

Submission to Victoria Law Reform Commission's discussion paper on stalking

AUGUST 2021



AASW

Australian Association
of Social Workers

About the Australian Association of Social Workers

The Australian Association of Social Workers (AASW) is the national professional body representing more than 15,000 social workers throughout Australia. The AASW works to promote the profession of social work including setting the benchmark for professional education and practice in social work, while also advocating on matters of human rights to advance social justice.

Acknowledgements

This submission has been developed in consultation with our Victorian members who are working in the area of family violence.

For further information or questions relating to this submission, please contact:

Author(s) of the Submission

Charles Chu

Social Policy and Advocacy Officer

Charles.chu@asw.asn.au

Manager, Social Policy and Advocacy

Rachel Reilly

Rachel.reilly@asw.asn.au

Executive Summary

The submission discusses stalking in the context of family violence as many victim-survivors of family violence experience stalking behaviours by their perpetrators. The AASW adopts a human right approach where the rights of victim-survivors and children impacted need to be the first and foremost in policy decision-making. In this context, the AASW takes the position that while stalking affects many members of society, it is a gendered crime and abuse of human rights most commonly perpetrated by men against women and children. It is both widely prevalent and completely preventable. Unlike family violence, there is minimal policy infrastructure to hold perpetrators of stalking accountable, minimise the risk of the escalation of stalking behaviours, and wrap services around victim-survivors and children impacted by stalking. Therefore, structural change is required to identify victim-survivors at all entry points in social services systems and provide timely services for victim-survivors to meet their diverse needs. Recommendations for structural changes to foster a human-rights based approach to supporting victims and survivors are outlined below.

This submission provides comments on discussion question 1, 2, 18 and 23.

Recommendations

The AASW recommends:

- That police officers and judicial officers undertake additional training to recognise forms of stalking and identify its occurrence before stalking behaviors escalate.
- That a risk assessment framework provides a risk profile of perpetrators based on their historic IVOs record, severity of stalking behaviours, and engagement in client violence.
- That emergency housing support be funded and provided when a notification of stalking behaviour is made
- That a 'no wrong door' approach be adopted to wrap services around victim-survivors while they are experiencing stalking
- That the Department of Family, Fairness, and Housing develop guidelines for all police and judicial officers to enforce the *Child Wellbeing and Safety Act 2005* (VIC) when a report about stalking is made.

Responses to discussion questions

Q1. What are the factors that influence whether people who experience stalking report their experiences to police?

Recommendation(s):

- The AASW recommends police officers and judicial officers undertake additional training to recognise forms of stalking to be able to identify its occurrence before stalking behaviors escalate.

AASW members have told us that the victim-survivors they work with have reported being concerned how their reports are being handled in the criminal justice system. According to Victoria Police, there have been 7,974 stalking and harassment offences recorded in 2020.¹ However, our members suggest that this number is highly understated as the criminal justice system is not well-aware of newer forms of stalking, including technology-facilitated abuse and cyberstalking. Victim-survivors are worried that their claims are not to be believed upon reporting these emerging types of stalking and/or are concerned about escalated violence being inflicted upon them when an investigation is underway. In some cases, victim-survivors may not even be aware they are being stalked due to the use of technology.² This can manifest in numerous ways including the advancement of phone applications and attachments on emails which can track a person's phone or location. Furthermore, the perpetrator may have registered the device or technology under their name, or the account and password was set up by them. This can create a barrier and risks for a victim-survivor in accessing assistance for numerous reasons including being unable to safely access support without notifying the perpetrator and technology companies. This may act as a further barrier due to confidentiality and privacy which protects the rights of the account owner. For example, iPhone owners cannot get support from Apple if the phone and/or account on the phone is under the perpetrators' name.

"I have had one client tell me that the father of the victim-survivor's two children groomed his children to stalk and monitor the victim-survivors movement on his behalf; the children would get up in the middle of the night to break into their mother's phone and iPad to see who she had been emailing or what websites she was looking at, or what calls she had made during the day. These children were 13 and 16 years old acting on behalf of the father out of fear." AASW member.

¹ Crime Statistic Agency, 2020. 'Recorded Offence'. Accessed 16th August 2021. Available at: <https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/recorded-offences-2>
² Joseph, J., 2012. Cyberstalking: An international perspective. In Dot. cons (pp. 113-133). Willan.

It is key to increase awareness within the criminal justice system of these issues so people will feel more confident reporting to skilled and knowledgeable police officers and that their matters are taken seriously. Therefore, the AASW recommends police officers and judicial officers undertake additional training to recognise all forms of stalking, in particular technology-facilitated stalking, and identify its occurrence before stalking behaviors escalate. This will ensure that the criminal justice system will be more responsive to victim-survivors who experience and report stalking.

Q2. 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?

Recommendation(s):

- That a risk assessment framework provides a risk profile of perpetrators based on their historic IVOs record, severity of stalking behaviours
- That engagement in client violence be considered a further risk factor in when completing a risk assessment of a perpetrator

The AASW supports the development of a specific risk assessment framework that is based on the current approach to repeat offenders of family violence. The current Family Violence Multi-Agency Risk Assessment and Management (MARAM) framework assesses the risk of victim-survivors in instances of family violence by evaluating the severity of reported crime and identifying the needs of victim-survivors. While stalking is a known risk factor of family violence, not all people who experience stalking experience it within the context of family violence. Subsequently, there is no current assessment framework that is specific for people experiencing stalking outside of the parameters of family violence, and therefore no ability to measure risk or the escalation of risk. This can lead to victim-survivors to fall through the cracks of the social services system. Therefore, the AASW recognises that some elements of the MARAM framework can be applied to assess the risk of victim-survivors who experience stalking outside of the context of family violence, including a comprehensive analysis of a perpetrator's history of crime, the potential for escalation, and their engagement in client violence against workers.

The history of crime

The criminal history of a perpetrator should be considered when assessing the risk of stalking behaviours, as it can assist the police officers in identifying their patterns of offending behaviours. For example, if a perpetrator is recorded to have three or more Intervention Order (IVOs) against their name, police officers can then begin to investigate the behaviour of perpetrators in a more detailed way, contributing to the early detection of high-risk individuals who are susceptible to recidivism. As repeated perpetrators of stalking often prey on multiple victim-survivors, the number

of IVOs against them could be indicative of their offending behaviours.³ By detecting repeated and high-risk offenders based on their criminal history, it could prevent further escalation and victimisation of stalking.

The potential for escalation

The inability of police to understand, identify and respond to stalking behaviours can lead to risk being overlooked and the potential to prioritise other matters such as an application for an IVO to remove a victim and survivor from a residential address. A better understanding of the escalation of stalking, such as the difference between repeat phone calls versus repeat phone calls with threatening messages, close together within a certain period of time, with the intention to frighten and/or control the victim. A means of scaling risk in the context of stalking, with the aim to determine the likely outcomes of an offender of stalking could assist in the escalation to more serious criminal acts.

Client violence towards social workers

AASW members report that they experience stalking in the context of their work, particularly in the social, community and welfare sector. Violent or aggressive behaviour by those assessed to be the perpetrator of violence, including stalking from those clients, direct associates of clients, and friends or family members of clients are common in the social services system.⁴

“At a variety of service points such as family violence agencies, refuges, homelessness entry points and child protection, staff often face experiences of clients, perpetrators or associates of perpetrators stalking and wandering around offices, damaging their cars, waiting for them to leave and following them.” AASW member.

The National Survey of Workers in the Domestic, Family and Sexual Violence Sector 2018 shows that client violence against social service workers is a common occurrence in Australia. The survey asked respondents about how many times, in the last twelve months, they had experienced bullying, harassment, violence or threats from different groups they may encounter in their work, such as clients or associates of clients, or colleagues in their organisation or in another organisation. The workforce is highly diverse, and women are a substantial majority (83.4%). Around half of workers had experienced bullying, harassment, violence or threats from a client in the last 12 months (49.0%). Of those who experienced it, more experienced it once or twice (30.1%) than more frequently. However, 10.2% of respondents had experienced it three or four times in the last 12

³ Davis, K.E., Frieze, I.H. and Maiuro, R.D. eds., 2001. *Stalking: Perspectives on victims and perpetrators*. Springer Publishing Company.

⁴ Broadley, K. and Paterson, N., 2020. *Client violence towards workers in the child, family and community welfare sector*. Melbourne: Australian Institute of Family Studies.

months and 8.7% had very high levels of exposure, reporting they had experienced it 5 or more times.⁵

However, there is no assessment framework that recognises client violence as an indicator of risk for the victim-survivors. Client violence can often result in engagement breakdowns (when a social worker terminates their working relationship with the perpetrator) and subsequently, pose as a barrier to monitoring perpetrators. The engagement in client violence should be taken into account when assessing the risk of a perpetrator's behaviours and in victim-survivor safety planning. The AASW welcomes the opportunity to develop such framework with VLRC and relevant department in the future.

Q18. Should there be more protections for victim survivors in stalking prosecutions? If so, what kind?

Recommendation(s):

- That emergency housing support be funded and provided when a notification of stalking behaviour is made
- That a 'no wrong door' approach be adopted to wrap services around victim-survivors while they are being stalked

Homelessness among victim-survivors can occur as a direct result of experiencing stalking, as they often have to leave their home to avoid continue stalking.⁶ People experiencing intersecting forms of discrimination and exclusion, such as women on a temporary visa arrangement and women living with disability, are less likely to have the personal resources needed to recover from family violence and avoid homelessness. They are more likely to be forced to be dependent on government support

⁵ Chung, D., Cordier, R., Chen, Y.W. and Green, D., 2018. National Survey of Workers in the Domestic, Family and Sexual Violence Sectors.

⁶ Jasinski, J.L., Wesely, J.K., Mustaine, E. and Wright, J.D., 2005. The experience of violence in the lives of homeless women: A research report. Washington, DC: National Institute of Justice.

systems. The example of Joan* below demonstrates the difficulty of seeking secure housing to avoid being stalked by the perpetrator.

“Joan* aged 64 years unexpectedly observed a young girl being assaulted by a family member and reported this to police and was later involved giving evidence in subsequent proceedings. Subsequently, Joan experienced extreme, personalised and prolonged stalking, intimidation and threats. Despite being supported by police to apply successfully for an intervention order, Joan felt this offered inadequate protection and claimed a policewoman advised her to relocate. Joan* fled her home, and ended up sleeping in her car for 18 months, placing her pets in care of the Pets of the Homeless until she could connect to a social worker and obtain alternative accommodation.” AASW Member.

Joan’s experience is not uncommon among older women’s experience of homelessness, following an experience of stalking and intimidation, either by a family member or non-family perpetrator. They require anonymity and have to relocate and often in the process have to leave their belongings, pets and security behind with limited referrals made to services to support them in this process. The AASW endorses a ‘no wrong door’ approach, such as those used by the Orange Door, that timely services are provided for victim-survivors the moment they disclose their experience to any social service.

Q23. 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?

Recommendation(s):

- That the Department of Family, Fairness, and Housing develop guidelines for all police and judicial officers to enforce the *Child Wellbeing and Safety Act 2005 (VIC)* when a report about stalking is made.

The AASW strongly endorses the proposal to educate all court staff and police officers on the complexity of family violence and supports procedural change that assumes a zero-tolerance approach to breaches and aims to increase protections for victim-survivors and their children. Our members work with families where stalking has created devastating impacts both on victim-survivors and their children. While we welcome recent policy announcements to maintain appropriate and respectful communication with children in alignment with the best interests of the child and repeal marital services orders for legislation, stronger enforcement of the *Child Wellbeing and Safety Act 2005 (VIC)* is also needed when police and judicial officers interact with the children of victim-survivors. Therefore, we recommend the Department of Family, Fairness, and Housing to develop guidelines for all police and judicial officers to enforce the best interest of a child. This guideline should include working with children experiencing trauma, and the knowledge of broader social

services system so that referrals can be made anytime to meet the needs of children. The AASW welcomes the future opportunity to contribute our expertise on family violence to the development of such guidelines.

Conclusion

The AASW recognises the significant impact that stalking can have on the wellbeing and sense of security of victim-survivors and their children. Our members see daily this impact but also the benefits that properly trained police, judicial officers, and family violence workers have in addressing these impacts. This requires the Victorian Government to recognise both and to provide victim-survivors with support before their situation escalates. The AASW welcomes the opportunity to work with VLRC and the Victorian Government to implement this important reform.



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Level 7, 14-20 Blackwood Street
NORTH MELBOURNE VIC 3051

PO Box 2008
ROYAL MELBOURNE HOSPITAL VIC
3050

P: 03 9320 1027
E: socialpolicy@asw.asn.au
www.aasw.asn.au

ACN 008 576 010
ABN 93 008 576 010



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www.aasw.asn.au

