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## **Submission to the Victorian Law Reform Commission in response to the 2021 Consultation Paper on Stalking**

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### **Preface**

The Victorian Law Reform Commission should be commended for undertaking this inquiry into stalking. Unless otherwise stated, the views expressed herein are my own and are not intended to reflect the opinions of my employer. Invariably, the views provided lean on my doctoral research, including the findings of the study which surveyed 143 females living in Australia who had been stalked.

## Chapter 1: Nature and dynamics of stalking

1. Stalking victimization can be considered incendiary; the sustained, ‘slow-burn’ effect of being stalked causes further victimization. There has been a great deal of research on the duration of being stalked. In a nutshell, there are repeated findings that an average duration of stalking is 22 to 24 months (Pathé & Mullen, 1997; Spitzberg & Cupach, 2007; Tjaden & Thoennes, 1998), and those stalked by former intimate partners are more likely to be stalked for longer. Despite a wealth of research on stalking over the past 30 years, the question of ‘what works?’ to stop stalking behaviours remains largely unanswered.
2. The means by which a person may stalk another can vary, and a person engaged in stalking may employ several methods to pursue another. Stalking by proxy (for example, using a licensed private investigator) (see VLRC Consultation Paper (‘Consultation Paper’) 1.9), is a growing concern. Results from my doctoral study of females who experienced stalking ( $N=143$ ) showed that, in 45 per cent of cases, the person engaged in stalking harassed not just the respondent, but also their affiliates (i.e., friends, children, partner, neighbours or work colleagues). In most cases (57 per cent), the person engaged in stalking tried to find information about the respondent from others (e.g., partner, friends or work colleagues).
3. The workplace is an environment in which stalking may occur or, indeed, begin. As such, greater attention ought to be paid to workplace frameworks regarding stalking (including schools/universities). For example, those experiencing stalking may feel unsafe travelling to/from work or not want their contact details to be displayed on the company website. Those experiencing stalking may need additional support from their employer to effectively manage their stalking experience. It is common for victims to be absent from their place of work to seek help or to take other measures to respond to being stalked (such as seeing a counsellor or moving residence). With the advent of initiatives providing paid leave for those employees experiencing domestic violence, it is worthwhile including stalking as a reason for providing paid leave (even if the person

engaged in stalking is not a former intimate partner). It is also true that those experiencing stalking may view their employer as a person capable of helping with the experience. As such, employers should be encouraged to take a pro-active approach in identifying risks associated with being stalked and understanding how to better support staff.

4. Generally, education and awareness (across Australia) on what constitutes stalking, and ways to respond to being stalked, need to be improved. Schools, universities, and (other) workplaces ought to be targeted by a dedicated awareness programme (such as SPARC (Consultation Paper **2.10**), to increase public understanding of both stalking (ie., the definition) and the importance of contacting the police at an early stage. An initiative aimed at teaching people how to safely say ‘no’ to the advances of another and to accept ‘no’ from another will likely be successful in preventing several instances of stalking.
5. It is common for those experiencing stalking to delay in reporting to the police (see Consultation Paper **2.11**). The findings from my doctoral project show that an early response (i.e., within two weeks) was associated with a shorter duration of stalking (i.e., less than one year) for the following responses: personally informing the stalking that their behaviour was unwanted; informing the police; and informing an employer. While there were several limitations to the study, perhaps a (for example) ‘Don’t wait’ or ‘Why wait?’ campaign targeted at those who are stalked to generate awareness of the many options available to prevent or stop stalking may be desirable.
6. There may be strong opposition (right or wrong) to a campaign that places the onus of ‘doing something’ on the person being stalked. Of course, in an ideal world, the campaign should be targeted at all people called ‘Don’t stalk’. In addition to a ‘Don’t wait’ campaign, it may be helpful to run a related awareness strategy targeted at understanding what is acceptable (social) conduct when contacting someone and/or romantically pursuing another, compared with that which may be criminal (especially contacting another using social media).

## Chapter 2: Recognising and reporting stalking

**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?

7. In addition to the many reasons provided in **2.26** of the Consultation Paper as to why a victim survivor may be reluctant to report their experience to the police, many victims are likely to feel that they have, in some way, contributed to the stalking (see, for example, the application of the ‘Just World Hypothesis’ (Lerner, 1980) to stalking (Sheridan, Gillett, Davies, Blaauw & Patel, 2003)). It is important that education/awareness campaigns confront this potential issue among victims as a barrier to reporting stalking.
8. Those who have experience stalking should be made aware of their options to respond to being stalked. Armed with this knowledge, those experiencing stalking can then better navigate the process of responding to being stalked. An online tool (such as the one discussed at **2.14** of the Consultation Paper) would be apposite. A single online source for dealing with/managing being stalked would be invaluable and go a long way toward assisting with the prosecution of criminal conduct (for example, a person being stalked may then report to the police and/or start to keep detailed records/evidence of their stalking experience). It may also be useful to identify that conduct which would be counter-productive (i.e., start stalking your stalker or assault your stalker, blame yourself, resort to alcohol/drugs).

## Chapter 3: Understanding and responding to stalking

**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?

**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?

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

9. Some victims may not want to report their experience to police for concern that the person engaging in stalking may face the full force of the criminal justice system (especially ex-intimates). For this reason, among other, it may be worthwhile considering a ‘softer’ option to policing stalking. **Appendix 1** of this submission shows a template ‘Harassment Warning Letter’ which was used by Hampshire Constabulary (UK). The constabulary dealt with certain harassing behaviours by way of this instrument. It is understood that a letter was issued where a complaint had been made against a person engaged in certain types of stalking. Such an instrument was used to make an alleged offender aware that their behaviour constituted an offence under the *Protection from Harassment Act 1997* (England & Wales). The allegation(s) would be put to the offender, followed by a signed undertaking that their behaviour is recognised as an offence, the continuance of which would be prosecuted. Of course, such an approach would only be used in certain circumstances (for example, particularly in the dissolution of short-term (indeed, adolescent) relationships).
10. This quasi-civil/criminal instrument was experimental and no robust empirical data exist in relation to its use, frequency and rate of success in deterring unwanted behaviour. There may be merit, however, in advancing formal agreements between parties, as there is some evidence that mutual restraining orders serve as an effective deterrent (Meloy, Cowett, Parker, Hofland & Friedland, 1997). It is submitted that such a tool would be

particularly effective against Mullen et al's (1999) 'incompetent suitor' (de Becker, 2002; Gowland, 2014).

11. As it is a policing tool (i.e., using police discretion), this avoids a flood of court hearings via applications arising from PSIO's (mentioned in **3.62** of the Consultation Paper). Another benefit of the warning letter is that instead of waiting for the stalker to make further contact to gain (more) evidence of a pattern of behaviour, the person engaged in stalking is notified that their behaviour has been identified as inappropriate, is known to the police, and that they risk prosecution.
12. One drawback to using a warning letter is that it may, over time, be viewed as impotent – that is, a person stalking another may see that the police are aware of the stalking but have chosen not to charge. The fact remains, however, that an harassment warning letter or equivalent will certainly serve as evidence against a person alleged to be pursuing another. It will be important that proper guidelines are drafted for police to issue such a notice (i.e., What is the standard of proof before issuance? Must a person the rank of Inspector grant a notice? What if the person alleged to be stalking cross-applies for a warning letter against the person alleged to be stalked?).
13. There is merit in police officers undertaking specific training in the risk assessment of stalking incidents. Stalking is peculiar, as it can range from someone using another person's email address to sign up to a phishing scam (bothersome) to threats to kill. Indeed, 'merry Christmas' in an SMS message from another, without context, is not sinister, but when sent by a former lover and paired with a history of violence and struggle through the criminal justice system to avoid the person sending the SMS, the behaviour is viewed differently. As such, special training will assist in supporting the community and, should a task force be raised, this, by itself (after months of shared experience among officers dealing with stalking cases) may be capable of being the very good predictor of risk (see for example, the Los Angeles Police Threat Management Unit).

14. Relatedly, those who experience stalking are likely to suffer psychological harm. Special training for police officers in achieving best evidence from a vulnerable witness/complainant would be useful.
15. The chief priority for any policing response to stalking must be that victims feel they are believed and taken seriously. The literature repeatedly exposes that victims do not feel believed and/or their experience is marginalized. This could be for several reasons, among them, of course, confusion around legitimate procedures, for example, a complainant may be questioned in a way that recognizes that, should the matter proceed to trial, their testimony will likely be challenged. Above all, those who report to the police should be treated as credible and with respect (this advice is, of course, no criticism of VICPOL, as the findings that victims do not feel believed are from several studies worldwide for the past 30 years).

**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?

16. Yes, so long as it is compatible with other legislation.

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

17. Given the various existing methods of disposal available to the police in an instance of stalking, as well as the PSIO process, a Code of Practice is desirable. It will also be an evolving document – one that reflects best practice in reports of stalking. Care should be taken to ensure that police officers retain their (reviewable) discretion when dealing with instances of stalking.

**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?

18. The PSIO is similar to the Stalking Protection Order ('SPO') (England & Wales) (<https://www.cps.gov.uk/legal-guidance/stalking-protection-orders>). In England and

Wales, an interim 'SPO' can still only be granted by a Magistrate (though with a lower threshold requirement). The Consultation Paper seems to suggest (at **3.55**) that a PSIO Notice would be akin to an FVSN, which is granted by a (more) senior officer. The concern is the circumvention of judicial oversight in the face of criminal sanction. Among other things, judicial oversight will prevent vague and/or unenforceable conditions being imposed on alleged offenders. Another concern (identified in the Consultation Paper at **3.63**) would be the use of a PSIO Notice by vexatious individuals or, indeed, those engaged in stalking.



## Chapter 4: The personal safety intervention order system

**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?

19. I see no issue in allowing applications for PSIO's to be completed online by persons other than police officers.

**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?

20. The prohibition of cross-examination of a complainant by a person subject to a PSIO ought not to be the status-quo. In circumstances where a PSIO has been granted, the Prosecution ought to apply (to the Court) for special measures (to prohibit cross-examination of the complainant by the defendant personally). The Court should then consider this application and allow the defendant to make submissions. An automatic right to special measures (as in the case of the FVPA) need not apply to stalking cases. There would be significant costs and (court) delay in assigning counsel to cross-examine for all PSIO applications.

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

21. While I view (mandatory) treatment programs as an important initiative, I defer to learned practitioners, such as those at Forensicare (<https://www.forensicare.vic.gov.au/>) as to the timing and method of treating those engaged in stalking.

**Question 11** Should there be additional offences in the *Personal Safety Intervention Orders Act 2010* (Vic) to address more serious breaches? If so, what should they cover?

22. In England and Wales, there is a separate (more serious) offence of stalking (in addition to harassing another) whereby a person either causes another to fear that violence will be

used against them, or causes serious alarm or distress which has a substantial effect on another's usual day-to-day activities (See *Protection from Harassment Act 1997 s 4A*). This aggravated form of stalking, then, carries a maximum sentence of ten years' imprisonment (compared with a maximum sentence of six-months imprisonment).

23. I take no objection to creating additional offences for repeated breaches of a PSIO in circumstances where the respondent knew (or ought to have known) that the conduct constituted a breach.

**Question 12** Should the restrictions on publication in the *Personal Safety Intervention Orders Act 2010* (Vic) be expanded to cover adults?

24. For victims of stalking, moving through the criminal justice system can be traumatic and, indeed, they may be embarrassed by any publicity. Of course, this must be weighed against the fact that 'open justice' is a pillar of criminal proceedings.
25. Automatic restrictions on the publication of proceedings can be abused. For instance, in circumstances where a person simply does not want any court proceeding to be known publicly (whether or not the proceedings are stalking related), an application for a PSIO will likely soon follow. The right to privacy is difficult to balance against the public interest in open justice and, if there is appetite in restricting the publication of proceedings for PSIO matters, there should be judicial oversight in the decision making process. That is, the court should exercise its discretion to suppress information (as opposed to there being an automatic right).

**Question 13** Should there be free legal representation in some personal safety intervention order matters? If yes, what eligibility criteria should apply?

26. Yes, free representation should be available. It might be worthwhile investing in a Centre staffed by several employed solicitors who then regularly train and supervise volunteers (law students or law graduates). This can limit costs associated with providing free representation and provide law students with an excellent opportunity to learn more about the criminal justice system as well as volunteer to help those affected by crime.

**Question 14** Should the appeals process for intervention orders be changed to improve the experience of victim survivors? If so, how?

27. No submission.

**Question 15** Are there any other aspects of the *Family Violence Protection Act 2008* (Vic) that should be replicated in the *Personal Safety Intervention Orders Act 2010* (Vic)?

28. No submission.

## Chapter 5: Criminal law responses to stalking

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

**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.

29. In Queensland, a person is liable for Unlawful Stalking (see *Criminal Code 1899 (Qld)* s 359B) in circumstances where they intentionally direct a prescribed behaviour at a person *that would* cause the complainant apprehension or fear of violence or causes detriment. This then, does not require the accused to intend, know or ought to know that their conduct will cause harm. As a result, the ‘incompetent suitor’ (Mullen et al, 1999) who repeatedly contacts a person (but does not intend any malice) is far more likely to be captured by stalking legislation in Queensland, than in Victoria.
30. From a criminological perspective, the rehabilitation of offenders can be difficult when they are ‘labelled’ by virtue of their past conduct. In addition to the reasons provided in the Consultation Paper (at 5.27 and 5.28) as to why stalking may not be charged, it is likely that, in some cases, those engaged in stalking do not accept that their conduct amounts to stalking (or is not criminal). The term ‘stalker’ is a label that, deservedly or not, can cause stigma and may be more difficult for offenders to align with that, say, an offence of ‘harassment’.
31. The definition of ‘stalking’ (legal and/or behavioural) is not uniform across the globe (or, indeed, Australia). Despite this dissonance, the term ‘stalker’ is universally pejorative and is associated with poor mental health, social skills and/or deviance. Such a label, therefore, is one that offenders will fundamentally reject and try to distance from,

which then fuels the occurrence of negotiated plea deals or trials (see Consultation Paper at 5.27). Changing the name of the offence might be worth considering.

**Question 18** Should there be more protections for victim survivors in stalking prosecutions? If so, what kind?

32. No submission.

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

33. There is a wealth of research concerning the risk profile of those engaged in stalking and several factors would be helpful to the court in determining sentence. For example, whether the offender is fixated or simply naive, and/or accepts their conduct is wrong. These are crucial findings to assist in sentencing, and may be worthwhile eliciting from the offender before sentence.

**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?

34. In the light of the recent statistic indicating 13,872 stalking offences were recorded by police in Victoria (Consultation Paper 1.15), the cost of electronically monitoring high-risk offenders would be significant.

35. There is also the stigma that attaches with being electronically monitored. Given that the objective of electronically tagging is to ensure that the offender does not approach the victim, the problem remains that if both are free to roam a city (subject to the offender being prohibited from several sites), an electronic tag does not completely remove the risk of contact (unless the victim is also tagged and an alert is provided whenever the two are near). In addition to those provided in the Consultation Paper at 5.60, this is yet another drawback of such a system. Careful consideration ought to be undertaken before an electronic monitoring scheme is rolled out in Victoria.

36. While the financial cost of electronically monitoring an offender may be less than imprisonment, if an offender is truly at high-risk of reoffending, then imprisonment

should be considered (to ensure complete safety for victims). The concern is that courts will want to, understandably, minimize any risk to a victim survivor, and electronically tagging an offender may become a (very expensive and severely limiting) sentencing norm.

## Chapter 6: Responding to people who experience stalking

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

37. It would be useful for victims of stalking to see (online, perhaps in a graph or chart) both the system for a complaint against a person engaged in stalking, as well as processing times in the criminal justice system. I accept that such data may be difficult to ascertain and, in fact, may not be encouraging. Timelines and information about a prosecution can help with the anxiety that a person who has experienced stalking may have. For a person who has been stalked, it is the uncertainty that can be most detrimental, and so if the criminal justice system can provide (at least, some) certainty (and manage expectations), this will improve the victim survivor experience or at least mitigate further harm.
38. It is hoped that any package or services provided to those experiencing stalking will be streamlined. That is, although several agencies may be involved in a single prosecution (police, victim support, legal aid), viewed from the victim's perspective, they are all working simultaneously and there is a single line of communication or source of information. This can reduce anxiety, confusion, and a sense of being overwhelmed by having to repeat information or continuously be exposed to the ordeal.

**Question 22** How can the financial support scheme for victims of crime be improved so that it better meets the needs of victim survivors of stalking?

39. See above comments regarding assisting victim survivors in the workplace.

**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?

40. See above comments regarding assisting victim survivors in the workplace.

## Chapter 7: Responding to people who commit stalking

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

41. No submission.

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

42. No submission.

**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?

43. No submission.

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



## Chapter 8: Responses to cyberstalking

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

44. No submission.

**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?

45. No submission.

**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?

46. No submission.

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# Appendix 1



## Hampshire Constabulary Chief Constable

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ADDRESSEE

Tel: 101  
Direct Dial:  
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12 June 2012

To ADDRESSEE

### PROTECTION FROM HARASSMENT ACT 1997

A complaint has been recorded by police from  Police Station that you have engaged in conduct that has caused harassment, namely:-

which may constitute an offence under Section 2 or 4 of the Protection From Harassment Act 1997.

**This letter is to formally bring to your attention the complaint received. If you are shown to continue with this conduct you may be liable to arrest and prosecution under the protection from harassment act 1997. The maximum penalty on conviction for this offence is five years imprisonment. The court may also impose a restraining order.**

Signed

Sgt/Insp

I confirm that I have been served with a copy of this notice.

Signed

I confirm that I served a true copy of this notice on

Signed

Name/Rank/No

N.B. If you have any outstanding issues, which necessitate contact with the complainant, you are advised to do so through a solicitor as other methods may render you to further complaint, arrest and prosecution.

AD141a

[www.hampshire.police.uk](http://www.hampshire.police.uk)

