

Victorian Law Reform Commission (VLRC) Stalking: Consultation Paper Submission Responses

PREAMBLE

My name is Sarah Pervaiz and I have chosen to make a written submission in my personal capacity in response to the VLRC's Consultation Paper on Stalking and related matters. The VLRC's review was instigated by Celeste Manno's tragic death [REDACTED] on 16 November 2020. Celeste has been my best friend of 12 years since we met in our first year of secondary school.

I have been supporting her family, particularly her mother Aggie Di Mauro as much as I can in various ways. We supported Celeste as much as we could throughout the time in which she was being stalked, however all the events leading up to the tragic loss of our dearest Celeste left us feeling extremely underwhelmed and dissatisfied with the current legal system in place. As a practicing lawyer I am aware that there are numerous gaps in our legislative system in various respects, so the underwhelming feeling did not come as a surprise. However, the loss of Celeste under such horrific and heinous circumstances is a sore reminder that we cannot be complacent with our laws or its enforcement.

I have become exceedingly passionate in this area in respect of law reform. It is a shame that the VLRC only now has the opportunity to review this area of law, despite numerous sufferers falling victim to their perpetrators in previous years. Nonetheless, this is a huge step in in our gruelling fight to obtain some form of justice for Celeste, and to help ensure that other victims and their families and friends do not have to suffer such horrific and tragic outcomes.

[REDACTED]

This broken system was ill-equipped to keep our precious angel safe and alive. Changes NEED to be made. Celeste no longer has a voice, and she can no longer advocate for what she believes is right. We now need to be her voice and ensure that her legacy lives on. I hope to achieve this by advocating for change, including by responding to the VLRC's consultation and completing the Engage Victoria short form in relation to this matter, as a person who has supported another who has experienced stalking.

This submission seeks to address questions 2, 3, 6, 10, 15, 16, 18, 20 and 27 whilst also providing general discussion on our entire experience thus far.

RESPONSE

[REDACTED] Instead, we are now stuck with the fact that she is gone and is now classified as a victim of stalking and homicide. We cannot even refer to her as a victim 'survivor'. [REDACTED]

[REDACTED] The mere fact that we are having to write submissions as a result of Celeste's horrific passing is evidence that the criminal law response to stalking **MUST** be improved.¹ This submission will focus on one key area, namely protection afforded to victims of stalking.²

PROTECTIONS FOR VICTIM SURVIVORS³

The criminal law system is much too focussed on fairness towards an accused, and no way near attentive enough to the protection of victims. This is seen across many levels of our system, from the

¹ Question 16 "Can the criminal law response to stalking be improved?"

² Question 18 "Should there be more protections for victim survivors in stalking prosecutions? If so, what kind?"

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criminal law enforcement practices by Victoria Police, all the way through to the plethora of rights an accused has during criminal trial, compared to the minimal rights a victim has (if any at all).



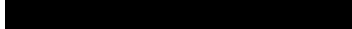
Code of Practice⁴

This first encounter demonstrates that there is significant room for improvement within Victoria Police to ensure that at a bare minimum, its officers are duly educated in the scope of the *Crimes Act 1958* (Cth) and the duty that each officer has to uphold and enforce the law. If a specific police Code of Practice on managing reports of stalking and assessing risk would assist in ensuring this duty is met, then one most certainly should exist.⁵ This Code of Practice should operate in a very similar nature to that which applies in family violence situations, including:

- (i) the risk assessment framework to help police and courts identify the course of conduct and manage risk of serious harm in the context of stalking;⁶
- (ii) applications of Personal Safety Intervention Orders (**PSIOs**) being made by Victoria Police only (and not the victim);
- (iii) proper and due investigation and filing of criminal charges including for contraventions of PSIOs;
- (iv) increase in successful prosecutions;
- (v) minimising the trauma experienced by victim survivors and their support people during police investigation;
- (vi) making appropriate referrals; and
- (vii) special training and guidelines,

some of which are further expanded on below.

Risk Assessment Framework⁷

If we have learned anything from the tragic loss of our precious Celeste, it is that stalking outside of family violence situations can be just as serious and severe. 

⁴ Question 6 “Should there be a specific police Code of Practice for reports of stalking? If so, what should it cover?”; 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)”; and 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?”

⁵ Question 6 “Should there be a specific police Code of Practice for reports of stalking? If so, what should it cover?”

⁶ 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 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)”; and 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?”

⁷ Ibid.

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[REDACTED]

[REDACTED] There was clearly a high risk throughout the entire time, but it was overlooked.

[REDACTED]

The multi-agency risk assessment and management (**MARAM**) framework along with something similar to the Family Violence Report (**FVR(L17)**) which utilises an actuarial risk assessment and risk management tool, should also apply to PSIOs. However, these tools would not be enough to ensure victims are protected and their safety prioritised. As the research suggests, such tools should be used in conjunction with person-centred information to ensure due diligence is carried out.

Victoria Police Applications of PSIOs

To ensure victims safety is prioritised, applications for PSIOs should be made by Victoria Police by default, and not the victim themselves.

[REDACTED]

[REDACTED] Further, by taking the responsibility away from the victim to ensure they follow through with PSIOs (as victims may be easily coerced or scared into dropping the stalking charges), it further enhances the possibility of successful prosecution of offenders.

Due Investigation and Criminal Charges

Where there has been a reported breach of a PSIO (or an interim PSIO), such reports must be taken seriously and investigated fully with due diligence and criminal charges laid where appropriate. Where there has indeed been a breach, the charges should also be expedited to ensure that the consequences that follow (e.g. a sentence of imprisonment) are implemented as soon as possible, to ensure the victim can be kept safe. Otherwise, simply increasing the list of charges without any consequences being carried out in ample time just gives offenders more 'ammunition' to dwell over and fuel any sinister intentions that they may have.

[REDACTED]

Minimising Trauma

In addition to that already mentioned, there are more things that should have occurred that may have reduced the trauma that Celeste experienced.

[REDACTED]

Secondly, in addition to due investigation and criminal charges being laid, transparency with the victim and their support person is also important to ensure the victim experiences as least amount of trauma as possible. That is, keeping the victim fully informed of all breaches and actions taken to avoid anxiety and uncertainty.

Appropriate Referrals⁸

All alleged offenders of stalking or similar offences should be referred to appropriate psychological assistance programs. These programs should address things such as the basics of the alleged wrongdoing and why it is wrong and illegal, the consequences of the alleged contraventions, understanding what is going through the accused's mind, having the accused understand what a

⁸ 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?"

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victim might be feeling, and providing the accused with psychological assistance where the need becomes apparent.

Such programs may decrease the risk of negative and sinister intentions materialising. This would also give psychological experts the opportunity to assess the level of risk that may exist in the accused's behaviour and can facilitate Victoria Police's response to such risk.

Special Training and Guidelines⁹

Whilst acknowledging that budgetary constraints are an issue, special training and guidelines applicable to Victoria Police would truly benefit the entire realm of law enforcement, not just in the case of stalking. If Victoria Police received special training in areas such as law, psychology and criminal responsibility, it is my view that this would substantially increase the success rate of prosecutions and increase the morale between Victoria Police and the general public. Even by merely being introduced to certain psychological concepts that may be applicable, it could drastically improve officer's ability to assess risk and act accordingly.

If all of the abovementioned areas were addressed in a specific Code of Practice, this could drastically improve the criminal law response to stalking and in some cases, improve the criminal law response to crime generally.

Another area that could be improved in order to ensure adequate protection is afforded to victims is the use of electronic monitoring.

Electronic Monitoring¹⁰

It is my view that Victoria should allow electronic monitoring to be used as a bail condition in high-risk cases of stalking and similar offences, alike to that which occurs in Queensland. This view extends to see electronic monitoring being included as a condition of a civil protection order if there is a history of violence, similar to that in Tasmania, however expanded to cover a history of apprehended violence where there exists in the victim a serious and reasonable fear of violence. Such a system would require adequate evaluation and risk assessment to ensure it is not over-used in such a way as to limit civil liberties unnecessarily.

International research shows the benefits that may result from electronic monitoring in the context of family violence, which I believe would also be seen if the same were implemented in other personal safety matters. It is my view that these benefits far outweigh the potential issues that may arise. Particularly in light of the following:

- despite the fact that the more people that are subject to electronic monitoring, the harder it becomes to monitor them all intensely – this is a mere logistical issue and nonetheless, some intense monitoring is better than none at all. This was the situation that Celeste had to face, left feeling unprotected by a mere piece of paper (being the interim PSIO) that carried little weight, value or peace of mind;
- whilst electronic monitoring is a significant incursion into civil liberties which may not be justified for convicted persons who do not pose a serious risk of harm – that is why such an imposition should only follow a thorough actuarial risk assessment and evaluation;
- the fact that there is a lack of awareness of the limitations of electronic monitoring (in both the public and decision makers) – is no substantive ground to not consider electronic

⁹ Ibid.

¹⁰ Question 6 "Should there be a specific police Code of Practice for reports of stalking? If so, what should it cover?"; 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)"; and 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?"

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monitoring in certain circumstances and only demonstrates the need to increase knowledge in this area through peer reviewed research.

CONCLUSION

All the above submissions will, of course, come at a cost if implemented, so there is the overarching and inevitable issue of funding. However, this is a matter of public health and safety at such a vast capacity. Over the years we have seen an increase in violence against women and unfortunate and tragic losses of loved ones at the hands of monstrous criminals and an ill-equipped legal system. With this in mind, the issue of mere economics seems rather trivial. Accordingly, these changes (if implemented) should receive Commonwealth subsidised support where appropriate.

Celeste Manno was the most pure, innocent, kind, caring, loving, and generous being to have ever blessed this earth. [REDACTED]

[REDACTED] The entire legal system requires an overhaul, including the criminal trial evidence and procedure rules such as that set out in the *Evidence Act 2008* (Vic), *Criminal Procedure Act 2009* (Vic), *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic), and the *Sentencing Act 1991* (Vic), and the enforcement practices associated with such rules.

This submission outlines the very bare minimum measures that could be considered to ensure future victims are protected and prioritised. [REDACTED]

[REDACTED] Nothing we can do will ever bring her back to us, all we can do is our best to ensure her legacy lives on, even when she cannot. Accordingly, I would like to note that we propose that the suite of legislative amendments that may arise from these horrendous circumstances and subsequent review will be known as 'Celeste's Law'.