



15 July 2021

Law Reform Commission
GPO Box 4637
MELBOURNE VIC 3001

Dear VLRC

Re: Submission into Stalking Laws in Victoria

Please find attached a submission into the report into Stalking Laws in Victoria. Thank you for undertaking this important work.

I am a woman in my 50s. I have worked in the legal profession as a lawyer and have been the subject of stalking, sexual and general harassment throughout different periods of my life. I have also attended the Magistrates Court seeking protection from family violence. My experiences have left me with a deep disappointment in the legal system which should provide protection and/or justice and a sense that I am on my own when it comes to my own protection and safety. I also have some understanding of mental health concerns and the intersection of these with the criminal justice system.

I want to remain anonymous, but you are free to use my submission and/or make it public.

I have read the consultation paper. It is lengthy and detailed. I won't address everything as I suspect any attempt to do so would result in a very lengthy response, something I neither have time nor the inclination to do. I fear that the suggestions and observations I make will be ignored anyway. My observation is borne out of the long history of women's concerns not being listened to on a range of fronts and is not the sole province of the LRCV even despite some good reforms in recent years, it's just not good enough when many women die every week at the hands of men.

Best wishes and best of luck changing the system.

Anonymous.

SUBMISSION – STALKING LAWS

General Comments

I don't like the use of the term victim, I use the term target. People with a fixation target others. I think the term victim comes with certain connotations which aren't helpful. I accept never-the-less that this is the nomenclature preferred by many others engaged in the discussion/debate on criminal justice etc. But regardless and from my perspective, the approach of perpetrators to target women aligns with the general behaviour of personality disordered types which are found to be prevalent in this type of offender.

Below are general observations in response to the consultation paper on stalking in general terms.

First, from everything I've read, the majority of people who stalk - are men. They are mostly men who have been rejected. Whether this is in actuality or a figment of their imagination. They have interpretation actions, events or lack of action through a disordered and fixated way of thinking and for them, it translates to rejection and/or lack of control. This spurs on increased frequency and obsessiveness of behaviour. Regardless of the setting, the behaviour directed at the target is inappropriate.

Secondly, sex offenders are using apps to source sexual liaisons and rape women. They have been for some time. Once they rape, they delete their details and evade capture by the police. Similarly, stalkers are using technology to stalk, intimidate and harass women. The technology is simply just another tool in their offending.

Women are forced to change their behaviour in an attempt to feel safe. This includes online behaviour and the ability to interact and engage in an online community – just like everyone else does, women should not have to change their behaviour to feel safe, but for the most part they do. Stalkers take this form of social interaction away from women. It is therefore, another way a perpetrator curtails the ability of a woman to freely interact and engage in some form of social life. Whether or not stalking results in physical harm, your paper makes it clear that the psychological effects on the target are enormous. Stalking is simply another form of coercive control.

It is evident that the majority of stalkers are suffering from some type of personality disorder. See attached paper – Cavezza and McEwan (2014). I note the paper I have provided you was not referenced in your consultation paper. The study cited is an Australian study also conducted here in Melbourne.

The law, as usual, always lags behind. It is time that it not lag any further. There needs to be urgency in the action taken. We need to keep up with the tools that offenders use and have both appropriate treatment for offenders and protections for targets. The criminal justice system must look to using a blend of psychological and/or psychiatric treatment options as well as punishments and/or protection measures for targets.

Some of the suggestions below you might find radical. But it is time for radical action. When will we all agree that the unnecessary deaths of women by men is enough and that nothing other than radical action is required?

Suggestions

- **Reverse the onus of proof on the Crown** to prove the offence where stalking occurs. Put the onus of proof back on the offender to disprove the offence. And before you reject this suggestion out of hand, women rarely make up stories about being raped. Similarly, the same can be said for these types of stalking offences. This would do a number of things:
 1. Reduce the burden on the Crown;
 2. Potentially increase the rate of offenders that turn up and defend themselves or face the consequences (more on this part later);
 3. The Magistrates Court is a vile environment for women and victims of crime. When will we stop this being the place women must go for justice or protection? Having to sit in the same room as the person who is harassing you cannot continue. Has there ever been any consideration as to how that impacts a woman? No wonder women do not want to come forward. The burden that is placed on women who simply want protection is unacceptable.
 4. If you must continue with this absolute abuse of power, a woman should not be forced to sit in the same court room. Given COVID, we are all used to appearing on zoom/teams and the like. Courts should make greater use of remote appearances – especially for targets.
 5. I also do not understand why some of these things cannot be conducted more on the papers – especially with evidence being electronically gathered, including photographs.
 6. I think cross-examination is grossly overrated and unhelpful in these types of cases as well. There should be no cross examination of targets. Cross examination is used and abused in the legal system as a form of character assassination against women who make a complaint. It is not an appropriate way of getting to the truth or testing allegations. There is a serious abuse of power and power imbalance in the way that this is used. Why could a case type conference not be conducted where the perpetrator is interviewed, then the target – then a decision can be made? More mediation style, but with all parties being kept apart – then the Magistrate can make a decision. Evidence and counter evidence can be viewed, assessed and discussed. It can still have all the rigour and hallmarks of the court system, but without the confrontation and aggression of an adversarial system which gets ‘played’ and used by perpetrators every single day.
 7. My own experience in the family violence system showed me that there are many well-meaning people in the system, but due to the volume of work, the courts need more resourcing to deal with matters properly. FVO cases have become too cookie cutter and formulaic. Additionally, the politicisation of reporting successful prosecutions also means that the police will only want to go for the low hanging fruit. In other words, where a prosecution is easy to get, rather than trying to truly serve justice. That has to end. Each and every women who brings a complaint deserves to have her complaint handled properly whether it is complex or straight forward, whether there is a lot of evidence or scant evidence. Your paper attests to the fact that women would not bother to bring such cases on frivolous or unfounded grounds; all matters must be taken seriously. Women’s lives are at stake.

8. It is obvious that men who suffer personality disorders have also become incredibly adept at using the legal system and processes as a tool in their armoury to inflict suffering on women. The Family Violence and Family Law system and other jurisdictions are sometimes used as a tool to abuse women and the legal profession have to bear some responsibility for this – especially when cases are taken that should never have been taken all in the name of making fees. It is disgusting and needs to stop.

Other practical suggestions

- The attached paper identifies that a high prevalence of stalkers have **personality disorder**, and as such they must be treated for their disorder whilst ensuring the safety of targets. I noticed that this paper was not referred to in your consultation paper. It seems that it is the only paper that is relatively recent that includes a study of men who stalk in Australia.
- Therefore, as a suggestion, when an offender is brought before the court, the first order should be a psychological assessment to determine if the person has a personality disorder and court ordered psych treatment if determined necessary. Given the research, it is a very safe assumption to assume the person is disordered and poses a threat. If the person does not want to comply, then criminal sanctions can be imposed. For example, if a target does not attend their individually tailored treatment program, stay away from the target/leave them alone, then the course of action escalates to monitoring and/or detention if necessary for the purposes of keeping the target safe and protecting the victim's psychological and physical safety. If the person has disordered thinking and through treatment is not going to change their behaviour, then clearly, the state must prioritise the safety of the target.

See attached: Cristina Cavezza & Troy McEwan (2014) Cyberstalking versus off-line stalking in a forensic sample. Psychology, Crime & Law, DOI. https://www.researchgate.net/publication/264901467_Cyberstalking_versus_off-line_stalking_in_a_forensic_sample

- It is not the target's fault for not reporting the behaviour. Clearly, there are many examples of where women have reported that they do not feel the police respond appropriately or take their concerns seriously. Or in the alternative, even if they do feel supported, the police cannot provide adequate protection from the constant threats and intimidation that this type of all invasive and pervasive threat presents to a target of stalking. Perhaps consider the creation of an **online data base** where women could record details of stalking behaviour – open up a case file, (either identified or anonymous) to record the evidence, upload photographic evidence etc and then decide/determine if they wanted to come forward to police. This would also help the target to self-identify the escalation and increasing prevalence of the behaviour. Sometimes, once information is written down or recorded, reviewing the totality of the evidence can help or motivate the target to report to the authorities what is going on. A traffic light system could also be embedded, that when the information that is being recorded reaches a threshold, a message could advise the target to seek advice or assistance from the police. Additionally, many women do not want to appear punitive towards a former partner (if this is the case), [REDACTED]
[REDACTED]
[REDACTED] We should not underestimate that stalking targets are often chosen because of their kindness, empathy and perhaps vulnerability, and for a stalker, this is what makes them a target. The relationship between target and stalker can be somewhat enabling. Again, not the fault of the target, but a keen observation of a disordered mind exploiting an otherwise kind human trait.

- Asking police to assess the seriousness of risk (**risk assessment tool**) to a target is problematic because this opens up the possibility that police will incorrectly assess that risk – even if they are applying any risk assessment tool correctly. I understand this might be a popular and conventional approach, however, starting with believing the target in the first place will reduce the burden of having to make an assessment cold. See my point above on assessing risk. But if this was considered a viable option by the LRCV, you should have a trained psychologist do it – not the police. The police are busy enough.
- Whilst **education campaigns** are important, there is an incorrect embedded assumption that the victim or target, by somehow having this increased awareness can modify their behaviour or is in some way responsible if they do not modify their behaviour – or be aware or watch out. This approach is incorrect. Women should not have to have their awareness ‘raised’. Quite simply, men should not stalk women. With whatever education campaign you create, please ensure that women are not seen as somehow responsible for the actions of others.
- In terms of **technology**, I noted the general comment about how difficult it might be for the collection or collation of evidence due to the nature and prevalence of smart tech tools and how that might be a huge burden to recover data etc. (pp62-64). Additionally, it is noted that some tech companies may be overseas entities and asking them to modify their products or services to comply with stalking laws may be difficult. Firstly, if data collection, manipulation and threats were a problem for men, it would have had an answer decades ago. It is just an excuse to simply say things are too costly or too hard. Get some tech companies with smart savvy tech people (15 year olds) to come up with some options or ask ASIO to let you talk to their white hat hackers for some advice. University post-graduate researchers may also be able to assist. Secondly, if a global tech giant does not want to comply with Victorian law, then surely the state government could require them to place a disclaimer on any of their products notifying the purchaser that the product they are buying does not confirm to Victorian anti-stalking laws. The more consumers have power in the market place to influence companies the better. Clearly, this was an issue for the dating app Tinder when they were exposed for not retaining data to help police catch rapists – they moved to fix things pretty quickly. The VLRC should not underestimate the power of the market place, especially in this ecommerce area, to motivate app makers who make most of their revenue off advertising views. The more people who use the app, the more views. This would directly hit non-compliant app developers right in the hip pocket.
- Finally, **believe women**. All the research shows, women very rarely make these types of allegations up. But they have to face the police and legal justice system. The thresholds are way too high, and are all weighted in favour of men/perpetrators. The system is unfairly weighted against women and it needs to radically change.

Thank you for taking the time to read this submission. Please. Be bold, be brave. We need drastic and radical changes to our criminal and justice systems. Women should not continue to pay such a heavy price. And it’s far too often that they pay with their lives.