

## SUBMISSION

Prepared by Springvale Monash Legal Service Inc for the

### **Victorian Law Reform Commission, STALKING**

Date submitted: 19 August 2021



**SPRINGVALE MONASH  
LEGAL SERVICE Inc.**



**CASEY & CARDINIA**

ABN: 96 206 448 228 Reg: A0013997D

Head Office:

POSTAL ADDRESS: PO Box 312, Springvale, VIC 3171

OFFICE ADDRESS: 5 Osborne Avenue, Springvale VIC 3171

T: (03) 9545 7400 E: [info@smls.com.au](mailto:info@smls.com.au)

Branch Office:

POSTAL ADDRESS: PO Box 2543, Fountain Gate VIC 3805

OFFICE ADDRESS: Suite 1, Level 2, 64 Victor Crescent, Narre Warren VIC 3805

T: (03) 9038 8002 E: [info\\_narrewarren@smls.com.au](mailto:info_narrewarren@smls.com.au)

**Our organisation**

Established in 1973, Springvale Monash Legal Service (**'SMLS'**) is a community legal centre that provides free legal advice, assistance, information and education to people experiencing disadvantage in our community within the City of Greater Dandenong, the City of Casey and the Shire of Cardinia.

SMLS operates a duty lawyer service at various courts in Victoria, including Dandenong Magistrates Court, the Children's Court and provides legal representation at courts and tribunals such as the Victorian Civil and Administrative Tribunal, Fair Work Commission, Federal Circuit Court, Family Court and Victims of Crime Assistance Tribunal.

For most of the 40 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree.

SMLS has an extensive community legal education program that is developed in response to feedback from the range of community engagement and community development activities that we are and have been involved in.

SMLS also has a significant policy, advocacy, and law reform program, contributing to reforms in family violence laws and practices, access to civil procedure reforms, discrimination towards young community members in their use of public space and their interactions with the criminal justice system, as well as in highlighting the needs of refugees and people seeking asylum, particularly unaccompanied humanitarian minors and women escaping family violence.

## Terms of Reference:

These submissions seek to respond to the following terms of reference:

- 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?
- Should there be a specific police Code of Practice for reports of stalking? If so, what should it cover?
- 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?
- Should there be free legal representation in some personal safety intervention order matters? If yes, what eligibility criteria should apply?
- 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?
- What are the barriers that some victim survivors experience when seeking help for cyberstalking?

## Acronyms:

PSIO	personal safety intervention order
SMLS	Springvale Monash Legal Service Inc

## **SUMMARY OF RECOMMENDATIONS**

1. Prioritise investment into research into how digital platform operators may be regulated as enablers of stalking behaviour.
2. That police develop a code of practice in handling and communicating with victim-survivors of stalking behaviour.
3. Respondents and affected persons to PSIO applications must have early access to legal representation, with free assistance offered to low-income earners and/or persons experiencing disadvantage.
4. Prioritise taking a rights-based approach to offering early, tailored and high-quality treatment to persons engaging in stalking behaviour and deferring the use of court-imposed treatment orders as a measure of absolute last resort.
5. We strongly oppose the use of electronic monitoring in dealing with stalking behaviour.

## INTRODUCTION

We thank the Victorian Law Reform Commission for the opportunity to make a submission into the current stalking system.

Through our work we have seen the perspective from both the victim-survivor of stalking and also from persons who engage in stalking behaviour. We have assisted clients who have faced stalking charges. We have also assisted clients, either as the affected person or the respondent in personal safety intervention order ('PSIO') matters, including but not limited to, stalking-related matters.

Relevantly, the matters we have seen through our work include:

- Complainants and respondents living with a mental health illness or a learning disability
- Child respondents whereby PSIO applications were being made between students attending the same school
- Neighbourhood disputes being dealt with as PSIO and stalking matters

### Reporting stalking

For the most part, the clients we have seen have been willing to report stalking to police or to report breaches of PSIOs. A recurring theme from clients reflects a perception that police have not taken their complaints seriously. Clients frequently report police declining to take a statement, or declining to charge the person, usually on the grounds that there is insufficient evidence. The issue of insufficient evidence often arises in the instance of cyberstalking, whereby the person engaging in stalking behaviour has used a fake account, or has used an application such as Snapchat where the evidence is immediately lost.

We see an urgent need for further research into how the law can better respond to cyberstalking and ways that digital platform operators may be regulated as enablers of stalking behaviour.

**Recommendation one:** Prioritise investment into research into how digital platform operators may be regulated as enablers of stalking behaviour.

Anecdotally, we hear reports of police placing the burden on the victim to manage or avoid the person engaging in stalking behaviour, rather than the police stepping in to act. Clients may not report earlier instances of stalking behaviour as the conduct may be subtle and may only be understood as forming part of a pattern of stalking behaviour when viewed in retrospect. This may later create difficulties in building the evidence needed to prove there has been a course of conduct.

Broadly speaking, we have encountered instances whereby clients who experience intersectional disadvantage based on, for example, their gender, race, disability or low proficiency in English, have felt they have not been taken seriously by police. There does seem to be inconsistencies in the way that police interact with particular cohorts of complainants.

We have encountered instances where the client has decided not to pursue their matter further given their past interactions with police. Clients lose their sense of confidence in law enforcement and our legal system.

It is important to maintain the community's sense of confidence in law enforcement and the justice system by encouraging complainants to come forward.

In these circumstances, we see value in police developing a code of practice in handling and communicating with victim-survivors of stalking behaviour, to promote a consistent, person-centred approach.

**Recommendation two:** That police develop a code of practice in handling and communicating with victim-survivors of stalking behaviour.

Running alongside enhancing police practices, we do see a role for victim advocates in supporting clients in making complaints to police. We would support an integrated service model whereby victim advocates have clear referral pathways to legal services to further support victim-survivors in weighing up and pursuing their legal options.

### **Barriers to reporting stalking behaviour**

SMLS has also encountered instances where the client may choose not to apply for a PSIO in response to stalking behaviour if the client perceives that doing so may give rise to any risk of child protection involvement.

From our family violence work more broadly, we see there a reluctance to report if there is a fear of reprisal by the perpetrator of family violence. We see that further research may be needed to see whether this applies in the context of stalking behaviour in the non-family or domestic violence context.

We do continue to see matters involving neighbourhood disputes being treated as stalking offences and PSIO matters. As mentioned, we have also seen instances of PSIOs being made against children in instance of disputes between students attending the same school.

We hold grave concerns of the risk of criminalising the behaviour, particularly in the instances involving children or where the person engaging in stalking behaviour and/or respondent to a PSIO application has a mental illness or learning disability. We consider there may be more appropriate, long-term solutions to resolving these kinds of interpersonal disputes.

### **The need for legal representation**

There is an urgent and critical need for legal representation. Early access to legal assistance may be a useful mechanism to divert neighbourhood disputes and disputes between children within a school setting away from being treated as stalking or PSIO matters. Early access to legal assistance may assist in diffusing the disputes and divert matters to more appropriate dispute resolution pathways. This may be of particular importance if online applications become available for PSIOs.

Given funding constraints, our legal service is limited in what assistance we can provide clients regarding PSIO applications, whether they be respondents, affected persons or applicants. Limited access to legal assistance is particularly problematic for clients experiencing disadvantage, such as young people, clients living with a mental illness or a learning disability or clients from CALD backgrounds. As previously mentioned, it may render clients experiencing vulnerability even more at risk of exposure to the criminal justice system. It is also of particular concern if there is a risk of criminalising behaviour where there are fundamentally underlying health issues driving the stalking behaviour.

We of course acknowledge that stalking behaviour is gendered, and that there must also be fundamental societal change to dismantle systemic gender bias.

Free legal assistance must be available to both affected persons and respondents to PSIOs for those on low income or experiencing disadvantage. Given the complexity of stalking behaviour, there is significant value in investing in integrated service models - where victim-survivors and/or persons engaging in stalking behaviour may have ready access to legal assistance, victim advocates, social work, healthcare and other non-legal supports.

**Recommendation three:** Respondents and affected persons to PSIO applications must have early access to legal representation, with free assistance offered to low-income earners and persons experiencing disadvantage.

### **Orders for treatment programs**

We certainly support timely access to tailored, high-quality treatment where it is identified that it may be effective in addressing any underlying health concerns which may drive stalking behaviour.

We have concerns however of the human rights implications of court-imposed treatment orders being made as a condition of PSIOs. Any moves to introduce treatment orders in the context of PSIOs must include assurances that the treatment will be tailored, accessible and effective. Court imposed treatment orders should be considered as a last resort and if imposed, be in the least restrictive form. There must be oversight of treatment providers to ensure the excellence of programs delivered. Any treatment orders must also be accessible. Anecdotally, we hear of long wait lists to access publicly funded programs and prohibitive costs of privately run programs. Respondents must not be expected to give up paid work in order to attend treatment programs. Any treatment programs must be subject to rigorous monitoring and evaluation.

Overall, there must be greater focus and investment in implementing a less coercive approach to offering respondents early access to treatment.

**Recommendation four:** Prioritise taking a rights-based approach to offering early, tailored and high-quality treatment to persons engaging in stalking behaviour and deferring the use of court imposed treatment orders as a measure of absolute last resort.

### **Proposed use of electronic monitoring**

Given the immense human rights implications of the use of electronic monitoring, we strongly oppose its use. We consider that the grave human rights concerns may only be outweighed if there is strong evidence of its significant efficacy in increasing victim-survivor safety and limited to what we would see as rare circumstances where there are absolutely no alternatives available and would be subject to robust judicial and regulatory oversight.

We hold grave concerns that some of our clients who are already vulnerable to being over-policed and surveilled may be at particular risk of being further subjected to these kinds of heavy-handed measures.

**Recommendation five:** We strongly oppose the use of electronic monitoring in dealing with stalking behaviour.