 2017).

Case management and monitoring of higher concern cases is necessary, not just to ensure the best possible information position when developing a case management plan, but also to allow for rapid adjustment of that plan based on new information. It needs to balance actions geared towards a long-term goal (resolving the stalking case) with more immediate short-term goals (ensuring victim safety). If a stalker has been arrested and charged, but not remanded, for example, this will require both an immediate response (informing the victim, taking extra safety precautions if necessary) as soon as the stalker is released as well as a potential adjustment to the longer-term plan. If there is no system in place that addresses both these short and long-term requirements, actions in individual cases will be heavily reliant on the individual professionals involved and the results will therefore be very variable.

The concept of targeted and flexible case management of stalking cases based on levels of concern and effective information sharing has already been adopted in other countries. In the UK, the Multi-Agency Stalking Interventions Program (MASIP) trialled three different approaches to multi-agency cooperation (Tompson, Belur & Jerath, 2020) to improve responses to stalking. The evaluation found overall positive results, with stakeholders and offenders reporting high levels of satisfaction and promising preliminary data suggesting health interventions for people who stalk were successful and re-offending rates had decreased. Victims were positive about the presence of victim advocacy in the MASIP model, noting that this 'informed and empowered them', but also that 'this did not necessarily translate to the rest

of the criminal justice system (i.e., the courts)' (Tompson et al., 2020, p.5). The cost benefit ratio of investment in this kind of multi-agency response was found to be 'beneficial for the state' given the substantial costs associated with persistent and often violent stalking situations (Tompson et al., 2020, p.6).

Information sharing

A key element of effective case management is good information sharing between agencies involved in the case. In the threat management (Calhoun & Weston, 2015) and family violence literature (Mason et al., 2017) the concept of the 'silo effect' is well known and occurs when different parties or agencies all possess some information, but they fail to share this information or communicate about it. This means each actor is working towards their own goal, when successful threat management should be about working towards a shared goal.

The same holds for case management in stalking cases, everyone involved should be working towards a common goal of stopping the stalking and preventing further harm to the person(s) being stalked. In Victoria, recognition of this need to share information has led to the Family Violence Information Sharing Scheme (FVISS), but there is currently no such scheme for non-family violence stalking cases.

Whether such a scheme is required in Victoria for stalking is unclear. The number of organisations involved in managing stalking cases is smaller than in family violence as there is no existing service sector. Stalking cases involving former intimates or estranged family members are already covered by the FVISS. It may be that

the agencies that are routinely involved in managing active stalking situations (e.g., police, mental health (public and private), corrections, forensic mental health, and some limited victim and offender support services) could share information under existing provisions in the Information Privacy Principles and the Health Information Privacy Principles. There are exemptions in these principles to allow for disclosure, collection and use of information without the consent of the individual if there is a reasonable belief that there is a serious threat to an individual or public welfare, or that unlawful activity is being engaged in, or to assist police.

Given the targeted and persistent nature of stalking behaviour, it is likely that these provisions of the existing privacy legislation could be used to share information between relevant agencies and organisations. This would likely be made easier if specific guidance were made available to agencies about how and when they can share information in cases where there is a targeted threat.

The need for specialist, multi-agency support

People who stalk and people who are being stalked often have needs that influence their stalking behaviour and/or resilience, for example mental health issues, problematic drug and alcohol use, housing problems and unemployment. Because of this, multi-agency management of both groups is often required to ensure that any risk management response is sufficient to stop the stalking. This looks somewhat different for people who are stalked and people who stalk, but the first step in both instances is having a location where the person can go (or be referred) that can guide subsequent cooperative management.

Support for people who are stalked

The most important support required for people who are stalked is a specialist victim support and advocacy service that can provide them with tailored and appropriate advice about responding to stalking, assist them in

communicating with other agencies, advocate for them through the criminal justice system, and refer them to other treatment and support services. Ideally such a service could conduct screening for increased concern and refer cases directly to police for further action and would be linked with agencies who provide primary responses to stalking through a multi-agency risk management panel (see following section).

These kinds of specialist stalking victim support services simply do not exist in Australia, though they have been established across the United Kingdom and in Denmark, Germany and in parts of the United States (see Boehlein et al., 2020; Tompson et al., 2020; Harmon et al., 2004; Larsen, Bomholdt & Hundahl, 2020; https://www.stop-stalking-berlin.de/en/home_en/). In the UK, the National Stalking Helpline operates effectively (our understanding that the helpline operates with financial support from the UK government).

Support for people who stalk

For those who stalk, any factors that play a role in perpetuating the stalking episode need to be identified and managed appropriately, be it through informal police interventions such as the stop conversation and proactive police monitoring, formal legal interventions, such as intervention orders, charges, remand, imprisonment, probation and compulsory mental health treatment, or other targeted interventions, such as workplace management, psychiatric treatment, psychological treatment for behaviour, substance use treatment and social supports. Some of this is covered in the later section on Offender interventions. However, specialist services available through the courts are likely to be effective in many stalking situations, particularly those assessed as being at lower to moderate risk/concern.

For example, programs such as the Court Integrated Services Program (CISP) and the Mental Health Advice and Response Service (MHARS) can help to identify key drivers of stalking behaviour and refer people who stalk to services for support and intervention. Similarly, judicial monitoring for some stalking offenders may be appropriate.

Examples might be people whose stalking has been assessed as being the result of a major mental illness and so monitoring via the Assessment and Referral Court could be helpful. If the use of judicial monitoring is recommended by the VLRC, it must be informed by a specialist assessment of the person who is stalking by an organisation such as Forensicare to ensure that the conditions attached to the monitoring actually address the causes of the stalking behaviour. Such an assessment must

be focussed on the stalking behaviour, not the general needs of the individual and so needs to be undertaken by a specialist service. This is likely to be particularly important in cases of stalking by people who are strangers to or acquaintances of the victim, where mental illness may play a more central role in the stalking behaviour. To be possible to meet the demand, Forensicare would require additional funding to support such a service.

Examples of multi-agency working in stalking cases and applicability to Victoria

Services like these can only be accessed by those whose cases are brought to court, which will often be some time after interventions can be most effective in reducing harm. Therefore, there is also the need for systems that facilitate multi-agency case management and information sharing in higher risk cases while they are still being investigated by police, or even those that are reported to agencies other than the police. Internationally, best practice models for this kind of multi-agency work have been developed in the United Kingdom and the Netherlands (they also exist in other jurisdictions, but we are less familiar with those services).

In the UK, MASIP used three different approaches to multi-agency cooperation in stalking cases (Tompson, Belur & Jerath, 2020). In London a multi-agency unit was established where police, forensic mental health, probation and victim advocacy staff were co-located and proactively identified stalking within policing and probation systems, and provided a specialist risk assessment and management response, including treatment of some stalkers through the forensic mental health service. The benefits of this approach are that there is a central location

that can develop highly specialist knowledge and responses to stalking. The negative of this approach is that this knowledge and response is limited to the organisations and people directly involved in the unit, and the unit itself can become 'siloes' from other parts of the organisations involved. The MASIP location in Cheshire was similar, though had more limited involvement from forensic mental health, with the clinicians were actually employed by police rather than being co-located and intervention only offered by specialist correctional staff. In Hampshire, specialist staff from police, corrections, a local victim advocacy service, and the forensic mental health service met regularly to identify concerning cases and ensure that they received appropriate risk assessment and were linked in for management.

The Netherlands used an approach like in Hampshire but using a network of existing victim support services. Once the National Police developed a new approach and process for dealing with stalking cases (including screening for concern and risk), they began making more effective use of already existing structures, so-called Safety Houses⁶ (Brandt & Voerman, 2020). The Safety Houses were created to tackle complex care and safety issues that exceed any one domain (family violence, radicalisation and violent extremism, reintegration of ex-detainees who pose a safety risk, people with mental health issues who pose a safety risk, etc.) Safety Houses are auspiced by the local council (which has powers equivalent to the Victorian State Government) and brings together victim support agencies, policing, (forensic) mental health, housing and other relevant organisations in

weekly meetings. Any one of the partner agencies can nominate a case for discussion and case management with cases then brought back as required for monitoring.

The kinds of approaches used in MASIP and the Netherlands 'coordinate activity around the victim and perpetrator' (Tompson, Belur & Jerath, 2020, p.4) and create a way to facilitate information-sharing, assessing concern, safety planning and case management and monitoring whilst also having safeguards in place to prevent information from being used in ways that are not appropriate.

Victoria has some unique features that mean that the kind of multi-agency model used in the Netherlands and Hampshire could be implemented relatively easily by existing organisations if funding was available. The concept is similar to the Risk Assessment and Management Panels (RAMPs) that already exist for family violence, meaning the concepts and some structures are familiar. However, an equivalent multi-agency Cooperative Stalking Service in Victoria could be run on a state-wide basis given the expected numbers of higher risk stalking cases that would require this kind of response (noting that many cases of ex-partner stalking would likely still be managed by RAMPs, so a stalking clinic would be more heavily focussed on non-family violence related stalking).

The obvious agencies to be involved in such a clinic would be Victoria Police, Forensicare, Corrections Victoria, CISP, and a victim advocacy service that provided specialist response for stalking victims. It may also be appropriate for

6 <https://www.youtube.com/watch?v=CMJNCMnDwak>

general mental health services and Child Protection to have optional seats in the clinic where they could bring cases as needed. This kind of clinic or panel approach would need each organisation to have its own internal response to stalking that could identify priority cases that would be brought to the clinic weekly or fortnightly for discussion, and some specialist staff positions that are dedicated to coordinating and enacting responses within their agency (this would be particularly important for the police, CISP, corrections and victim services which would likely bring most cases). Unlike Hampshire and the Netherlands, Victoria already has a specialist assessment and treatment service for people who stalk in the Problem Behaviour Program at Forensicare, meaning obtaining specialist risk assessment and facilitating referrals to general mental health where needed would be relatively more straightforward here than in either of those locations.

The primary aims of a cooperative stalking clinic would be:

- to ensure that cases identified as high risk are brought to the attention of each involved organisations for a holistic response with shared goals;
- to identify who is responsible for managing risk in each case, and ensure that risk and responsibility are shared between involved organisations;
- to provide specialist risk management advice in high risk cases;
- to facilitate information sharing, referrals, and cooperative risk management;
- to provide an accountability mechanism so that each organisation is clear about their responsibilities in the case.

Key message

Stalking cases vary in complexity and the level and nature of risks they present. Having formal mechanisms to facilitate multi-agency cooperation will provide the best opportunity to effectively manage stalking cases that present the greatest risk of harm to victims and the community. While only the highest risk cases require formal multi-agency management, resolution of many stalking cases will require intervention from multiple different agencies. Developing systems to respond to both people who are stalked and people who stalk, that can link them in with necessary supports, will be the most effective way of ensuring that harms are reduced, and that the safety and wellbeing of people being stalked is prioritised.

Recommendations

6. Establish an advice and advocacy service for people who are stalked that can link them with relevant support agencies and ensure cases that need to be referred to police are at the earliest possible opportunity.
7. Establish a multi-agency Cooperative Stalking Service that can coordinate activity around the victim and perpetrator in the highest risk cases to ensure that cooperative risk management takes place. Such a clinic would require partnership from relevant agencies including Forensicare, Victoria Police, Corrections Victoria and ideally a specialist victim advocacy service.
8. Investigate whether existing exemptions to the information and health information privacy principles could be used to facilitate information sharing, monitoring and management of stalking cases and maintain the safety and wellbeing of victims. If so, develop written guidance for agencies to assist them in disclosing and collecting information to manage stalking risk in according with existing privacy laws. If not, consider whether specific information sharing provisions for stalking cases need to be legislated.
9. Investigate whether there are resources available to support pre-sentence interventions for people who are identified as being at increased risk of further stalking. This includes resources within the Magistrates' Court of Victoria for judicial monitoring and MHARS assessment, within CISP for case management, and within Forensicare's specialist assessment and treatment services for people who stalk.

Criminal justice responses to stalking

Investigating and prosecuting stalking

VLRC Question 16. Can the criminal law response to stalking be improved?

VLRC Question 17. You might like to consider whether:

- a. there are any challenges in identifying when a person has engaged in a course of conduct or in obtaining evidence to demonstrate a course of conduct*
- b. the list of conduct in section 21A(2) of the Crimes Act 1958 (Vic) covers all types of stalking behaviour*
- c. cyberstalking is adequately covered*
- d. the law presents any barriers to investigating, charging and prosecuting offenders for stalking conduct.*

VLRC Question 4. What approaches or techniques should be used by law enforcement agencies when investigating stalking complaints?

VLRC Question 30. In what ways can apps and smart devices be used to facilitate stalking? What controls could be put in place to prevent apps and smart devices being used to facilitate stalking?

VLRC Question 6. Should there be a specific police Code of Practice for reports of stalking? If so, what should it cover?

Ensuring effective use of existing law

Stalking is a course of conduct, the individual elements of which may or may not amount to separate crimes. Therefore, if the course of conduct is not recognised, it can result in no criminal charges being laid or (an) individual act(s) being separately charged, resulting in a lesser sentence than would be the case if the total course of conduct were charged. A recent UK study of the police and prosecution

response to stalking found that 'both police and prosecutors continue to treat incidents as a single event, and therefore the patterns of behaviour are not properly understood' (HMIC, 2017, p.8). There is no equivalent Australian research, however anecdotal accounts and our experience of assessing people who stalk for the courts and Corrections Victoria suggest that similar patterns are true here.



Jenny is being stalked by her neighbour, Andy. She has spoken informally to police at the local police station several times about Andy's behaviour, but it hasn't stopped. She now wants to officially report him to police but they say there is nothing they can do.

Jenny is a single mother with three young children. She lives in an apartment and Andy is her next-door neighbour. Andy is known to police; they regularly receive noise complaints from other neighbours in the building, because he plays loud music in the middle of the night. Andy also rings doorbells and bangs on windows. Police have shown up on numerous occasions for various incidents and everyone in the building knows Andy 'is not quite right'.

Since Jenny moved into the apartment, three months ago, Andy has become convinced she is his ex-girlfriend, Sarah. He calls her Sarah when he sees her. He regularly stands on the landing outside her apartment looking through the kitchen window, sometimes until late at night. He rings the doorbell several times a day on some days and says things like 'Sarah, can I come in', 'Sarah are you coming with me?' Jenny has had to instruct the children to never open the door. On seven occasions Andy has hung a plastic bag on Jenny's front door handle. The bags contained dirty laundry, gift cards, Andy's house keys, a photograph of Andy, several onions and a Christmas hat.

Last week Jenny looked out of her kitchen window and saw that Andy had covered the entire balustrade on the landing in toilet paper. She and the children are becoming quite afraid because Andy's behaviour is getting ever stranger.

Reviews of non-fatal (HMIC, 2017) and fatal stalking cases⁷ (e.g. Inspectie J&V, 2019; Gateshead Community Safety Board, 2018; Commissie Eenhoorn, 2016) clearly illustrate several key issues in police responses to stalking:

- Victim safety should be the primary focus; instead the focus is too often on the criminal justice response.

- Police work processes are fragmented and communication and cooperation both within and between agencies is lacking.
- No one feels responsible, there is no case ownership and no case management.
- Risk to the victim is not assessed and even if there is a realisation that the victim may be at risk, this risk is not managed.

7 Swinburne is currently conducting in-depth research into homicides that were preceded by stalking in Victoria.

Research into police understanding of and response to stalking, including cyberstalking (e.g., Ngo, 2018; Brady & Nobles, 2017; Brandt & Voerman, 2020; Wei-Jung, 2020) suggests it is a lack of understanding of stalking and stalking laws that causes problems when responding to such cases, and that greater understanding leads to an improved response (Lynch & Logan, 2015; Ngo, 2018).

Due to the ongoing nature and complexity of stalking cases, dealing with them effectively requires more from police than a reactive or 'standard' policing response. As Diemer et al. state: 'the simpler 'crime fighting' approach to 'solving crimes' may need a more nuanced approach in which training, supervision and discretion may be as relevant as it is in policing domestic violence' (2017, p. 349). It is not reasonable to expect every single police officer to have detailed knowledge about a specialised topic as stalking. As with other complex areas of crime, such as Family Violence and Sex Crimes, frontline police need enough knowledge and understanding to recognise stalking and provide some basic advice to people reporting, then the capacity to refer more serious cases that require additional risk management to specialist investigators for a proactive response.

Several authors have studied police units that were specially set up to respond to cases such as stalking (e.g., Williams, Lane & Zona, 1996; Storey and Hart, 2011). These studies showed that specialist units were focused on case management; they used a wide range of management tactics, including so-called 'extra-legal' tactics and focused on cultivating

relationships with others in order to stop the stalking. This approach is also used successfully by units targeting those who are fixated on public figures, such as members of royal families and/or politicians, such as VFTAC in Victoria, FTAC in the UK and TDM in the Netherlands (Sizoo & Nobelen, in press; James & Farnham, 2016). It is also consistent with recent changes to Victoria Police responses to high-risk family violence cases, which are similarly characterised by persistent behaviour, with Family Violence Investigation Units tasked with taking preventative actions.

A specialist response is also required when investigating cyberstalking/technology facilitated stalking. There are many ways in which technology can be used to stalk (see Eterovic-Soric et al., 2017 for a comprehensive overview),⁸ but also to detect stalking behaviour. Investigating cyberstalking requires specific knowledge and a particular skillset, which is why police employ digital forensic specialists. This knowledge, however, is often not brought to bear on stalking investigations (Todd, Bryce, Franqueira, 2020; Wei-Jung, 2020) with victims simply told to 'stop using social media' (Taylor-Dunn et al., 2017, p.8). As previously noted, Todd, Bryce and Franqueira (2020) found that digital evidence is often not used because it is not collected; there is a demonstrable need for frontline police officers to understand cyberstalking, so they can 'effectively handle digital evidence from the point of first response' (p.92).

8 So-called spy-shops offer resources that even ten years ago would have been unavailable to most people. They can be utilised by both stalkers and victims. See for example: [Hidden Cameras Spy Cams Spy Gear - The Spy Store Australia](#)



Rachel is a 24-year-old woman who works as a model. She uses social media extensively to showcase her work and new employers often find her through one of her social media pages. When Rachel posts photographs or stories about work she has been doing, people regularly respond with comments. Usually these are positive, although she has received some abusive messages too. Since about six weeks she has noticed that one user is responding to her Instagram posts very regularly. The messages started off as quite crude and brief comments on her appearance, but they have become longer and more concerning.

The user who is leaving the comments has also sent her a number of private messages consisting of sexually explicit and detailed sadistic fantasies. Rachel's manager suggested she go to the police, who told her it was difficult to trace the user and that they would not put resources towards investigating anonymous online abuse. Rachel was advised to block the user and consider staying off social media for a while.

Rachel's manager has decided to monitor the messages because he finds them very concerning. A month after Rachel went to the police, she receives a message that has an attachment. It is a photograph of Rachel saying goodbye to her partner at her front door. Rachel and her manager go to the police again and this time she is taken more seriously, and police manage to link the IP address to a user in another state.

Other jurisdictions have tried to support police and prosecutions with specific codes of practice for responding to stalking. For example, in the UK, the Crown Prosecution Service (CPS) has issued legal guidance on stalking and harassment and there is a 'Protocol on the appropriate handling of stalking or harassment offences between the National Police Chiefs' Council and the Crown Prosecution Service'.⁹ The UK College of Policing has issued Advice for First Responders in stalking cases that has translated into specific policies for individual police forces across the UK (see for example <https://www.sussex.police.uk/SysSiteAssets/foi-media/sussex/policies/stalking-and-harassment-policy-578.pdf>).

In the Netherlands, police developed and implemented a new work process for policing stalking (Brandt & Voerman, 2020). While these changes are all relatively recent, the need for guidance to ensure effective police responses to stalking has been recognised for at least the past two decades, as evidenced by the 2002 publication of a Model Protocol for Community Oriented Police Response to Stalking by the US Department of Justice (<https://www.policefoundation.org/wp-content/uploads/2015/06/Creating-an-Effective-Stalking-Protocol-2002.pdf>).

9 [Stalking and Harassment | The Crown Prosecution Service \(cps.gov.uk\)](#)

Differentiating harassment and stalking in criminal law

While many stalking situations do not attract sufficient attention from the criminal justice system, stalking laws can also be inappropriately used for behaviours that MacKenzie and James (2011) described as 'banal', for example when someone has only sent two text messages, or when a person followed someone and spoke to them twice during one evening. It has previously been argued (McEwan, Mullen & Mackenzie, 2007) that a clear differentiation between harassment and stalking in section 21A could provide a solution to this problem. Harassment could be defined as a summary offence consisting of a targeted course of conduct involving behaviours listed in section 21A(2) of the Crimes Act 1958 (Vic), which did persist for more than 48 hours. This would stop the stalking law from being used in cases that do not warrant a charge of an indictable offence, while still providing an opportunity to respond to meaningfully to harassment that is deemed socially unacceptable. This would also be consistent with the purpose of the PSIO Act (2010) Section 1, which explicitly lists harassment as a behaviour that the Act is intended to protect people from. The bifurcation of harassment and stalking has led to problems in some jurisdictions, such as the United Kingdom, but this is because the two concepts and patterns of behaviour are not clearly distinguished in the relevant legislation (see Middlemiss, 2014 for description of the English and Welsh law).

Introducing a maximum duration for harassment to separate it from the more serious offence would overcome this issue and reflect the research literature suggesting that more persistent episodes of unwanted intrusion are associated with negative impact on those targeted (Purcell et al., 2004).

Such a change would of course need to be accompanied by education for police and prosecutors to avoid inappropriate use of multiple harassment charges in stalking cases, rather charging the more serious offence for a prolonged course of conduct.

Key message

Shortcomings in police and wider systemic responses to stalking behaviour have been observed around the world and documented clearly for over two decades. Research and policy work in this area has strongly concluded that while an effectively drafted stalking law is essential, understanding and application of the law by police, and appropriate policies for a graduated response to stalking are equally as important.

To protect people who are stalked, police must shift from reactive responses focused on criminal investigation to preventative responses focused on harm reduction. Central to this is responding not just to individual incidents but recognising the course of conduct and actively trying to prevent cases from continuing and/or escalating. This requires a parallel approach that gives equal weight to criminal investigation and risk management appropriate to the level of risk/concern that is present in a given case.

Criminal investigation of stalking cases and use of stalking laws would be assisted by giving greater priority to these cases, commensurate to the harm that is caused. This includes, for example, using digital forensic expertise in stalking cases, and ensuring that there is a specialist risk management response in higher concern cases, beyond what can be provided by frontline police.

Recommendations

10. Victoria Police should establish a Code of Practice for responding to stalking. This Code should emphasise the need to prioritise the safety of the person reporting stalking over and above the need to investigate and arrest or charge. This will require work within Victoria Police to ensure that officers are not penalised for spending time on these harm reduction and preventative responses rather than arrests and charges. Such a Code could draw on elements of the Victoria Police Code of Practice for the Investigation of Family Violence which emphasises the primary considerations of assessment of risk, prioritising victim safety, and finally the most effective means of holding perpetrators to account.
11. Use knowledge of best practice from research and examples from countries where they've enacted a policing response for stalking, such as the UK, the Netherlands and even the way the FV units investigate FV-related stalking in Victoria to inform a best practice model of policing. Such a model suggests specialist local teams to provide useful case management in cases at elevated risk, and a centralised highly expert team that can manage and facilitate multi-agency responses to the highest risk cases is best-practice internationally.
12. Digital forensic expertise needs to be used more widely to comprehensively investigate cyber-aspects of stalking cases and frontline police officers require a better understanding of cyberstalking and how to collect evidence in such cases.
13. The Office of Public Prosecutions, and the unit that manages prosecutions within Victoria Police, should develop specific guidance for charging and pursuing stalking charges. This should include guidance on how stalking laws interact with and sit beside other state and Commonwealth laws, such as Use Carriage Service to Harass or Menace (section 474.17 of the Commonwealth Criminal Code contained in schedule one of the Crimes Act 1914 (Cth)) and Contravention of personal safety intervention order (PSIO Act 2010 (100)).

Stalking by law

Whilst criminalising stalking has offered welcome legal avenues of tackling stalking cases, it is important to draw attention to the fact that the law, courts, agencies and complaints bodies can also be used to facilitate and perpetuate stalking (Pathe, Mackenzie & Mullen, 2001).



Dr Parker is a forensic psychiatrist who assessed Mr Williams four years ago in the context of other offences. Mr Williams is aggrieved about the fact that Dr Parker diagnosed him as suffering from a narcissistic personality disorder and testified to that effect in court.

For the last three and a half years, Mr Williams has been lodging complaints against Dr Parker with various professional bodies and organisations that she is a member of. None of these complaints have been upheld, but Dr Parker is obliged to respond to each one and take part in the proceedings. As soon as one proceeding ends, another is initiated. Dr Parker has attempted to speak to the complaints bodies about Mr William's harassment of her via these proceedings, but she was informed due process was to be adhered to.

Mr Williams also sends Dr Parker letters telling her she has ruined his life and to 'take back' her diagnosis and tell the court she lied, or he will 'get her' when he gets out of prison. He also posts negative and abusive texts about her online and emails similar messages to Dr Parker's employer and colleagues. Mr William's sentence is almost at an end and Dr Parker is concerned for her safety once he is released. The ongoing stress has had an effect on Dr Parker's physical and mental health. She has had to take sick leave on a number of occasions. She is anxious, her sleep is affected and when the latest envelope from a complaints body arrived, she burst into tears at the thought of having to respond to yet another complaint.

Stalking by proxy occurs when 'stalking activities are perpetrated by others on the stalker's behalf (Mullen, Purcell & Pathe, 2009, p.157), for example when friends or family members speak to the person being stalked to get them to reconcile with the person who is stalking. A recent US study found that one third of study participants reported having experienced stalking by proxy (Logan, 2020). Courts (including family courts), professional associations or

regulatory bodies, police, correction services, HR departments, mediation services, child protection and other formal agencies can all be inveigled into becoming part of a stalking campaign by co-opting their normal processes. Most such organisations appear unaware of the fact that their standard information gathering procedures could be used for nefarious purposes and have few checks and balances in place to minimise the chance that this could occur.

When the use of the legal system or complaints mechanisms become part of a stalking episode, stalking can overlap with vexatious litigation and querulousness. Querulants, or unusually persistent complainers, are people for whom complaining has become pathological; the phenomenon can be viewed through a psychiatric or a legal lens (Levy, 2014; Mullen & Lester, 2006). In the English-speaking world, the legal lens has been prevalent, leading to the criminalisation of such behaviour and people being described as vexatious rather than pathological litigants (Levy, 2015; Mullen & Lester, 2006). We note that in December 2008 the Victorian Parliamentary Law Reform Committee undertook an 'inquiry into vexatious litigants' and recommended 'better case management and more training and guidance for the judiciary and court and tribunal staff' to 'prevent and better manage vexatious litigants' (Law Reform Committee, 2008, p.29), mirroring best practice in stalking cases.

Whilst the behaviour and mindset of the stalker and the vexatious litigant show many similarities (e.g., sense of entitlement, seeing themselves as the victim, repeated behaviours), most stalkers who use courts and/or complaints bodies to stalk would not meet the threshold for being declared vexatious litigants. Pathe, MacKenzie and Mullen (2004) provide an extensive overview of how stalkers can use the 'justice system to trace, to harass and to enforce contact with their victim' (p.104). It sadly is not unusual, for example, for a stalker to obtain their victim's new phone number/address/email address because it was listed on court documents provided to them. If stalking is not recognised, people who experience stalking can be forced to take part in mediation or face their stalker in court, not only adding to their distress, but also potentially prolonging or exacerbating the stalking episode (Voerman & Brandt, 2016).

Key message

Courts, complaints bodies and offices with similar functions need to know they may be used by someone engaging in stalking behaviours and be able to recognise when this is occurring. They need to have appropriate responses in place to respond to such cases.

Recommendation

14. Court Services Victoria should investigate mechanisms that would allow cases where there is a history of stalking behaviour to be flagged and linked over time so that the court can more easily detect and put in place measures to prevent it being used as part of a campaign of harassment.

Specialist risk assessment for court

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

The research literature on stalking recidivism suggests that at least half of people who report stalking to police experience continued stalking after the first report. Moreover, in a Dutch sample of people assessed as part of court order for stalking, half had subsequent police reports for continuing to stalk the same person, while at least 20% went on to stalk someone new (McEwan, 2020; Hehemann, K., et al. 2017). In a Victorian sample of 235 people assessed at Forensicare for stalking, 26.4% were charged with further stalking-related offences (15% stalking the same person as in their Forensicare assessment) over an average follow-up time of approximately 4 years (McEwan et al., 2018). These statistics indicate that there is a group of people who are at increased risk of further stalking behaviour and who might be targeted for interventions intended to reduce that risk.

One way of ensuring that such interventions occur is to make them a condition of sentence. This requires a specialist risk assessment to inform the court of whether the person is actually considered high risk of further stalking, and the nature of any interventions that are appropriate.

In Victoria, courts can already request a specialist risk assessment report in stalking cases at the discretion of the judicial officer. These reports are written for the court (rather than for the defence or prosecution) after a plea or finding of guilt and are requested with the express intent of informing sentence. All of these reports are written by clinical and forensic psychologists or forensic psychiatrists employed by Forensicare, with specialist expertise in stalking behaviour and risk assessment.

At present there are no specific requirements for judicial officers to request a report in a stalking case. Such reports are often requested if there is concern about the presence of mental illness, or if there is a history of previous stalking and there are concerns about risk.

Recommendations

15. Given the complexity of reasons for stalking, and the high rates of recidivism, Victorian courts should be encouraged to request a specialist assessment, including risk assessment, of people who appear before them for stalking. There may be specific situations in which a report should be the default option. These are:
 - a. Where the person has stalked a stranger or an acquaintance
 - b. Where there is a history of previous stalking convictions involving other victims

16. Given the majority of people appearing before the courts for stalking behaviour are not actually charged with stalking, courts should implement a screening process (similar to that recommended for Victoria Police) so that potential stalking cases are identified and routinely referred for specialist risk assessment and recommendations. This screening could be required of prosecutors as part of the submission of charges in cases where the charges are for:
 - c. Persistent breach of intervention order or multiple breaches of intervention order
 - d. Carriage service or telecommunications service to menace/harass

17. If these recommendations are implemented, Forensicare is particularly well placed to conduct the assessments; however, additional resources would be required to enable Forensicare to undertake these assessments in a timely way to inform the court.

The Personal Safety Intervention Order (PSIO) system and court processes in stalking cases

VLRC Question 7. Should there be an option under the Personal Safety Intervention Orders Act 2010 (Vic) for police to be able to issue the equivalent of a Family Violence Safety Notice? Why/why not?

VLRC Question 8. Should a person making an application for a personal safety intervention order be able to do so online? If yes, in what circumstances?

VLRC Question 9. Should respondents be prevented from personally cross-examining the affected person in some personal safety intervention order matters? If so, in what circumstances?

Personal Safety Intervention Orders (PSIOs)

Intervention or protective orders are used in many jurisdictions (Baldry et al., 2016), though to our knowledge Victoria was one of the first jurisdictions to implement such orders outside of a family violence context (McEwan et al., 2007). There is some research on the perceived and actual efficacy of such orders. Protective orders can be effective in stopping stalking (Meloy et al., 1997), but in some cases orders do not protect the applicant, instead exacerbating the stalking and/or providing a false sense of security (MacKenzie & James, 2011). Intervention orders are breached in a significant number of cases and many stalkers 'test' such orders to see what will engender a police response (McMahon & Willis, 2003).

The likelihood that intervention orders will be effective in actually stopping stalking is dependent upon the nature of the stalking situation. In low concern cases they can act as a formal 'warning', indicating that people have noticed the behaviour and that it will not be tolerated. This is likely to be effective in bringing the stalking to a halt (Strand, 2012). It is possible that a 'stop conversation' (in which police formally

notify the person that their behaviour could lead to criminal charges) would be equally as effective in these cases without the resource implications of having a formal order issued by a court and served by police.

In more concerning cases however, an intervention order is likely to be less effective as a protective measure and may simply be a tool that allows police to pursue criminal charges when the order is breached. However, using a PSIO in this way requires that both the police and the person reporting the stalking are aware that the order is unlikely to have any protective effect, and that any breaches must be very actively pursued as this is the entire point of putting the order in place. Failing to respond to breaches may actually increase risk in these cases because it shows the person they can continue with impunity and adds to victims' distress and lack of trust in police (HMIC, 2017). This method of using orders must be done carefully and in a considered way that is matched by appropriate risk management to ensure that it does not increase risk to the person being stalked.

At present in Victoria, anecdotal experience suggests that it is common for Victoria Police members to advise people who report threats, harassment or stalking to apply for a PSIO as a first step. This is problematic as there is no consideration of the characteristics of the individual case, meaning that people who are being stalked may have an inaccurate sense that they are safe due to the order, even though the order could actually exacerbate their risk.

Putting an order in place also places the onus of responding on the victim, who must observe the breach, notify police, and often collect evidence that the breach occurred. Even when people are able to do these things, police are often slow to react to reports and lack knowledge about effective enforcement options, which is frustrating for victims and can contribute to distrust of the police (Fischer, Cleven & Struijk, 2019).

Key message

PSIO's can be useful if they are viewed as one of a suite of tools and strategies that the legal system has at its disposal to deal with stalking cases and they are used in a targeted way. Victims should be provided with advice and guidance if a PSIO is issued and potential risks and benefits weighed and managed.

Police-initiated PSIO Applications

In non-family violence related stalking cases in Victoria, people who are being stalked can apply for a Personal Safety Intervention Order (PSIO), the purpose of which is to protect their safety and to 'to promote and assist in the resolution of disputes through mediation where appropriate' (PSIO Act 2010, Sect 1(a)(b)). Police can also apply for a PSIO on behalf of the person being stalked (PSIO Act 2010, Sect 15(e)).

Given that PSIOs are not suitable in all stalking cases, there is an argument to be made police should be responsible for making an application for a PSIO on behalf of the person being stalked in all cases where stalking is identified. This could then be undertaken as part of a considered risk management plan in situations where the level of concern/risk suggests it is likely to be effective

as a preventative measure. This reduces the chance of police recommending a PSIO in lieu of stalking charges as stalking has already been identified and the preventative element of the order is emphasised. Where a PSIO is considered unlikely to be protective, other risk management measures should be implemented by police.

There are a number of other benefits to having police initiate PSIOs in all stalking cases. It will give police better oversight of the case and the opportunity to discuss with the person being stalked what the PSIO can actually achieve (or not). Police-initiated PSIOs also better reflect the first principle of stalking management, which is that there should be no contact between the person stalking and the person being stalked (Dressing et al., 2020; Mullen et al., 2006).

Asking the person being stalked to initiate a PSIO makes them responsible for frustrating the stalker rather than the police (Voerman & Brandt, 2016). Our anecdotal experience suggests that at present PSIOs are not being used as part of a risk management plan, but as a default response rather than considering whether stalking is actually present. It is unclear whether people who are told by police to get a PSIO are currently being provided with adequate information and advice about how this could anger or frustrate their stalker, how it could increase their risk and that they need to be mindful of this.

It is also unlikely that they will always be informed about when the order is going to be

served so that they can plan to, for example, not be at home on that day or take other necessary precautions.

Having police be responsible for initiating PSIOs in stalking cases would mean that online applications would not be necessary. The potential cost of this approach is that people who are distrustful of police might be less able or willing to seek protection. This is where a central victim advocacy and support service is required. Such a service could provide direct support to people who wish to report stalking to police, and access a PSIO and other risk management, but require assistance to feel safe to do so.

Other contact between parties in a stalking situation



Peter and his wife viewed a house that was for sale and made an offer, which was accepted. A few weeks after the sale had been concluded, Peter talked to a real estate agent who told him that, in his opinion, he paid too much for his new property. Peter is furious and calls the real estate agent who sold him the house and tells him he has been cheated and he wants the sale to be undone and his money returned. The real estate agent explains that that is not possible. Peter calls the estate agent every day, telling him he has to undo the sale. The estate agent and his secretary have started hanging up the phone as soon as they realise it is Peter who is calling.

This further infuriates Peter, who drives to the real estate agent's office and confronts him in the parking lot. He pushes the estate agent and only leaves when the estate agent says he will call the police. Peter begins coming to the office every day and accosting people who enter the office, telling them they should take their business elsewhere. He has also started leaving terrible online reviews and has made a complaint to consumer affairs.

One night, Peter waits in the car park after closing time and approaches the estate agent's secretary, who is terrified and locks herself in her car. After this incident, the estate agent calls the police and is told he should take out a Personal Safety Intervention Order against Peter. Peter attends the Magistrate's Court and is asked whether he would consider mediation, given the dispute is non-violent.

Ongoing contact between people who stalk and people being stalked is a risk factor for stalking persistence (Pathé, 2002; McEwan et al., 2017). To effectively manage stalking and increase the chances of stopping the behaviour, people who are being stalked are advised to have no contact with the stalker and not respond to their attempts at contact and communication (Dressing et al., 2020; Mullen et al., 2006; Brandt & Voerman, 2020). This means that once stalking is identified there should be measures taken to prevent the person accused of stalking and the person reporting the stalking from being in direct contact. This should involve:

- Mediation being contraindicated. Mediation is not a suitable solution in stalking cases and may in fact enable the stalker to continue stalking their victim through the mediation process.
- No direct cross-examination. Stalking cases should require cross-examination of the complainant by an intermediary, even when the accused is self-represented. It is unreasonable, if the prosecution has reasonable grounds to pursue a charge, for the court to be potentially facilitating stalking by allowing the accused to harangue the victim as a witness.
- Provide options for remote hearings. Ideally, witnesses (not just the direct stalking victim but also secondary victims who have been targeted during the stalking) should have access to remote witness facilities to give evidence.

Key message

Any police or court-related processes that encourage direct contact between a complainant and respondent should be avoided in cases identified as stalking. This includes mediation, and in-court procedures such as cross-examination and giving evidence.

Recommendations

18. Applications for PSIOs should be required to go through a screening system to identify stalking cases. Such a screen could be applied by police, by court registrars or as part of an online system, with those identified as experiencing stalking diverted to contact either the stalking victim support service, or their local police station. Such a screening system would need to be developed and piloted before being introduced to ensure that it is sufficiently accurate in capturing all cases that are deemed to be stalking, while excluding as many as possible of those where stalking does not appear to be present.
19. Consideration should be given to making PSIOs in stalking cases only able to be initiated by police. If implemented in conjunction with previous recommendations about police responses, this would ensure that PSIOs are part of a system of targeted risk management, rather than a default option. This will require consideration of supports and advocacy for victims who do not feel comfortable approaching police, including people from Aboriginal and Torres Strait Islander backgrounds. The previously recommended victim support and advocacy service could provide assistance in these cases so PSIOs are accessible.
20. Consider the introduction of courtroom procedures that reduce contact between complainants and the accused in stalking cases. Strategies adopted as part of the recommendations of the Royal Commission into Family Violence will be relevant, such as remote witness facilities, and prohibitions on direct cross-examination by the accused.

Offender interventions¹⁰

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

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

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

Treatment approach in stalking cases

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. This makes it very difficult to access the samples required to conduct the kind of research that is required to build an evidence-base that can inform treatment. As part of their ongoing collaboration with Forensicare to facilitate stalking research, the Centre for Forensic Behavioural Science is currently undertaking research into the psychological factors that contribute to stalking behaviour, so as to inform the development of a treatment program for stalkers that could be subject to future research.

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

¹⁰ Parts of this section are similar to the equivalent section in the Forensicare submission to the VLRC stalking consultation given the overlapping matters considered.

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 there is no specifically validated approach to treating people who stalk, there are best practice guidelines. Reflecting Bonta and Andrews (2016) Risk Needs and Responsivity principles, which provide an evidence-based framework for offender intervention, treatment should primarily be provided to those assessed as being at high risk of future stalking behaviour. Determining this requires a comprehensive assessment, which includes risk assessment but also provides an opportunity to assess a range of other matters that may relate to the stalking and could be targets for intervention.

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.

Expertise in understanding offending behaviour and behaviour change principles is required to work with high risk stalkers. 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. However, this group frequently presents with co-morbid mental disorder, with personality disorder being present in at least 50% (Nijdam-Jones et al., 2018). This means that while the kinds of skills that are learned in treatment may be relatively straightforward, the dynamics in the treating relationship are far more complex. Responding effectively to these dynamics is an integral part of treatment, both to maximise the potential treatment effect and to ensure that the treating clinician is able to manage the relationship sufficiently that they are not placed at risk of being stalked. It is therefore essential that offender treatment in stalking cases is provided by psychologists who are skilled in working with these kinds of issues.

The heterogeneity of people who stalk means that group treatment may not be possible in many settings, as there would be insufficient numbers of people with the same treatment needs to run a group. However, it may be possible to have people who stalk in groups with people with other offending behaviour that are focussed on general skill development. Offence-specific work on the underlying thinking and emotional factors that relate to stalking could then been addressed in individual treatment sessions (Purcell & McEwan, 2018).

Current treatment availability in Victoria

At present in Victoria, rehabilitation interventions are not tailored to the diverse needs of people who commit stalking in any routine way. There are no specific treatment pathways for people convicted of stalking or related offences either in prison or the community though some clients would receive individual psychological treatment from Corrections Victoria if they were also considered a serious violent or sexual offender).

It is difficult to know what the demand is for treatment for stalking behaviour in prisons, as there is no way of knowing how many people who stalk are imprisoned. 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 (https://www.sentencingcouncil.vic.gov.au/sacstat/magistrates_court/6231_21A.html). 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).

For those who are ordered to treatment as part of a community corrections order, some are referred to Forensicare by Corrections Victoria, though referrals are not necessarily routine, depending 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 when 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 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. This makes it essential that low or no cost treatment options are made available for people outside of the criminal justice system. At present, such a service

is offered by Forensicare as part of the public mental health system, though it has limited availability within current resources. There are also 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 the private setting.

Key message

Despite recent research revealing high rates of stalking recidivism, there is a limited evidence base for treatment of people who stalk. That does not prevent best-practice treatment from occurring, but in Victoria such treatment is generally not available within the correctional system and is only offered in the community by Forensicare. Forensicare also provides treatment for those outside of the criminal justice system, which is unique in Australia and internationally.

Recommendations

21. Specific funding to support research into effective treatments for people who stalk is required. Forensicare and the Centre for Forensic Behavioural Science are uniquely positioned to undertake such research given our long history of research with people who stalk, existing assessment and treatment pathways, and our demonstrated ability to translate research in this area into practice.
22. Referral pathways to assessment and treatment for people in the criminal justice system should be reviewed to ensure that people are able to access specialist assessment and treatment in a timely way.
23. It is essential to improve pathways into treatment for people whose stalking has not brought them into contact with the criminal justice system. Victoria is unique internationally in already having a specialist service that provides such treatment, but its availability is limited by current resources. Further resourcing of the PBP to advertise this service and provide early intervention could assist in preventing persistent stalking cases from causing harm to the Victorian community.

Electronic monitoring

VLRC Question 20. Should electronic monitoring be introduced to monitor people who have been assessed as posing a high risk of ongoing stalking behaviour? If yes, in what circumstances?

The inclination to impose coercive monitoring on stalkers is understandable, given the persistent nature of the behaviour and the risk of harm to those targeted. The logic for perpetual monitoring of offenders via electronic monitoring is multi-faceted. It is thought that EM can:

- Act as a deterrent by increasing the risk of being detected
- Act as a deterrent by increasing the effort required to offend undetected
- Remove 'excuses' for offending and increasing stability and structure by imposing rules that limit exposure to opportunity to offend
- Reduce provocations by reducing exposure to antisocial peers and environments (both through curfews and location restrictions and by avoiding the criminogenic potential of prison)

- Belur et al., (2020)

In the case of stalking, the intent may also be to allow police to intervene pre-emptively should a person be detected in the vicinity of the stalking victim. At present, the person being stalked/at risk of stalking bears the burden of monitoring for the presence of the stalker and reporting this to police (whether through standard reporting or through some sort of alarm system). Introducing EM would remove this burden from victims and place it instead on the person at risk of stalking and the police as the responsible agency. It should be noted that even if offenders are monitored with EM, if it has the intention of

preventing targeted violence, potential victims still may be required to wear some sort of tracking device and carry an alarm system. The other potential positive of EM is that it may be a way of keeping some people out of prison and maintain employment and social connection that actually act to reduce their risk of further offending.

However, the evidence base to support positive effects of electronic monitoring of reoffending is limited. Belur and colleagues (2020) recently published a meta-analysis investigating the effectiveness of electronic monitoring (EM) at reducing recidivism, but also the mechanisms through which EM might work to reduce recidivism, the conditions in which it is more and less effective, the challenges of implementing EM, and the cost-effectiveness of EM programs. Belur and colleagues' analysis is detailed and nuanced and worth reading in its entirety. In brief, they concluded that:

'Overall, our findings indicate that EM has been shown to produce positive effects for certain offenders (such as sex offenders), at certain points in the criminal justice process (post-trial instead of prison), and perhaps in combination with other conditions attached (such as geographic restrictions) and therapeutic components. The evidence suggests it is less effective at reducing recidivism for other offender subgroups and under different conditions. (...) What the evidence analysed here failed to highlight was another condition that has a substantial impact on how EM works, namely, the swiftness and certainty of response to a breach.' (p. 115)

Belur et al., (2020) also concluded that the costs of EM were 'less expensive than prison but more expensive than parole', and EM involving continuous monitoring was substantially more expensive than EM intended to merely act as a record of where an offender had been. They also noted that EM can be inequitable depending on the requirements for the offender to have a permanent residence and the necessary supports from family members.

Translating the findings of Belur and colleagues' meta-analysis into the specific example of monitoring of people who stalk is not straightforward. What this analysis tells us is that it is essential that if any move were made towards electronic monitoring of people who stalk it would need to be very clear what the main effect is that is intended to be achieved.

From our analysis, there are two main effects that seem to be underlying this question. First, the intention is to enable proactive prevention of harm by directly intervening when someone is presenting an acute risk (i.e. they are close to the victim). This would necessarily require continuous monitoring of the person so breaches could engender an immediate response. It would also potentially mean that the specific victim(s) who are assessed as being at risk need to wear some sort of device that would allow police to be notified if the offender and victim are in proximity. If the EM alerts were tied to an area, this runs the risk of imprisoning victims within a 'safe zone' outside of which they could run into the stalker. It also has the potential to create a false sense of security for victims.

The second effect would seem to be the idea that the EM would deter the person from

stalking through fear of detection. As Belur and colleagues' work shows, there is limited evidence to support this mechanism. Moreover, it is predicated on the idea that the person presenting the risk is concerned about detection. In many cases involving fatal violence in the context of stalking, it is the stalker's intention to be caught, or to commit suicide after the homicide (this is the subject of ongoing research at the Centre for Forensic Behavioural Science through analysis of homicide). The hoped for deterrent effect is probably less likely to work in the cases that are at risk of the most severe outcomes because of the nature of targeted violence (as opposed to general offending, where deterrent effects may be more apparent).

There are also considerable ethical concerns about impinging on the freedom of movement of someone with constant monitoring via EM. There is no risk assessment instrument that is accurate enough to say that someone is 'definitely' going to seriously harm the victim. The decision that someone is at high risk of a very serious outcome would need to be made by a judge and not based on expert psychological or psychiatric opinion as such opinion does not have an evidence base. If concern about the risk of serious harm is so high that this kind of continuous monitoring is deemed necessary, it may be more reasonable and effective to remand the person. If there are no outstanding charges and the risk is still considered extreme when someone is released from prison then this kind of EM may be useful in a very small number of cases. However, it should be noted that monitoring an offender who presents with this level of risk of targeted violence after a lengthy period of imprisonment is unlikely to fully protect victims or even offer them much peace of mind.

In these cases, situational management by removing either the offender or the victim from the physical location (i.e., relocating them interstate with alerts on travel for the offender) is likely to be the most effective risk management option.

The other potential situation in which EM for people who stalk could be considered would have quite a different purpose. This would be with the consent of the individual involved as a way of avoiding imprisonment if they were otherwise deemed low risk of further stalking. This use of static EM (not continuously monitored but allowing checks and police investigation) is intended as a more cost-effective offender management method rather than being explicitly protective for the person who was stalked. This is the opposite of the intentions implied in the VLRC question, but actually may be a more realistic use of EM in stalking cases, so as to free up resources to more intensively manage high risk cases without EM in the vast majority of circumstances.

We have chosen not to make any specific recommendations about the use of EM in stalking situations because the issues are complex and require substantial consideration from a range of perspectives that is beyond the scope of this submission.

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